AMENDED IN SENATE JUNE 23, 2009

AMENDED IN SENATE JUNE 18, 2009

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AMENDED IN ASSEMBLY MARCH 31, 2009

CALIFORNIA LEGISLATURE—2009–10 REGULAR SESSION

ASSEMBLY BILL No. 350

Introduced by Assembly Member Lieu
(Coauthor: Senator Florez)

February 19, 2009

An act to add Division 21 (commencing with Section 60000) to the Financial Code, relating to debt.

LEGISLATIVE COUNSEL'S DIGEST

AB 350, as amended, Lieu. Debt management and settlement.

Existing law, the Check Sellers, Bill Payers and Proraters Law, provides for licensure and regulation by the Commissioner of Corporations of persons engaged in, among other activities, the business of receiving money as an agent of the obligor for the purpose of paying bills, invoices, or accounts for the obligor.

This bill would enact the Debt Settlement Services Act and would, commencing January 1, ~~2011~~ *2012*, provide for the licensing and regulation by the commissioner of providers, defined as persons who provide, offer to provide, or agree to provide debt settlement services, as defined, directly or through others. The bill would require a provider to submit specified fees and an application for licensure with the commissioner. An applicant, and any person who signs an application on behalf of an applicant, who knowingly misrepresents or submits any material matter that is false, or a person who otherwise willfully violates a provision of the act, would be guilty of a misdemeanor. The bill would specify the conditions under which the commissioner may issue or deny licensure as a provider, would require renewal of a provider's license on an annual basis, and would require a provider to satisfy certain requirements before entering into an agreement with an individual for the provision of debt settlement services, including providing specified disclosures. The bill would require an agreement for debt settlement services to contain specified terms and would impose limits on the fees charged by providers. The bill would prohibit providers from engaging in specified practices. The bill would authorize the commissioner to take enforcement actions against a provider for violations of the bill's provisions and would also authorize an injured individual to recover specified damages from a provider that violates the bill's provisions. The bill would enact other related provisions.

Because the bill would create a new crime, it would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: yes.

The people of the State of California do enact as follows:

SECTION 1. Division 21 (commencing with Section 60000) is added to the Financial Code, to read:

DIVISION 21. DEBT SETTLEMENT SERVICES ACT

Chapter 1. Short Title

60000. This division shall be known and may be cited as the Debt Settlement Services Act.

Chapter 2. Definitions

60001. As used in this division, the following definitions shall apply:

(a) "Agreement" means an agreement between a provider and an individual for the performance of debt settlement services.

(b) "Applicant" means any person who submits an application to the department for the purpose of seeking licensure to become a debt settlement provider.

(c) "Commissioner" means the Commissioner of Corporations.

(d) "Concessions" means assent to repayment of an unsecured debt on terms more favorable to an individual than the terms of the contract between the individual and a creditor.

(e) "Debt settlement services" means services as an intermediary between an individual and one or more creditors of the individual for the purpose of obtaining concessions on behalf of the individual, but without receiving money from the individual for distribution to the individual's creditor.

(f) "Financial analysis" means the review of an individual's budget and income and expenses in order to make a determination about the individual's qualification for a provider's debt settlement program.

(g) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.

(h) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a public corporation, government, or governmental subdivision, agency, or instrumentality.

(i) "Principal amount of the debt" means the amount of a debt at the time of the execution of the agreement.

(j) "Program" means a program or strategy in which a provider furnishes debt settlement services.

(k) "Provider" means a person that provides, offers to provide, or agrees to provide debt settlement services directly or through others. "Provider" does not include either of the following:

(1) The services of a person licensed to practice law in this state, when the person renders services in the course of his or her practice as an attorney-at-law.

(2) The services of a person licensed as a certified public accountant or a public accountant in this state, when the person renders services in the course of his or her practice as a certified public accountant or a public accountant.

(3) A family member of an individual that negotiates financial concessions, with or without compensation, from the creditors of the individual.

(*l*) "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Chapter 3. General Provisions

60002. This division shall not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person's business or profession:

(a) A judicial officer, a person acting under an order of a court or an administrative agency, or an assignee for the benefit of creditors.

(b) A bank, bank holding company, or the subsidiary, agent, or affiliate of either, or a credit union or other financial institution licensed under state *or federal* law.

(c) A title insurer, escrow company, or other person that provides bill paying services if the person does not provide debt settlement services.

(d) Financial planning services provided in a financial planner-client relationship by a member of a financial planning profession whose members the commissioner determines are licensed under Chapter 3 (commencing with Section 25230) of Part 3 of Division 4 of the Corporations Code.

(e) A person licensed or registered to originate loans secured by real property.

60003. All fees collected by the commissioner pursuant to this division shall be deposited in the State Treasury to the credit of the State Corporations Fund. The administration of this division shall be supported out of the State Corporations Fund upon appropriation by the Legislature.

60004. The commissioner may adopt rules and regulations necessary to implement this division in accordance with the provisions of the Administrative Procedure Act (Chapter 3.5

(commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

Chapter 4. Licensing

60005. (a) No person shall provide debt settlement services to an individual who it reasonably should know resides in this state at the time it agrees to provide the services, unless the provider is licensed under this division.

(b) The commissioner shall maintain and publicize a list of the names of all licensed providers, which shall be published by the commissioner within 180 days of the operative date of this division.

60006. (a) An application for licensure as a provider shall be in a form prescribed by the commissioner.

(b) Subject to adjustment of dollar amounts pursuant to subdivision (a) of Section 60007, an application for licensure as a provider shall be accompanied by the following:

(1) The fee established by the commissioner.

(2) Evidence of a surety bond or minimum coverage of insurance, in an amount specified by the commissioner, which bond or insurance shall be maintained by the provider during the term of the license. The bond shall state that it is held for the benefit of the individuals who contract for debt settlement services, and can be claimed under by those individuals and by persons acting with respect to this division on behalf of those individuals, including the commissioner, a district attorney, city attorney, or the Attorney General.

(3) Proof that the applicant has filed appropriate documents with either the Secretary of State or the county in which the applicant is located to conduct a business in California.

60007. (a) The commissioner shall set an annual deadline for the submission of applications for licensure. The commissioner shall set, prior to the annual application deadline, based on its estimates of the cost of administering the program and the estimated number of license applicants, an application fee. Sixty days after the licensing deadline for the initial license, the commissioner shall determine, if necessary, a surcharge to cover the estimated costs for the remainder of the year, plus any deficit, if any, from the year prior, for administering this division. The surcharge shall be charged as a pro rata share to each applicant granted a license during that year based on the number of active enrolled California residents in that licensee's debt settlement program, with a reasonable minimum and maximum charge as determined by the commissioner.

(b) The commissioner shall notify each licensee by mail of the amount of the surcharge assessed against it and that the amount shall be paid within 30 days thereafter. If the licensee fails to pay the assessment on or before the 30th day upon which payment is due, the commissioner may by order summarily suspend or revoke the license issued to the licensee.

(c) Any applicant that files its application after the deadline shall be charged the initial application fee plus the pro rata surcharge specified in subdivision (a), and the application fee for that applicant shall not be adjusted to account for any partial year.

60008. Every application for licensure shall be signed by the applicant and shall declare as true any material matter pursuant to this application for licensure. Any applicant, and any person who signs an application on behalf of an applicant, who knowingly misrepresents or submits any material matter that is false is guilty of a misdemeanor. The application form shall contain a statement informing the applicant that a false or dishonest answer to a question may be grounds for denial or subsequent suspension or revocation of the applicant's license. An application for licensure shall be in a form prescribed by the commissioner and shall include the following:

(a) The applicant's name, principal business address and telephone number, and all other business addresses in this state, e-mail addresses, and Internet Web site addresses.

(b) All names under which the applicant conducts a debt settlement business or a business for which licensure by the Department of Corporations is required.

(c) The address of each location in this state at which the applicant shall provide debt settlement services or a statement that the applicant will have no such location.

(d) The name ~~and home address~~ of each executive officer and director of the applicant and each person that owns at least 10 percent of the applicant.

(e) A statement describing, to the extent it is known or should be known by the applicant, any material civil or criminal judgment relating to financial fraud or misuse and any material administrative or enforcement action by a governmental agency relating to financial fraud or misuse in any jurisdiction against the applicant, any of its officers, directors, owners, or agents.

(f) Evidence of accreditation or certification by an independent accrediting or certification organization approved by the commissioner. If the applicant has not had the opportunity to obtain accreditation or certification, the applicant shall provide proof of registration with a recognized accrediting or certifying organization along with a schedule under which it plans to obtain accreditation or certification. The applicant shall obtain accreditation or certification within six months of the date of its application. *If an applicant fails to obtain accreditation as set forth in the information provided to the commissioner under this subdivision, the failure shall be a material violation of this division and subject to subdivision (b) of Section 60031.*

(g) At the applicant's expense, via the process in Section 60009, the results of a national criminal history records check, including fingerprints, provided pursuant to the Federal Bureau of Investigation appropriation of Title II of Public Law 92-544 (28 U.S.C. Sec. 534) conducted within the immediately preceding 12 months, covering every executive officer of the applicant. The commissioner shall be the authorized agency to receive information regarding the results of the national criminal history records check under Title II of Public Law 92-544 (28 U.S.C. Sec. 534).

(h) Any other information that the commissioner reasonably requires to determine whether to issue a license.

60009. (a) An applicant for licensure shall provide to the commissioner, and the commissioner shall submit to the Department of Justice, fingerprint images and related information required by the Department of Justice of *all* applicants for licensure for purposes of obtaining information as to the existence and content of a record of state or federal convictions and state or federal arrests and also information as to the existence and content of a record of state or federal arrests for which the Department of Justice establishes that the person is free on bail or on his or her own recognizance pending trial or appeal.

(b) When received, the Department of Justice shall forward to the Federal Bureau of Investigation requests for federal *summary* criminal history information received pursuant to this section. The Department of Justice shall review the information returned from the Federal Bureau of Investigation and compile and disseminate a response to the Commissioner of Corporations.

(c) The Department of Justice shall provide state and federal responses to the commissioner pursuant to paragraph (1) of subdivision (p) of Section 11105 of the Penal Code.

(d) The commissioner may request from the Department of Justice subsequent arrest notification service, as provided pursuant to Section 11105.2 of the Penal Code, for a person described in subdivision (a).

(e) The Department of Justice shall charge a fee, to be paid by an applicant for licensure, that is sufficient to cover the cost of processing the request described in this section.

(f) All information supplied to the commissioner in connection with the application for licensure shall be held confidential by the commissioner.

60010. An applicant or licensed provider shall notify the department prior to any change in the information specified in paragraph (2) of subdivision (b) of Section 60006 or in subdivision (a), *(b),* or (c) of Section 60008, or within 14 days after any change in the information specified in subdivision *(d) or* (e) of Section 60008, or any other information as required, by rule, by the commissioner.

60011. (a) Except as otherwise provided in subdivisions (b) and (c), the commissioner shall issue a certificate of licensure as a provider to a person that complies with this division.

(b) The commissioner may deny licensure for any of the following:

(1) An application that contains information that is materially erroneous or incomplete.

(2) The applicant, an officer, director, or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving fraud, deceit, or dishonesty or the violation of state or federal securities or consumer protection laws.

(3) An applicant has made any false statement or representation to the commissioner.

(4) An applicant is or becomes insolvent.

(5) An applicant refuses to reasonably comply with an investigation or examination of the debt settlement service provider by the commissioner.

(6) An applicant has improperly withheld, misappropriated, or converted funds received in the course of doing business.

(7) An applicant has used fraudulent, coercive, or dishonest practices, or demonstrated incompetence regarding debt settlement services, or financial irresponsibility in this state or elsewhere.

(8) An applicant has shown to have engaged in a pattern of failing to perform services promised.

(c) The commissioner shall deny licensure if the application is not accompanied by the fee established by the commissioner.

60012. (a) The commissioner shall approve or deny an initial license as a provider within 60 days after a complete application is filed. In connection with a request pursuant to subdivision (h) of Section 60008 for additional information, the commissioner may extend the 60-day period for not more than 45 days. Within 10 business days after denying an application, the commissioner, in a record, shall inform the applicant of the reasons for the denial.

(b) If the commissioner denies an application for licensure as a provider or does not act on an application within the time prescribed in subdivision (a), the applicant may appeal and request a hearing pursuant to the California Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

60013. (a) A provider shall obtain a renewal of its license annually.

(b) An application for renewal of licensure as a provider shall be in a form prescribed by the commissioner and be filed no fewer than 30 and no more than 60 days before the license expires.

(c) Application for renewal shall be accompanied by the fee established by the commissioner in an amount reasonably necessary for the administration of this division. The commissioner may, if necessary, also include a surcharge to the licensure renewal fee that shall be determined by the amount of the deficit, if any, for reasonable expenses and costs incurred greater than the revenue collected, in the administration of this division in the year immediately preceding the renewal year. The surcharge shall be charged to providers on a pro rata share based on the number of California residents enrolled in the provider's debt settlement services program.

(d) The commissioner, by rule, may require a provider to submit specific business information with the annual renewal application.

60014. A person or entity licensed as a provider under this division shall be exempt from the requirements of Division 3 (commencing with Section 12000), except to the extent the person is performing services and activities governed by Section 12000.

Chapter 5. Regulations

60015. A provider that is required to be licensed under this division shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a customer service representative, as appropriate, during ordinary business hours.

60016. (a) Before an individual assents to an agreement to engage in a program, the provider shall do all of the following:

(1) Prepare and provide a written financial analysis specific to the individual.

(2) Provide a written good faith estimate of the length of time it will take to complete the program and a statement of the total amount of debt owed to each creditor included in the program. The estimate shall include a statement of the monthly savings goals for the individual to complete the program.

(3) Based upon the completed financial analysis, make a determination that the individual is qualified for a debt settlement program and that the individual can reasonably meet the requirements of the program.

(4) Inform the individual in writing of all of the following:

(A) The name and business address of the provider.

(B) That some programs are not suitable for some individuals.

(C) That the conduct of a program may negatively affect the individual's credit rating or credit scores.

(D) That nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including litigation.

(E) That unless the individual is insolvent, if a creditor settles for less than the full amount of the debt, the program may result in the creation of taxable income to the individual, even though the individual does not receive any money.

(F) That specific results cannot be predicted or guaranteed.

(G) That a program requires an individual to meet certain savings goals in order to maximize settlement results.

(H) That a provider, who is not otherwise authorized or professionally licensed, does not provide accounting or legal advice to individuals.

(I) That a provider does not receive compensation from an individual's creditors, banks, or third-party collection agencies.

(J) That a provider cannot force negotiations or settlements with creditors but will advocate solely on behalf of an individual.

(K) That if an individual terminates an agreement pursuant to paragraph (1) of subdivision (b) of Section 60019, no additional fees will be due.

(L) That the use of debt settlement services may not stop a creditor from filing or pursuing a lawsuit against an individual.

(M) That the consumer may owe fees upon signing an agreement whether or not any debts are reduced under the program.

(b) The provider shall insert the following statement, in not less than 10-point type, in its debt settlement program agreements:

"Complaints related to this agreement may be directed to the Department of Corporations by ~~telephone and its Internet Web site address~~ *calling (866) ASK-CORP or by logging on to their Internet Web site at www.corp.ca.gov*."

60017. (a) For purposes of this section, the following definitions apply:

(1) "Consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.

(2) "Federal act" means the Electronic Signatures in the Global and National Commerce Act (15 U.S.C. Sec.7001 et seq.).

(b) A provider may satisfy the requirements of Section 60016, 60019, 60020, or 60024 by means of the Internet or other electronic means if the provider obtains a consumer's consent in the manner provided by Section 101(c)(1) of the federal act (15 U.S.C. Sec. 7001(c)(1)).

(c) The disclosures and materials required by Section 60016, 60019, 60020, or 60024 shall be presented in a form that is capable of being printed and accurately reproduced for later reference.

(d) With respect to disclosure by means of an Internet Web site, the disclosure of the information required by subdivision (d) of

Section 60016 shall appear on one or more screens that satisfy both of the following:

(1) The screen contains no other information.

(2) An individual shall be able to see the screen before proceeding to assent to formation of a program.

(e) At the time of providing the materials and agreement required by subdivisions (a), (b), and (c) of Section 60016, Section 60019, and Section 60024, a provider shall inform the individual*, pursuant to Section 60020,* that upon electronic, telephonic, or written request, it will send the individual a written copy of the materials, and shall comply with a request as provided in subdivision (f).

(f) If a provider is requested, before the expiration of 90 days after a program is completed or terminated, to send a written copy of the materials required by subdivisions (b) and (c) of Section 60016, Section 60019, and Section 60024, the provider shall send them, *pursuant to Section 60020,* at no charge within three business days after the request, but the provider shall not be required to comply with a request more than once per calendar month or if it reasonably believes the request is made for purposes of harassment. If a request is made more than 90 days after a program is completed or terminated, the provider shall send within a reasonable time a written copy of the materials requested.

60018. A provider shall maintain an Internet Web site and shall disclose all of the following on the home page of its Internet Web site or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals its contents:

(a) Its name, business address, telephone number, and e-mail address, if any.

(b) Its license number under this division and a link to the department's Internet Web site.

(c) All other disclosures required by law.

60019. (a) An agreement under this division shall satisfy all of the following requirements:

(1) Be in writing, dated, and signed by the individual.

(2) Include the name of the individual and the address where the individual resides.

(3) Include the name, business address, and telephone number of the provider and, if this does not include a street address in California, the name and address of its California agent for service of process.

(4) Be delivered to the individual immediately upon formation of the agreement. For purposes of this paragraph, delivery of an electronic record occurs when it is sent to the individual and made available in a format in which the individual may retrieve, save, and print, and the individual is notified that it is available.

(5) Include all disclosures required under Section 60016.

(6) Disclose all of the following:

(A) The list required under subdivision (a) of Section 60016.

(B) The amount, and method of determining the amount, of all fees, individually itemized, to be paid by the individual.

(C) How the provider will comply with its obligations under subdivision (a) of Section 60024.

(D) That the individual may contact the ~~commissioner~~ *Department of Corporations* with any questions or complaints regarding the provider.

(7) Display the following provisions, which shall appear prominently and clearly on the front page:

(A) The total amount of the debt brought into the program.

(B) The setup fee amount to be paid by the individual, if any.

(C) The monthly fee to be paid by the individual, if any.

(D) The estimated number of months for which a monthly fee is required by the agreement.

(E) An estimate of the total amount of fees reasonably anticipated to be paid by the individual over the term of the agreement, as applicable.

(F) The total amount of fees that may be charged under the contract.

(b) An agreement under this division shall provide the following:

(1) That the individual has a right to terminate the agreement at any time by giving the provider written or electronic notice. Termination of the agreement becomes effective immediately upon receipt by the provider, at which time all powers of attorney granted by the individual to the provider are revoked and ineffective.

(2) That the individual can cancel an agreement and receive a full refund of any moneys paid to the provider before midnight of the fifth business day after the individual assents to it. Notice of cancellation is effective upon proof of sending the notice prior to the deadline. Upon cancellation the provider shall refund all fees no later than 10 business days from the date of cancellation.

(3) That any power of attorney only authorizes the provider, as reasonably necessary, to communicate with creditors for the purposes of negotiating settlement offers and to initiate transfer of funds in accordance with Section 60025.

(4) That the provider shall notify the individual within three business days after learning of a creditor's decision to cease final negotiation with the provider. This notification shall include both of the following:

(A) The identity of the creditor.

(B) The right of the individual to modify or terminate the agreement.

(C) The terms and conditions of the agreement modification process.

(c) An agreement shall not do any of the following:

(1) Provide for application of the law of any jurisdiction other than this state.

(2) Except as permitted by the California Arbitration Act (Title 9 (commencing with Section 1280) of Part 3 of the Code of Civil Procedure), contain a provision that modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are generally available to the individual under law other than as provided in this division.

(3) Contain a provision that restricts the individual's remedies under this division or under another law of this state.

(4) Contain a provision that does any of the following:

(A) Limits or releases the liability of any person for not performing the agreement or for violating this division.

(B) Indemnifies any person for liability arising under the agreement or this division.

(C) Require the individual to be responsible for payment of attorney's fees of the provider.

(d) All rights and obligations specified in subdivision (b) exist even if not provided in the agreement. A provision in an agreement that violates subdivision (b) or (c) is void.

60020. If a provider communicates with an individual primarily in a language other than English, the provider shall furnish a translation into the other language of the disclosures and documents required by this division.

60021. (a) The total of all fees charged by a provider shall not exceed 20 percent of the principal amount of debt which includes a maximum total set up fee specific to the individual of up to 5 percent. The provider's total fees must be spread over at least half the length of the program or until offers of settlement by creditors are obtained on at least half of the debts enrolled to the provider. In no case shall total fees exceed 20 percent of the principal debt, and the total fees plus settlements cannot exceed the principal amount of the debt. However, this section shall not preclude an individual from voluntarily prepaying fees earned by the provider.

(b) A provider shall not impose, directly or indirectly, a fee or other charge on an individual or receive money from or on behalf of an individual for debt settlement services except as permitted by this section.

(c) A provider shall not impose charges or receive payment for debt settlement services until the provider and the individual have signed an agreement that complies with Sections 60016, 60019, and 60020.

(d) If a payment to a provider by an individual under this division is dishonored, a provider may impose a reasonable charge on the individual, not to exceed fifteen dollars ($15). Any charge pursuant to this subdivision shall be limited to one per payment due.

60022. (a) If a provider imposes a fee or other charge or receives money or other payments not authorized by Section 60021, the agreement is void and the individual may recover as provided in Section 60032.

(b) If a provider is not licensed as required by this division when an individual assents to an agreement, the agreement shall be void.

(c) If an agreement is void pursuant to subdivision (a) or (b), the provider shall not have a claim against the individual for breach of contract or for restitution.

(d) Subdivision (a) shall not apply to an error in computation in the amount of an authorized fee if (1) the provider shows by a preponderance of evidence that the violation was not willful and resulted from a good faith error, notwithstanding the maintenance of procedures reasonably adapted to avoid that error, and (2) within 60 days of discovering the error the provider notifies the individual of the error and makes whatever adjustments in the account are necessary to correct the error.

60023. If an individual who has entered into a fee agreement fails for 60 days to make payments required by the agreement, a provider may terminate the agreement. The provider may not earn additional fees on or after termination.

60024. (a) A provider shall provide the accounting required by subdivision (b), as follows:

(1) Upon settlement of a debt.

(2) Within five business days after a request by an individual, but the provider shall not be required to comply with more than one request in any calendar month.

(3) Upon cancellation or termination of an agreement.

(b) A provider, in a record, shall provide the following to each individual for whom it has established a program if a creditor has agreed to accept as payment in full an amount less than the principal amount of the debt owed by the individual:

(1) The total amount and terms of the settlement.

(2) The amount of the debt when the individual assented to the program.

(3) The amount of the debt when the creditor agreed to the settlement.

(4) The fee, and the calculation of the fee, if any, charged to the individual based on a percentage of the settlement of debt or based on a percentage of the savings realized by the individual.

(c) A provider shall maintain records for each individual for whom it provides debt settlement services for five years after the final payment made by the individual. A provider shall produce a copy of those records and provide them to the individual within a reasonable time after a request for the records. The provider may use electronic or other means of storage of the records.

(d) A provider shall provide the individual with a copy of the written documentation from the creditor of a debt that has been successfully settled, when available to the provider.

60025. (a) A provider shall not, directly or indirectly, do any of the following:

(1) Exercise or attempt to exercise a power of attorney not authorized by the agreement.

(2) Exercise or attempt to exercise a power of attorney after an agreement has been cancelled or terminated.

(3) Initiate a transfer of funds to or from an individual's bank or other financial institution, unless the transfer is one of the following:

(A) A return of money to the individual.

(B) Before termination of an agreement, properly authorized by the agreement and this division, for payment of a fee.

(C) A transaction that has been expressly approved in writing, or recorded statement, by the individual after the transaction has been presented to the individual for approval.

(D) A transaction expressly directed by the individual to the bank or financial institution.

(4) Settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual or provider receives a certification or confirmation by the creditor that the payment is in full settlement, or is part of a payment plan that is in full settlement, of the debt.

(5) Make a representation that:

(A) The provider will furnish money to pay bills or prevent attachments.

(B) Payment of a certain amount will guarantee satisfaction of a certain amount or range of indebtedness.

(C) Participation in a program will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment.

(6) Represent that it is a not-for-profit entity unless it is organized and properly operating as a not-for-profit entity under the law of the state in which it was formed or that it is a tax-exempt entity unless it has received certification of tax-exempt status from the Internal Revenue Service.

(7) Knowingly employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information.

(8) Fail to respond to and research any complaint initiated by an individual within 20 days of receipt of the complaint and resolve each complaint in a prompt and reasonable manner.

(9) Require an individual participating in a debt settlement program to utilize additional ancillary services.

(10) Receive financial incentives or additional compensation based on the outcome of the debt settlement program in excess of the fee cap.

(11) Pay referral fees to creditors or potential creditors who refer new clients to the provider.

(b) If a provider furnishes debt settlement services to an individual, the provider may not, directly or indirectly, do any of the following:

(1) Purchase a debt or obligation of the individual.

(2) Receive from or on behalf of the individual either of the following:

(A) A promissory note or other negotiable instrument other than a check.

(B) A postdated check.

(3) Lend money or provide credit to the individual, except as a deferral of a fee at no additional expense to the individual, or advance a settlement payment for the individual at no additional expense to the individual.

(4) Obtain a mortgage or other security interest from any person in connection with the services provided to the individual.

(5) Force or otherwise require an individual to deposit his or her funds into a specific financial institution. A provider must also state to the individual that the individual is free to choose any FDIC-insured *or NCUA-insured* financial institution. However, this shall not prevent a provider from furnishing the individual with a list of FDIC-insured *or NCUA-insured* financial institutions from which the individual may choose or explaining the benefits of using any particular financial institution.

(6) Except as permitted by federal and California law, disclose the identity or identifying information of the individual or the identity of the individual's creditors, except to:

(A) The commissioner, upon proper demand.

(B) A creditor of the individual, to the extent necessary to secure the cooperation of the creditor in a program.

(C) The extent necessary to administer the program.

(7) Except as otherwise provided in Section 60021, provide the individual less than the full benefit of a compromise of a debt arranged by the provider.

(8) Charge the individual for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt settlement services or educational services concerning personal finance.

(9) Furnish legal advice or perform legal services, unless the person furnishing that advice to or performing those services for the individual is licensed to practice law.

(10) Advise individuals to stop payment on any of the accounts being handled by the provider.

(11) Hold an individual's funds in trust.

(12) Include in any debt settlement services agreement any secured debt.

(c) This division does not authorize any person to engage in the practice of law.

60026. Each provider shall establish an internal formal complaint policy that creates a process for the provider to receive, review, and address or resolve formal complaints internally. The availability of this process shall be communicated in writing to individuals enrolled in the provider's program. This policy shall include a provision that all consumers who file a formal complaint shall receive a response from the provider within 20 days from the provider's receipt of the complaint. The provider shall maintain a file for each formal complaint that documents the complaint, its handling, and the resolution, if any, of the complaint and the provider shall disclose the file to the commissioner upon request.

60027. No later than 30 days after a provider has been served with notice of a civil action for violation of this division by or on behalf of an individual who resides in this state at either the time of an agreement or the time the notice is served, the provider shall notify the commissioner in a record that it has been sued.

60028. Any advertising concerning debt settlement services shall not contain any false, misleading, or deceptive statement or omit to state any fact necessary to make the statements made, in light of circumstances under which they are made, not false, misleading, or deceptive.

60029. (a) The commissioner may act on his or her own initiative or in response to complaints and may receive complaints, take action to obtain voluntary compliance with this division, refer cases to the Attorney General, or any other law enforcement agency, and seek or provide remedies as provided in this division.

(b) The commissioner may investigate and examine once every two years, in this state or elsewhere, by subpoena or otherwise, the activities, books, accounts, and records of a person that provides or offers to provide debt settlement services, or a person to which a provider has delegated its obligations under an agreement or under this division, to determine compliance with this division. Information that identifies individuals who have agreements with the provider shall not be disclosed to the public. In connection with the investigation, the commissioner may do either of the following:

(1) Charge the person the reasonable expenses necessarily incurred to conduct the examination.

(2) Require or permit a person to file a statement under oath as to all the facts and circumstances of a matter to be investigated.

(c) The commissioner may enter into cooperative arrangements with any other federal or state agency having authority over providers and may exchange with any of those agencies information about a provider, including information obtained during an examination of the provider.

60030. (a) The commissioner may enforce this division and rules adopted under this division by taking one or more of the following actions:

(1) Ordering a provider or a director, employee, or other agent of a provider to desist and refrain from any violations.

(2) Ordering a provider or a person that has caused a violation to correct the violation, including making restitution of money or property to a person aggrieved by a violation.

(3) Imposing an administrative penalty not exceeding two thousand five hundred dollars ($2,500) for each violation on a provider or a person that has caused a violation.

(4) Prosecuting a civil action to do either or both of the following:

(A) Enforce an order.

(B) Obtain restitution or an injunction or other equitable relief, or both.

(b) If a person knowingly violates or knowingly authorizes, directs, or aids in the violation of a final order issued under paragraph (1) or (2) of subdivision (a), the commissioner may impose an administrative penalty not exceeding ten thousand dollars ($10,000) for each violation.

(c) The commissioner may recover the reasonable costs of enforcing this division under subdivisions (a) and (b), including attorney's fees based on the hours reasonably expended and the hourly rates for attorneys of comparable experience in the community.

(d) In determining the amount of a penalty to impose under subdivision (a) or (b), the commissioner shall consider the seriousness of the violation, the good faith of the violator, any previous violations by the violator, the deleterious effect of the violation on the public, the net worth of the violator, and any other factor the commissioner considers relevant to the determination of the civil penalty.

(e) Any penalties or other amounts recovered by the commissioner under this section shall be paid into the State Corporations Fund.

60031. (a) In this section, "insolvent" means any of the following:

(1) The inability to pay debts in the ordinary course of business other than as a result of good faith dispute.

(2) Being unable to pay debts as they become due.

(3) Being insolvent within the meaning of the federal bankruptcy law (11 U.S.C. Sec. 101 et seq.).

(b) The commissioner may suspend, revoke, or deny renewal of a provider's license if:

(1) A fact or condition exists that, if it had existed when the licensee applied for licensure as a provider, would have been a reason for denying the license.

(2) The provider has committed a material violation of this division or a rule or order of the commissioner under this division.

(3) The provider is insolvent.

(4) The provider or an employee or affiliate of the provider has refused to permit the commissioner to make an examination authorized by this division, failed to comply with paragraph (2) of subdivision (b) of Section 60029 within 15 days after request, or made a material misrepresentation or omission in complying with paragraph (2) of subdivision (b) of Section 60029.

(5) The provider has not responded within a reasonable time and in an appropriate manner to communications from the commissioner.

(6) The provider has been convicted of a crime that involves dishonesty, fraud, or deceit, and that is substantially related to the qualifications, functions, or duties of the licensed activity.

(c) If the commissioner suspends or revokes a provider's license, the provider may appeal and request a hearing pursuant to the California Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code).

60032. (a) If an agreement is void pursuant to subdivision (a) or (b) of Section 60022, the individual may recover in a civil action all money paid by or on behalf of the individual pursuant to the agreement, in addition to the recovery under subdivision (b).

(b) An individual with respect to whom a provider violates this division may recover the following in a civil action from the provider and any person that caused the violation:

(1) Compensatory damages for injury caused by the violation.

(2) Reasonable attorney's fees and costs.

60033. If an act or practice of a provider violates both this division and Chapter 5 (commencing with Section 17200) of Part 2 of Division 7 of the Business and Professions Code, an individual may not recover under both for the same act or practice.

60034. (a) An action brought under this division shall be commenced within three years after the latest of one of the following:

(1) The last transmission of money to a provider by or on behalf of the individual.

(2) The date on which the individual discovered or reasonably should have discovered the facts giving rise to the individual's claim.

(b) The period prescribed in paragraph (2) of subdivision (a) shall be tolled during any period during which the provider or, if different, the defendant has materially misrepresented information required by this division to be disclosed to the individual, if the information so misrepresented is material to the establishment of the liability of the defendant under this division.

60035. This division shall not apply to a debt settlement agreement between an individual and a provider for the performance of debt settlement services that was entered into prior to the operative date of this division.

60036. The commissioner may make general rules and regulations and specific rulings, demands, and findings for the enforcement of this division.

60037. Any person, including a partner or officer of an entity that is a licensee, who willfully violates any provision of this division or who willfully violates any rule or order adopted pursuant to this division, shall, upon conviction, be punished by a fine of not more than ten thousand dollars ($10,000), or by imprisonment in a county jail for not more than one year, or by both that fine and imprisonment. However, no person may be imprisoned for the violation of any rule or order unless he or she had knowledge of the rule or order.

60038. A provider shall act in good faith in all matters under this division.

60039. This division shall become operative on January 1, ~~2011.~~ *2012.*

Chapter 6. Miscellaneous

60050. The provisions of this division are severable. If any provision of this division or its application is held invalid, that invalidity shall not affect other provisions or applications that can be given effect without the invalid provision or application.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

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