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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, 2012, provide for the licensing and regulation by the commissioner of providers, defined as persons ~~who~~ *that* 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, signed under penalty of perjury, 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 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 require a provider to submit annual reports to the commissioner containing specified information relating to its business in the previous calendar year. 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, and expand the scope of the crime of perjury, 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:

- 1 SECTION 1. Division 21 (commencing with Section 60000)
- 2 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) “Control” means the possession, direct or indirect, of the power to direct or cause the direction of the management or policies of a licensee, whether through the ownership of voting securities, by contract, or otherwise. Control shall be presumed to exist if any person or persons, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing, 10 percent or more of the voting securities or other interest of any other licensee.

(f) “Debt settlement program” or “program” means a program or strategy in which a provider furnishes debt settlement services.

(g) “Debt settlement services” means acting or offering to act as an intermediary between an individual and one or more creditors of the individual for the purpose of adjusting, settling, discharging, reaching a compromise on, or obtaining a concession on the individual’s unsecured debt or other unsecured obligation, *where the primary purpose of the action is to obtain a settlement or satisfaction of the individual’s debt in an amount less than the full principal amount of the debt*, in return for a fee or other consideration, ~~without receiving money from the individual for distribution to the individual’s creditors.~~

(h) “Department” means the Department of Corporations.

(i) “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. *Based on the financial analysis pursuant to Section 60016, the provider shall make a determination as described in paragraph (3) of subdivision (a) of Section 60016.*

(j) “Good faith” means honesty in fact and the observance of reasonable standards of fair dealing.

(k) “Licensee” means any person licensed pursuant to this division. “Licensee” does not include an employee regularly employed by a licensee at the licensee’s place of business.

(l) “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.

(m) “Principal amount of the debt” means the amount of a debt at the time of the execution of the agreement.

(n) “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 in an attorney-client relationship.

(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.

(o) “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:

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

4 ~~(b) A financial institution under state or federal law, which is~~
5 ~~limited to the following:~~

6 ~~(1) Any bank or its agent, trust company, insurance company,~~
7 ~~or industrial loan company doing business under the authority of~~
8 ~~or in accordance with a license, certificate, or charter issued by~~
9 ~~the United States or any state, district, territory, or commonwealth~~
10 ~~of the United States that is authorized to transact business in this~~
11 ~~state.~~

12 ~~(2) A federally chartered savings and loan association, federal~~
13 ~~savings bank, or federal credit union that is authorized to transact~~
14 ~~business in this state.~~

15 ~~(3) A savings and loan association, savings bank, or credit union~~
16 ~~organized under the laws of this or any other state that is authorized~~
17 ~~to transact business in this state.~~

18 ~~(4) A person engaged solely in business, commercial, or~~
19 ~~agricultural mortgage lending.~~

20 ~~(5) A wholly owned service corporation of a savings and loan~~
21 ~~association or savings bank organized under the laws of this state~~
22 ~~or the wholly owned service corporation of a federally chartered~~
23 ~~savings and loan association or savings bank that is authorized to~~
24 ~~transact business in this state.~~

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

28 (c) A California licensed title insurer or escrow company in
29 good standing that provides bill paying services if the person does
30 not provide debt settlement services.

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

36 (e) A person licensed or registered to originate loans secured
37 by real property when debt settlement services are provided in the
38 course of a loan origination.

(f) A nonprofit community service organization that fulfills the requirements of Section 12104 and is exempt from the requirements of Division 3 (commencing with Section 12000).

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 general rules and regulations and specific rulings, demands, orders, and findings necessary to administer, implement, and enforce 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 offer or 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 accompanied by all of the following:

(1) The sum of one thousand dollars (\$1,000) as a fee for investigating the application, the sum of not less than one thousand dollars (\$1,000) as an application fee, subject to adjustment under Section 60007, and the cost of fingerprint processing. The investigation fee and application fee are not refundable. Unused application fee funds shall be used to cover the cost of the program.

(2) Evidence of a surety bond in the amount of fifty thousand dollars (\$50,000), which shall be maintained by the provider during the term of the license.

(3) Financial statements prepared in accordance with generally accepted accounting principles and reviewed by an independent, third-party licensed accountant.

(b) As a substitute for the bond required in paragraph (2) of subdivision (a), a licensee may file either of the following with

1 the commissioner in the same amount required under paragraph
2 (2) of subdivision (a):

3 (1) An irrevocable letter of credit, issued or confirmed by a bank
4 approved by the administrator, payable upon presentation of a
5 certificate by the administrator stating that the provider or its agent
6 has not complied with this division.

7 (2) Bonds or other obligations of the United States or guaranteed
8 by the United States or bonds or other obligations of this state or
9 a political subdivision of this state, to be deposited and maintained
10 with a bank approved by the administrator for this purpose.

11 (c) Upon licensure as a provider, the bond required under this
12 section shall be payable to the commissioner and issued by an
13 insurer authorized to do business in this state. A copy of the bond,
14 including any and all riders and endorsements executed subsequent
15 to the effective date of the bond, shall be filed with the
16 commissioner for review and approval within 10 days of execution.
17 The bond shall be used for the recovery of losses or damages
18 incurred by individuals as the result of a licensee's noncompliance
19 with the requirements of this division or for the recovery of
20 expenses, fines, and fees levied by the commissioner, a district
21 attorney, city attorney, or the Attorney General.

22 (d) The bond required under this section shall remain in force
23 and effect until the surety is released from liability by the
24 commissioner, or until the bond is canceled by the surety.

25 (e) A licensee shall maintain a minimum net worth of one
26 hundred thousand dollars (\$100,000) at all times as evidenced by
27 the financial statement.

28 (f) A licensee shall annually file financial statements along with
29 the annual report to the commissioner required under Section
30 60029.5.

31 60007. (a) The commissioner shall set an annual deadline for
32 the submission of applications for licensure. Notwithstanding
33 paragraph (1) of subdivision (a) of Section 60006, the
34 commissioner shall set, prior to the annual application deadline,
35 based on its estimates of the cost of administering the program
36 and the estimated number of license applicants, an application fee.
37 Sixty days after the licensing deadline for the initial license, the
38 commissioner shall determine, if necessary, a surcharge to cover
39 the estimated costs for the remainder of the year, plus any deficit,
40 if any, from the year prior, for administering this division. The

1 surcharge shall be charged as a pro rata share to each applicant
2 granted a license during that year based on the number of active
3 enrolled California residents in that licensee's debt settlement
4 program, with a reasonable minimum and maximum charge as
5 determined by the commissioner.

6 (b) The commissioner shall notify each licensee by mail of the
7 amount of the surcharge assessed against it and that the amount
8 shall be paid within 30 days thereafter. If the licensee fails to pay
9 the assessment on or before the 30th day upon which payment is
10 due, the commissioner may by order summarily suspend or revoke
11 the license issued to the licensee. In the levying and collection of
12 the assessment, a licensee shall neither be assessed for, nor be
13 permitted to pay less than, one thousand dollars (\$1,000) per year.

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

18 60008. Every application for licensure shall be signed by the
19 applicant and shall declare, under penalty of perjury, as true any
20 material matter submitted on the application for licensure. Any
21 applicant, and any person who signs an application on behalf of
22 an applicant, who knowingly misrepresents or submits any material
23 matter that is false is guilty of a misdemeanor. The application
24 form shall contain a statement informing the applicant that a false
25 or dishonest answer to a question may be grounds for denial or
26 subsequent suspension or revocation of the applicant's license. An
27 application for licensure shall be in a form prescribed by the
28 commissioner and, at a minimum, shall include the following:

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

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

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

38 (d) The name of each executive officer and director of the
39 applicant and each person that owns or controls, directly or
40 indirectly, at least 10 percent or more of the outstanding equity

1 interests of the applicant and any other information necessary for
2 the investigation pursuant to Section 60008.5.

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

9 (f) At the applicant's expense, pursuant to the process in Section
10 60009, the results of a national criminal history records check,
11 including fingerprints, provided pursuant to the Federal Bureau of
12 Investigation appropriation of Title II of Public Law 92-544 (28
13 U.S.C. Sec. 534) conducted within the immediately preceding 12
14 months, covering every executive officer of the applicant. The
15 commissioner shall be the authorized agency to receive information
16 regarding the results of the national criminal history records check
17 under Title II of Public Law 92-544 (28 U.S.C. Sec. 534).

18 (g) Disclosure of common ownership by any person owning or
19 controlling, directly or indirectly, 10 percent or more of the
20 outstanding interests or equity securities in the applicant by the
21 following persons:

22 (1) Any person who advertises any service to assist consumers
23 with reducing or eliminating debt.

24 (2) Any person who provides banking or similar depository
25 services to consumers of debt settlement services providers.

26 (3) Any person, other than individuals employed by the
27 applicant, with whom the applicant contracts to provide debt
28 settlement services, or parts thereof, to consumers.

29 (h) An authorization for disclosure of financial records of the
30 applicant pursuant to Section 7473 of the Government Code.

31 (i) The name and contact information of the risk manager for
32 individual complaints as provided in Section 60026.

33 (j) A sample agreement and disclosures used by the applicant.

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

36 60008.5. (a) Upon filing the application and payment of fees
37 pursuant to paragraph (1) of subdivision (a) of Section 60006 and
38 approval of the bond pursuant to Section 60006, the commissioner
39 shall investigate and examine the following:

1 (1) The background and experience of the applicant and of the
2 partners or members owning or controlling, directly or indirectly,
3 10 percent or more of the outstanding interests if the applicant is
4 a partnership, association, or limited liability company.

5 (2) The background and experience of the applicant and officers,
6 directors, and persons owning or controlling, directly or indirectly,
7 10 percent or more of the outstanding equity securities or interests
8 if the applicant is a corporation, trust, or association, including an
9 unincorporated organization.

10 (b) If the commissioner determines that the applicant has
11 satisfied the provisions of this division and does not find facts
12 constituting reasons for denial as specified in Section 60011, the
13 commissioner shall issue and deliver a license to the applicant to
14 engage in business in accordance with the provisions of this
15 division.

16 60009. (a) An applicant for licensure shall provide to the
17 commissioner, and the commissioner shall submit to the
18 Department of Justice, fingerprint images and related information
19 required by the Department of Justice of all applicants for licensure
20 for purposes of obtaining information as to the existence and
21 content of a record of state or federal convictions and state or
22 federal arrests and also information as to the existence and content
23 of a record of state or federal arrests for which the Department of
24 Justice establishes that the person is free on bail or on his or her
25 own recognizance pending trial or appeal.

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

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

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

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

4 (f) All proprietary and personal information, including, but not
5 limited to, financial statements, sample agreements, fee schedules,
6 and home addresses supplied to the commissioner in connection
7 with the application for licensure shall be held confidential by the
8 commissioner.

9 60010. An applicant or licensed provider shall notify the
10 department in writing at least 10 days prior to any change in the
11 information specified in paragraph (2) of subdivision (a) of, or in
12 subdivision (b) of, Section 60006 or in subdivision (a), (b), or (c)
13 of Section 60008, or within 14 days after any change in the
14 information specified in subdivision (d), (e), (g), or (h) of Section
15 60008, or any other information as required, by rule, by the
16 commissioner.

17 60011. (a) Except as otherwise provided in subdivisions (b)
18 and (c), the commissioner shall issue a certificate of licensure as
19 a provider to a person that complies with this division.

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

22 (1) An application that contains any omission or false statement
23 of material fact or is incomplete.

24 (2) The applicant, an officer, director, general partner, member,
25 or person owning or controlling, directly or indirectly, 10 percent
26 or more of the outstanding interests or equity securities of the
27 applicant has been convicted of or pleaded nolo contendere to a
28 crime, or suffered a civil judgment or any administrative judgment
29 by any public agency involving a finding of fraud, deceit, or
30 dishonesty or has violated state or federal securities or consumer
31 protection laws, or any regulatory scheme of the state or has been
32 convicted of any other offense reasonably related to the
33 qualifications, functions, or duties of a person engaged in the
34 business in accordance with the provisions of this division.

35 (3) An applicant or any officer, director, general partner,
36 member, or person owning or controlling, directly or indirectly,
37 10 percent or more of the outstanding interests or equity securities
38 of the applicant has made any false statement or representation to
39 the commissioner.

40 (4) An applicant is or becomes insolvent.

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

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

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

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

11 (9) An applicant or any officer, director, or general partner,
12 member, or person owning or controlling, directly or indirectly,
13 10 percent or more of the outstanding interests or equity securities
14 of the applicant has violated any provision of this division or the
15 rules or any order thereunder or any similar regulatory scheme of
16 the state or a foreign jurisdiction.

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

19 (d) The application shall be considered withdrawn within the
20 meaning of this section if the applicant fails to respond to a written
21 notification of a deficiency in the application within 90 days of
22 the date of the notification.

23 60012. (a) The commissioner shall approve or deny an initial
24 license as a provider within 60 days after the receipt of a complete
25 application, the receipt of criminal history background information
26 from the Department of Justice, and the payment of required fees.
27 Within 30 calendar days after denying an application, the
28 commissioner, in a record, shall inform the applicant of the reasons
29 for the denial.

30 (b) If the commissioner denies an application for licensure as
31 a provider or does not act on an application within the time
32 prescribed in subdivision (a), the applicant may appeal and request
33 a hearing pursuant to the California Administrative Procedure Act
34 (Chapter 4.5 (commencing with Section 11400) of Part 1 of
35 Division 3 of Title 2 of the Government Code).

36 60013. A license is not transferable or assignable without the
37 consent of the commissioner.

38 60013.5. No licensee shall provide debt settlement services in
39 this state under any other name, or through an Internet Web site
40 address other than those named in the license or except pursuant

1 to a currently effective written order of the commissioner
2 authorizing the other name or Internet Web site address.

3 60014. A person or entity licensed as a provider under this
4 division shall be exempt from the requirements of Division 3
5 (commencing with Section 12000), except to the extent the person
6 is performing services and activities governed by Section 12000
7 that do not constitute providing debt settlement services.

8 60014.5. In any proceeding under this division, the burden of
9 proving an exemption or exception is upon the person claiming it.

10
11 CHAPTER 5. ~~REGULATIONS~~REGULATION
12

13 60015. A provider that is required to be licensed under this
14 division shall maintain a toll-free communication system, staffed
15 at a level that reasonably permits an individual to speak to a
16 customer service representative, as appropriate, during ordinary
17 business hours.

18 60015.5. (a) Every provider that offers a debt settlement
19 program to an individual shall have reasonable grounds to believe
20 that the individual is qualified for the debt settlement program and
21 can reasonably meet the requirements of the program on the basis
22 of information furnished by the individual after reasonable inquiry
23 concerning the individual's financial situation and needs, including
24 a financial analysis pursuant to Section 60016, and any other
25 information known by the provider.

26 (b) In the furtherance of subdivision (a), and pursuant to a
27 written policy, a provider shall consult with the individual and
28 consider the following:

29 (1) Whether the individual's monthly income exceeds basic
30 living expenses by an amount that permits the individual to meet
31 the savings goals of the program.

32 (2) Whether the individual's creditors are likely to agree to the
33 settlement of the individual's debts.

34 (3) Whether the individual is current or delinquent on debts.

35 (4) Any other consideration required by rule of the
36 commissioner.

37 60016. (a) Before an individual assents to an agreement to
38 engage in a program, the provider shall do all of the following:

39 (1) Prepare and provide in not less than 12-point type a written
40 financial analysis specific to the individual. The financial analysis

1 shall be written in plain language and delivered to the individual
2 prior to the individual assenting to the agreement.

3 (2) Provide in not less than 12-point type a written good faith
4 estimate of the length of time it will take to complete the program
5 and a statement of the total amount of debt owed to each creditor
6 included in the program. The estimate shall include a statement of
7 the monthly savings goals for the individual that are necessary to
8 complete the program.

9 (3) Based upon the completed financial analysis, make a
10 determination supported by the financial analysis that the individual
11 is qualified *and suitable* for a debt settlement program and that
12 the individual can reasonably meet the requirements of the program
13 pursuant to Section 60015.5.

14 (4) Inform the individual in not less than 12-point type writing
15 of all of the following:

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

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

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

20 (D) That creditors may continue to charge interest, late fees,
21 over the limit fees, and other fees and nonpayment of debt may
22 lead creditors to increase finance and other charges or undertake
23 collection activity, including litigation and garnishment of wages.

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

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

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

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

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

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

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

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

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

5 (b) The provider shall insert the following statement, in not less
6 than 12-point type, in its debt settlement program agreements:

7
8 “Complaints related to this agreement may be directed to the
9 Department of Corporations by calling (866) ASK-CORP or by
10 logging on to their Internet Web site at www.corp.ca.gov.”

11
12 *60016.5. If a provider receives money from the individual for*
13 *distribution to the individual’s creditors, all of the following*
14 *provisions apply:*

15 (a) *The money received from the individual for distribution to*
16 *the individual’s creditors shall not be commingled with the*
17 *provider’s funds and shall be deposited in an FDIC-insured trust*
18 *account.*

19 (b) *The commissioner may, by rule, require providers that*
20 *receive money from the individual for distribution to the*
21 *individual’s creditors to obtain a fidelity bond in an amount*
22 *deemed adequate by the commissioner.*

23 (c) *The provider shall act in a fiduciary capacity to the*
24 *individual with respect to the individual’s funds deposited in the*
25 *trust account.*

26 (d) *The individual shall not incur an additional charge for the*
27 *establishment and maintenance of the trust account.*

28 (e) *At any time prior to the transmission of funds in the trust*
29 *account to the individual’s creditors, the individual may require*
30 *the return of the funds to himself or herself.*

31 (f) *Paragraph (4) of subdivision (a), and paragraphs (5) and*
32 *(11) of subdivision (b), of Section 60025 shall not apply.*

33 60017. (a) For purposes of this section, the following
34 definitions apply:

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

38 (2) “Federal act” means the Electronic Signatures in the Global
39 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 (a) of Section 60016 shall appear on one or more screens that satisfy all 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.

(3) The individual has not been required to submit personal information, including information regarding debts, prior to accessing the disclosures.

(e) At the time of providing the materials and agreement required by subdivision (a) 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. 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.

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

3 (c) All other disclosures required by law.

4 60019. (a) An agreement under this division shall satisfy all
5 of the following requirements:

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

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

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

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

18 (5) Include all disclosures required under Section 60016.

19 (6) Disclose all of the following:

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

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

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

25 (D) That the individual may contact the Department of
26 Corporations with any questions or complaints regarding the
27 provider.

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

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

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

32 (C) The monthly fee to be paid by the individual, if any,
33 including an explanation of how this amount will be collected from
34 the individual.

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

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

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

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

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

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

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

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

23 (A) The identity of the creditor.

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

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

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

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

31 (2) Except as permitted by the California Arbitration Act (Title
32 9 (commencing with Section 1280) of Part 3 of the Code of Civil
33 Procedure), contain a provision that modifies or limits otherwise
34 available forums or procedural rights, including the right to trial
35 by jury, that are generally available to the individual under law
36 other than as provided in this division.

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

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

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

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

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

7 (5) Contain a hold harmless clause excusing a provider's duties
8 under this division.

9 (6) Contain assignment of, or order for payment of, wages or
10 other assignment of compensation for services.

11 (7) Contain an acceleration provision not authorized under this
12 division.

13 (8) Contain an unconscionable provision.

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

17 60020. If a provider communicates with an individual primarily
18 in a language other than English, the provider shall furnish a
19 translation into the other language of the disclosures and documents
20 required by this division.

21 ~~60021. (a) A provider may charge one of the following, the~~
22 ~~terms of which shall be clearly disclosed in the agreement:~~

23 ~~(1) With respect to an agreement that provides for a flat fee,~~
24 ~~total fees shall not exceed 18 percent of the principal amount of~~
25 ~~the debt enrolled in the debt settlement program which shall be~~
26 ~~collected at a rate of no more than 1 percent of the principal amount~~
27 ~~of debt per month, or if the program is less than 18 months in~~
28 ~~length, in equal monthly payments for the term of the program.~~
29 ~~The debtor may voluntarily accelerate or prepay any unpaid~~
30 ~~installment payment of fees, and the provider may collect fees on~~
31 ~~a pro rata basis once the provider has finalized settlements from~~
32 ~~any creditors.~~

33 ~~(2) With respect to agreements in which fees are calculated as~~
34 ~~a percentage of the amount saved by an individual, a provider may~~
35 ~~charge the following:~~

36 ~~(A) A fee for consultation, obtaining a credit report, and setting~~
37 ~~up an account, in an amount not exceeding the lesser of four~~
38 ~~hundred dollars (\$400) or 4 percent of the debt in the program at~~
39 ~~the inception of the program or a higher amount set forth in~~
40 ~~regulation.~~

1 ~~(B) A monthly service fee, not to exceed fifty dollars (\$50) total,~~
2 ~~or a higher amount authorized by the commissioner, in any month.~~

3 ~~(C) A settlement fee that shall not exceed 30 percent of the~~
4 ~~excess of the outstanding amount of each debt over the amount~~
5 ~~actually paid to the creditor, as calculated at the time of settlement.~~
6 ~~Settlement fees authorized under subparagraph (B) shall become~~
7 ~~billable only as debts are settled.~~

8 ~~(D) A provider shall not impose or receive fees under both~~
9 ~~subparagraphs (A) and (B).~~

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

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

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

23 ~~60022. (a) If a provider imposes a fee or other charge or~~
24 ~~receives money or other payments not authorized by Section 60021,~~
25 ~~the agreement is void and the individual may recover as provided~~
26 ~~in Section 60032.~~

27 ~~(b)–~~

28 ~~60022. If a provider is not licensed as required by this division~~
29 ~~when an individual assents to an agreement, the agreement shall~~
30 ~~be void.~~

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

34 ~~(d) Subdivision (a) shall not apply to an error in computation~~
35 ~~in the amount of an authorized fee if the provider makes whatever~~
36 ~~adjustments in the account are necessary to correct the error within~~
37 ~~14 days of knowledge of the error.~~

38 ~~60023. If an individual who has entered into a fee agreement~~
39 ~~fails for 60 days to pay fees required by the agreement, a provider~~
40 ~~may terminate the agreement on the 60th day if a 30-day notice~~

1 and opportunity to cure has been provided. The provider may not
2 earn additional fees or charge an individual a termination fee on
3 or after termination.

4 60024. (a) A provider shall provide the accounting required
5 by subdivision (b), as follows:

6 (1) Upon settlement of a debt.

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

10 (3) Upon cancellation or termination of an agreement.

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

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

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

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

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

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

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

32 (e) A provider that receives an individual's monthly billing
33 statements from the individual's creditor shall provide the
34 individual with monthly statements of the individual's outstanding
35 debt.

36 60025. (a) A provider shall not, directly or indirectly, do any
37 of the following:

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

1 (2) Acquire any power of attorney other than to authorize the
2 provider, as reasonably necessary, to communicate with creditors
3 for the purposes of negotiating settlement offers and to initiate
4 transfer of funds in accordance with this division.

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

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

10 (A) A return of money to the individual.

11 (B) Before termination of an agreement, properly authorized
12 by the agreement and this division, and in compliance with other
13 rules and law governing direct debits to an individual's account,
14 for payment of a fee.

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

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

24 (6) Make a representation that:

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

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

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

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

37 (8) Employ an unconscionable or deceptive act or practice,
38 including the omission of any material information.

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

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

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

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

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

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

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

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

19 (B) A postdated check.

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

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

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

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

37 (A) The commissioner.

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

40 (C) The extent necessary to administer the program.

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

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

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

12 (10) Advise individuals to stop payment on any of the accounts.

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

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

16 (13) Engage in the business of debt collection on behalf of an
17 individual's creditor.

18 (14) Engage in the business of debt buying for an individual
19 represented by the provider.

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

22 60026. (a) Each provider shall establish an internal formal
23 complaint policy that creates a process for the provider to receive,
24 review, and address or resolve formal complaints internally. The
25 availability of this process shall be communicated in writing to
26 individuals enrolled in the provider's program. This policy shall
27 include a provision that individuals who file a formal complaint
28 shall receive a response from the provider within 20 days from the
29 provider's receipt of the complaint. The provider shall maintain a
30 file for each formal complaint that documents the complaint, its
31 handling, and the resolution, if any, of the complaint and the
32 provider shall disclose the file to the commissioner upon request.

33 (b) Every provider shall have an employee to review internal
34 complaints pursuant to the process set forth in this section.

35 60027. No later than 30 days after a provider has been served
36 with notice of a civil action for violation of this division by or on
37 behalf of an individual who resides in this state at either the time
38 of an agreement or the time the notice is served, the provider shall
39 notify the commissioner in a record that it has been sued.

1 60028. (a) ~~Any advertising~~ *Advertising* concerning debt
2 settlement services shall not contain any false, misleading, or
3 deceptive statement or omit to state any fact necessary to make
4 the statements made, in light of circumstances under which they
5 are made, not false, misleading, or deceptive. *No advertising may*
6 *contain claims about the success of debt settlement services unless*
7 *those claims are verified by an independent third party.*

8 (b) No advertising shall be used after its use has been
9 disapproved by the commissioner and the licensee is notified in
10 writing of the disapproval.

11 (c) The commissioner may require licensees to maintain a file
12 of all advertising copy for a period of 90 days from the date of its
13 use. The file shall be available to the commissioner upon request.

14 (d) No licensee shall place an advertisement disseminated
15 primarily in this state for debt settlement services unless the
16 licensee discloses in the printed text of the advertisement, or the
17 oral text in the case of a radio or television advertisement, that the
18 licensee is licensed by the department pursuant to this division.

19 60029. (a) Each licensee shall keep and use books, accounts,
20 and records in accordance with generally accepted accounting
21 practices and good business practice that will enable the
22 commissioner to determine if the licensee is complying with the
23 provisions of this division and with the rules and regulations
24 promulgated by the commissioner. Each licensee shall maintain
25 any other records as required by the commissioner.

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

31 (c) For the purpose of discovering violations of this division or
32 securing information required by the commissioner in the
33 administration and enforcement of this division, the commissioner
34 may investigate and examine at any time, but not less than once
35 every four years, in this state or elsewhere, by subpoena, report,
36 or otherwise, the activities, books, accounts, and records of a person
37 that provides or offers to provide debt settlement services, or a
38 person to which a provider has delegated its obligations under an
39 agreement or under this division, to determine compliance with
40 this division. For the purposes of examination, the commissioner

1 and the commissioner's representatives shall have access to the
2 offices and places of business, books, accounts, papers, records,
3 and files of all these persons. Information that identifies individuals
4 who have agreements with the provider shall not be disclosed to
5 the public. In connection with the investigation, the commissioner
6 may do either of the following:

7 (1) Charge the person or provider the reasonable expenses
8 necessarily incurred to conduct the examination. The commissioner
9 may maintain an action for the recovery of expenses in any court
10 of competent jurisdiction.

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

13 (d) For the purpose of any investigation or proceeding under
14 this law, the commissioner or any officer designated by the
15 commissioner may administer oaths and affirmations, subpoena
16 witnesses, compel their attendance, take evidence, and require the
17 production of any books, papers, correspondence, memoranda,
18 agreements, or other documents or records that the commissioner
19 deems relevant or material to the inquiry. If the books, records,
20 and supporting data are located out of this state they shall be made
21 available for examination by the commissioner in this state within
22 10 days after a written demand.

23 (e) A provider shall maintain all records for five years following
24 the last entry on a debt settlement transaction and shall enable the
25 commissioner to review the recordkeeping and reconcile each
26 individual debt settlement transaction with documentation
27 maintained in the individual's debt settlement file records. Failure
28 to keep the records for five years following the last entry shall
29 authorize the commissioner to assess and collect a penalty of up
30 to ten thousand dollars (\$10,000) for each year that the records are
31 not kept.

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

37 60029.5. (a) On or before March 15 of each year, beginning
38 March 2012, each licensee shall file an annual report with the
39 commissioner pursuant to procedures that the commissioner shall
40 establish by rule. The licensee shall submit with the annual report

1 a declaration that conforms to Section 2015.5 of the Code of Civil
2 Procedure, is executed by an official authorized by the licensee,
3 and that states that the licensee complies with this section. The
4 *specific proprietary business information contained in the*
5 licensee's annual report shall be kept confidential pursuant to
6 Chapter 3.5 (commencing with Section 6250) of Division 7 of
7 Title 1 of the Government Code and any regulations adopted
8 thereunder. For the previous calendar year, the report shall include
9 the following:

10 (1) The total amount of debt for all individuals for whom a
11 licensee is providing debt settlement services, as of December 31.

12 (2) The total principal amount of debt of all individuals that
13 entered into agreements.

14 (3) The total number of individuals that entered into agreements.

15 (4) The total number of individuals with outstanding debt
16 settlement service agreements in California.

17 (5) The total number of debts settled by the provider.

18 (6) The total dollar amount of debts settled by the provider, as
19 follows:

20 (A) The dollar amount of the settled debt, as of the establishment
21 of the program.

22 (B) The dollar amount of the settled debt at the time of
23 settlement, without debtor concessions.

24 (C) The dollar amount of the settled debt with debtor
25 concessions.

26 (7) The total amount of fees collected from California
27 individuals.

28 (8) Any other information required by rule.

29 (b) The commissioner shall prepare an annual consolidated
30 report of the reports submitted by licensees pursuant to subdivision
31 (a) and shall make the consolidated report available to the public.

32 60029.9. (a) It is unlawful for any person to knowingly alter,
33 destroy, mutilate, conceal, cover up, falsify, or make a false entry
34 in any record, document, or tangible object with the intent to
35 impede, obstruct, or influence the administration or enforcement
36 of any provision of this division.

37 (b) It is unlawful for any person to knowingly make an untrue
38 statement or omit to state a fact necessary in order to make the
39 statements made, in the light of the circumstances under which
40 they were made, not misleading to the commissioner during the

1 course of licensing, investigation, or examination, with the intent
2 to impede, obstruct, or influence the administration or enforcement
3 of any provision of this division.

4 60030. (a) The commissioner may enforce this division and
5 rules adopted under this division by taking one or more of the
6 following actions:

7 (1) Ordering a provider or any person to desist and refrain from
8 engaging in debt settlement services or from further violating this
9 division.

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

13 (3) Issuing a citation to a provider or any person in writing,
14 describing with particularity the basis of the citation. Each citation
15 may contain an order to desist and refrain and may include any
16 other orders, such as an assessment of an administrative penalty
17 pursuant to paragraph (4).

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

21 (5) Prosecuting a civil action to do either or both of the
22 following:

23 (A) Enforce an order.

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

26 (b) Any person who knowingly violates or authorizes, directs,
27 or aids in the violation of a final order issued under paragraph (1)
28 or (2) of subdivision (a) shall be liable for a civil penalty not
29 exceeding ten thousand dollars (\$10,000) for each violation, which
30 shall be assessed and recovered in a civil action brought in the
31 name of the people of the State of California by the commissioner
32 in any court of competent jurisdiction.

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

38 (d) In determining the amount of a penalty to impose under
39 subdivision (a) or (b), the commissioner shall consider the
40 seriousness of the violation, the good faith of the violator, any

1 previous violations by the violator, the deleterious effect of the
2 violation on the public, the net worth of the violator, and any other
3 factor the commissioner considers relevant to the determination
4 of the civil penalty.

5 (e) After the exhaustion of the review procedures provided for
6 in this section, the commissioner may apply to the appropriate
7 superior court for a judgment in the amount of the administrative
8 penalty, cost, fee, or any forfeiture of charge or fee in connection
9 with the transaction and order compelling the cited person to
10 comply with the order of the commissioner. The application, which
11 shall include a certified copy of the final order of the commissioner,
12 shall constitute a sufficient showing to warrant the issuance of the
13 judgment and order.

14 60030.5. (a) Whenever the commissioner believes from
15 evidence satisfactory to the commissioner that any person has
16 violated or is about to violate a provision of this division, or a
17 provision of any order, license, decision, demand, requirement, or
18 any regulation adopted pursuant to this division, the commissioner
19 may, in the commissioner's discretion, bring an action in the name
20 of the people of the State of California against that person to enjoin
21 that person from continuing that violation or doing any act in
22 furtherance of the violation or to enforce compliance with this law
23 or any rule or order thereunder. Upon a proper showing, a
24 permanent or preliminary injunction, restraining order, or writ of
25 mandate shall be granted and a receiver, monitor, conservator, or
26 other designated fiduciary or officer of the court may be appointed
27 for the defendant or the defendant's assets, or any other ancillary
28 relief may be granted as appropriate. A receiver, monitor,
29 conservator, or other designated fiduciary or officer of the court
30 appointed by the superior court pursuant to this section may, with
31 the approval of the court, exercise any or all of the powers of the
32 defendant's officers, directors, partners, trustees, or persons who
33 exercise similar powers and perform similar duties, including the
34 filing of a petition for bankruptcy. No action at law or in equity
35 may be maintained by any party against the commissioner, or a
36 receiver, monitor, conservator, or other designated fiduciary or
37 officer of the court, by reason of their exercising these powers or
38 performing these duties pursuant to the order of, or with the
39 approval of, the superior court.

(b) If the commissioner determines that it is in the public interest, the commissioner may include in any action authorized by subdivision (a) a claim for ancillary relief, including, but not limited to, a claim for restitution, disgorgement, or damages on behalf of the persons injured by the act or practice constituting the subject matter of the action. The commissioner may include in any action authorized by subdivision (a) a claim for costs, including reasonable attorney's fees and expenses, and the court shall have jurisdiction to award that relief and any other additional relief.

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 or revoke 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 or an officer, director, general partner, manager, or person owning or controlling, directly or indirectly, 10 percent or more of the outstanding interests or equity securities of the provider has committed a material violation of this division or a rule or order of the commissioner or any similar regulatory scheme of this state or a foreign jurisdiction, or has caused material damage to individuals who have agreements with the provider or to the public.

(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.

1 (6) The provider or an officer, director, general partner, manager,
2 or person owning or controlling, directly or indirectly, 10 percent
3 or more of the outstanding interests or equity securities of the
4 provider has been convicted of or pleaded nolo contendere to any
5 crime, or has been held liable in any civil action by final judgment,
6 or any administrative judgment by any public agency, if that crime
7 or civil or administrative judgment involved any offense involving
8 dishonesty, fraud, or deceit, or any other offense reasonably related
9 to the qualifications, functions, or duties of the licensed activity.

10 (7) The provider has failed to comply with any demand, ruling,
11 or requirement of the commissioner made pursuant to and within
12 the authority of this division.

13 (c) If the commissioner suspends or revokes a provider's license,
14 the provider may appeal and request a hearing pursuant to the
15 California Administrative Procedure Act (Chapter 4.5
16 (commencing with Section 11400) of Part 1 of Division 3 of Title
17 2 of the Government Code).

18 (d) A provider shall not knowingly permit a person suspended
19 or barred under this section from engaging in any business activity
20 requiring a license under this division on the premises where the
21 provider is conducting business.

22 60032. (a) If an agreement is void pursuant to subdivision (a)
23 or (b) of Section 60022, the individual may recover in a civil action
24 all money paid by or on behalf of the individual pursuant to the
25 agreement, in addition to the recovery under subdivision (b).

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

- 29 (1) Compensatory damages for injury caused by the violation.
30 (2) Reasonable attorney's fees and costs.

31 60033. If an act or practice of a provider violates both this
32 division and Chapter 5 (commencing with Section 17200) of Part
33 2 of Division 7 of the Business and Professions Code, an individual
34 may not recover under both for the same act or practice.

35 60034. (a) An action brought under this division shall be
36 commenced within three years after the latest of one of the
37 following:

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

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

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

10 60035. This division shall not apply to a debt settlement
11 agreement between an individual and a provider for the
12 performance of debt settlement services that was entered into prior
13 to the operative date of this division.

14 60037. Any person, including a partner or officer of an entity
15 that is a licensee, who willfully violates any provision of this
16 division or who willfully violates any rule or order adopted
17 pursuant to this division, shall, upon conviction, be punished by
18 a fine of not more than ten thousand dollars (\$10,000), or by
19 imprisonment in a county jail for not more than one year, or by
20 both that fine and imprisonment.

21 60038. A provider shall act in good faith in all matters under
22 this division.

23 60038.5. After an examination, investigation, or hearing under
24 this division, if the commissioner deems it of public interest or
25 advantage, the commissioner may certify a record to the proper
26 prosecuting official of the city, county, or city and county in which
27 the act complained of, examined, or investigated occurred. The
28 data and records shall be kept confidential pursuant to Chapter 3.5
29 (commencing with Section 6250) of Division 7 of Title 1 of the
30 Government Code and any regulations adopted thereunder.

31 60038.9. The rights, remedies, and penalties established by
32 this division are cumulative to the rights, remedies, or penalties
33 established under other laws. It is not necessary to exhaust
34 administrative remedies in order to pursue the civil remedies
35 provided for in this division. As applied to the penalties for acts
36 in violation of this division, the remedies provided by this division
37 are not exclusive and may be sought and employed in any
38 combination to enforce the provisions of this division.

39 60039. This division shall become operative on January 1,
40 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. The Legislature finds and declares that Section 1 of this act imposes a limitation on the public's right of access to the meetings of public bodies or the writings of public officials and agencies within the meaning of Section 3 of Article I of the California Constitution. Pursuant to that constitutional provision, the Legislature makes the following findings to demonstrate the interest protected by this limitation and the need for protecting that interest:

In order to allow the Department of Corporations to fully accomplish their goals, it is imperative to protect the interests of those persons submitting information to the department to ensure that any personal or sensitive business information that this act requires those persons to submit is protected as confidential information.

SEC. 3. 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.