

AMENDED IN SENATE JUNE 14, 2021

AMENDED IN ASSEMBLY MAY 5, 2021

AMENDED IN ASSEMBLY APRIL 20, 2021

AMENDED IN ASSEMBLY MARCH 25, 2021

CALIFORNIA LEGISLATURE—2021–22 REGULAR SESSION

ASSEMBLY BILL

No. 1405

Introduced by Assembly Member Wicks

February 19, 2021

An act to add Title 1.6C.17 (commencing with Section 1788.300) to Part 4 of Division 3 of the Civil Code, relating to consumer debt.

LEGISLATIVE COUNSEL'S DIGEST

AB 1405, as amended, Wicks. Debt settlement practices.

Existing law regulates various practices related to debt, including its sale and collection. Existing law, for purposes of debt collection, defines “consumer debt” as, among other things, money due or owing or alleged to be due or owing from a natural person by reason of a consumer credit transaction. Existing law, the Check Sellers, Bill Payers and Proraters Law, prohibits a person from engaging in the business of acting as a prorater without first obtaining a license from the Commissioner of Financial Protection and Innovation and defines a “prorater” as, among other things, a person who, for compensation, engages in the business of receiving money for the purpose of distributing the money among creditors in payment or partial payment of the obligations of the debtor. Under existing law, the Consumers Legal Remedies Act, specified unfair methods of competition and unfair or deceptive acts or practices undertaken by any person in a transaction intended to result or that

result in the sale or lease of goods or services to any consumer are unlawful.

This bill would enact the Fair Debt Settlement Practices Act. The bill would define “debt settlement provider” as a person ~~who, for compensation and on behalf of a consumer,~~ *who provides debt settlement services, as defined, provides services to assist a consumer with debt management or debt settlement, or modifying the terms of any extension of credit, or a person who accepts or maintains deposits of money for the purpose of distributing the money or evidences of money among creditors in payment or partial payment of the obligations of the consumer.* *defined. The bill would define a payment processor as a person who provides payment processing services, as defined.*

This bill would prohibit a debt settlement provider from engaging in false, deceptive, or misleading acts or practices, as specified, when providing debt settlement services. The bill would require a debt settlement provider to provide a consumer with certain disclosures along with an unsigned copy of the written contract that the debt settlement provider and the consumer would enter. The bill would prescribe requirements for the contents of these contracts.

This bill would prohibit certain unfair, abusive, or deceptive practices in connection with debt settlement provider *and payment processor* activities, some of which would apply to *both* a debt settlement service provider ~~based on its assistance or facilitation of the activities of another debt settlement company regarding a consumer to whom they both provide services.~~ *and a payment processor, and some of which would only apply to a debt settlement service provider, or a payment processor.* The bill would authorize a consumer to terminate a contract for debt settlement services at any time without a fee or penalty of any sort by notifying the debt settlement provider. *The bill would make the notice of termination effective immediately when the notice is made electronically or orally. The bill would make the notice effective upon receipt if the notice is sent via certified mail and would make the notice effective 5 calendar days from the date of mailing if the notice is sent by non-certified mail.* The bill would specify requirements the debt settlement provider ~~to take once the upon effective notice of termination is received,~~ *termination, including immediately providing a refund to the consumer of all unearned money held in the consumer’s settlement account.* *canceling the contract and notifying the payment processor, as provided. The bill would require a payment processor, upon notice of cancellation from the consumer or debt settlement provider, to stop*

accumulating service fees and refund to the consumer any unearned fees from the payment processor and debt settlement provider. When the payment processor receives notice of cancellation from the debt settlement provider, the bill would require the payment processor to provide certain information, and a specified statement, to the consumer. If a debt settlement provider receives notice of a lawsuit on an enrolled debt from any person other than the consumer, the bill would require the debt settlement provider to immediately forward that notice to the consumer, as provided. The bill would specify the application of its provisions, excluding certain parties.

This bill would authorize a consumer to bring a civil action for violation of these provisions. The bill would authorize statutory damages of not more than \$5,000, actual damages, injunctive relief, and other relief the court deems proper. The bill would require that a court award costs of the action and reasonable attorney’s fees for any successful cause of action. The bill would specify that reasonable attorney’s fees may be awarded to a prevailing debt settlement provider *or prevailing payment processor* upon a finding by the court that the consumer’s prosecution of the cause of action was not in good faith. The bill would specify that a debt settlement provider *or a payment processor* would not be civilly liable under specified circumstances. The bill would require a cause of action to be brought within 4 years of specified dates. The bill would provide that a waiver of the provisions is contrary to public policy and that its provisions are severable.

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

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

1 SECTION 1. Title 1.6C.17 (commencing with Section
2 1788.300) is added to Part 4 of Division 3 of the Civil Code, to
3 read:
4
5 TITLE 1.6C.17. FAIR DEBT SETTLEMENT PRACTICES
6
7 CHAPTER 1. GENERAL PROVISIONS
8
9 1788.300. This title may be cited as the Fair Debt Settlement
10 Practices Act.
11 1788.301. For purposes of this title:

- 1 (a) “Debt settlement provider” means a person ~~who, for~~
2 ~~compensation and on behalf of a consumer, does any of the~~
3 ~~following: who provides debt settlement services.~~
- 4 ~~(1) Provides services to assist a consumer with debt settlement~~
5 ~~services:~~
- 6 ~~—(2) Provides services to assist a consumer with debt~~
7 ~~management or debt settlement, or modifying the terms of any~~
8 ~~extension of credit.~~
- 9 ~~(3) Accepts or maintains deposits of money for the purpose of~~
10 ~~distributing the money or evidences of money among creditors in~~
11 ~~payment or partial payment of the obligations of the consumer.~~
- 12 (b) “Debt settlement services” means any of the following:
- 13 (1) Providing advice, or offering to act or acting as an
14 intermediary, including, but not limited to, offering debt
15 negotiation, debt reduction, or debt relief services between a
16 consumer and one or more of the consumer’s creditors, if the
17 primary purpose of that advice or action is to obtain a settlement
18 for less than the full amount of the debt.
- 19 (2) Advising, encouraging, assisting, or counseling a consumer
20 to accumulate funds in an account for future payment of a reduced
21 amount of debt to one or more of the consumer’s creditors.
- 22 ~~(3) Engaging in the business of a prorater as described in~~
23 ~~Division 3 (commencing with Section 12000) of the Financial~~
24 ~~Code for the purpose of negotiating, settling, or modifying the~~
25 ~~terms of a consumer’s debt.~~
- 26 (c) “Settlement account” means a depository account *established*
27 *and* used for the purpose of holding funds of a consumer to be
28 distributed to a creditor in the event of a settlement of a consumer’s
29 debt with the creditor.
- 30 (d) “Consumer” means a person who is allegedly legally
31 responsible for a debt.
- 32 (e) “Person” means a natural person or entity, whether a
33 corporation, partnership, association, trust, limited liability
34 company, cooperative, or other organization.
- 35 (f) “Creditor” means the person who originated the debt or is
36 assigned, or has purchased for collection, a debt for which a
37 consumer is allegedly legally responsible.
- 38 (g) “Debt” means money, whether in principal, interest, fees,
39 or other charges, which is due or owing or alleged to be due or

1 owing from a natural person to another person and incurred
2 primarily for personal, family, or household purposes.

3 (h) “Payment processor” means a person who provides payment
4 processing services.

5 (i) “Payment processing services” means accepting,
6 maintaining, holding, or distributing funds on behalf of a consumer
7 for the purpose of facilitating debt settlement services.

8 1788.302. (a) A debt settlement provider shall not engage in
9 false, deceptive, or misleading acts or practices when providing
10 debt settlement services. Without limiting the general application
11 of the foregoing, an act or practice is false, deceptive, or
12 misleading, in connection with providing debt settlement services,
13 if the act or practice consists of any of the following:

14 (1) Making or permitting another entity to publicly make on
15 behalf of the debt settlement provider, a statement or representation
16 that is false, deceptive, or misleading.

17 (2) Posting directly, or indirectly causing to be posted, an online
18 review or ranking on an internet website if the debt settlement
19 provider, or its agent, provided anything of value in exchange for
20 favorable treatment in that review or ranking.

21 (3) ~~Committing the knowing omission of~~ *Omitting* any material
22 information.

23 (b) A debt settlement provider shall provide to the consumer
24 the following disclosures along with an unsigned copy of the
25 written contract proposed to be entered into between the debt
26 settlement provider and the consumer ~~that complies with this~~
27 ~~section~~ no less than three calendar days prior to the execution of
28 that contract by the consumer. A fully executed copy of the contract
29 shall be delivered to the consumer by the debt settlement provider
30 immediately after the consumer executes ~~it~~. *the contract*.

31 (1) ~~Each~~ *The* contract shall be preceded by a ~~cautionary~~
32 disclosure that contains all of the following information in
33 conspicuous boldface type that is ~~not smaller than 14-point Arial~~
34 ~~typeface~~: *larger than the typeface provided in the contract*
35 *typeface*:

36 (A) There is no guarantee that any particular debt or all of the
37 consumer’s enrolled debts will be ~~reduced or eliminated~~: *reduced,*
38 *eliminated, or otherwise settled.*

39 (B) ~~The consumer is still required to pay all bills unless the~~
40 ~~creditor states otherwise~~: *payments made pursuant to the contract*

- 1 *will not be distributed to the creditor until a settlement is obtained.*
- 2 *This may take months to achieve.*
- 3 *(C) If the consumer stops paying any creditor, any of the*
- 4 *following may occur:*
- 5 *(i) The creditors may still try to collect.*
- 6 *(ii) The creditors may sue.*
- 7 *(iii) The creditor may garnish the consumer’s wages or levy the*
- 8 *consumer’s bank account or accounts, or both garnish the*
- 9 *consumer’s wages and levy the consumer’s bank account or*
- 10 *accounts.*
- 11 *(iv) The consumer’s credit score or credit rating may be*
- 12 *negatively impacted.*
- 13 *(D) Failing to pay debts on time may adversely affect the*
- 14 *consumer’s credit rating or credit scores.*
- 15 ~~(E)~~
- 16 *(E) Specific results cannot be predicted or guaranteed, and the*
- 17 *debt settlement provider cannot require a creditor to negotiate or*
- 18 *settle a debt.*
- 19 ~~(F)~~
- 20 *(F) A consumer may cancel the debt settlement contract at any*
- 21 *time.*
- 22 ~~(G)~~
- 23 *(G) Debt settlement services may not be suitable for all*
- 24 *individuals.*
- 25 ~~(H)~~
- 26 *(H) Bankruptcy may provide an alternative to debt settlement.*
- 27 ~~(G) Failing to pay debts on time may adversely affect the~~
- 28 ~~consumer’s credit rating or credit scores.~~
- 29 ~~(H)~~
- 30 *(I) Canceled debt ~~generally is~~ may be counted as income under*
- 31 *federal tax law, and the consumer may have to pay income taxes*
- 32 *on the amount of forgiven or reduced debt.*
- 33 ~~(I) The sources of income that are exempt from collection under~~
- 34 ~~California law.~~
- 35 ~~(J) If the consumer stops paying any creditor, any of the~~
- 36 ~~following may occur:~~
- 37 ~~(i) The creditors may still try to collect.~~
- 38 ~~(ii) The creditors may sue.~~
- 39 ~~(iii) The creditor may garnish the consumer’s wages or levy the~~
- 40 ~~consumer’s bank account or accounts, or both garnish the~~

1 consumer's wages and levy the consumer's bank account or
2 accounts:

3 (iv) The consumer's credit score or credit rating may be
4 negatively impacted.

5 (J) Many sources of income may be protected from debt
6 collection. Common sources of protected income include disability
7 insurance benefits, life insurance benefits, military benefits, pension
8 plans, retirement benefits, public assistance, social security
9 benefits, supplemental security income (SSI), unemployment
10 benefits, veterans benefits, workers compensation, and student
11 aid. See form EJ-155 from the Judicial Council for a complete list.

12 (K) The number of months estimated to enter into settlement
13 agreements that completely resolve all *enrolled* debts.

14 (L) All conditions that the consumer must satisfy before the
15 debt settlement provider will make a settlement offer to a creditor.

16 (2) Each ~~contract~~: *contract between a consumer and debt*
17 *settlement provider*:

18 (A) Shall list each debt to be serviced, including, for each debt,
19 the name of the creditor and the total amount of the debt. The total
20 amount of the debt may be based on either a billing statement for
21 the debt or information in the consumer's consumer report, as that
22 term is defined under the federal Fair Credit Reporting Act (15
23 U.S.C. Sec. 1681 et seq.). The billing statement or consumer report
24 must have been issued no more than 30 calendar days earlier.

25 (B) Shall provide the estimated period of time it will take the
26 consumer to ~~complete the payments required by the contract~~.
27 *accumulate in a settlement account the amount of money estimated*
28 *to be required to settle all debts*.

29 (C) Shall provide the ~~approximate number and amount of~~
30 ~~installments required to pay the debts in full after they have all~~
31 ~~been settled~~. *amount of time necessary to achieve the represented*
32 *results*.

33 (D) Shall provide, in terms easily understood by the least
34 sophisticated consumer, the method that the debt settlement
35 provider will use to calculate the charges and fees for debt
36 settlement services.

37 (E) Shall provide the name and mailing address of the debt
38 settlement provider and of the consumer.

39 (F) Shall provide a telephone number at which the consumer
40 may speak, during normal business hours, with a live representative

1 of the debt settlement provider during normal business hours who
 2 is able to access information about the consumer’s account.

3 (G) Shall be provided to the consumer in English and in the
 4 language in which it was negotiated or in which the debt settlement
 5 services were offered, if that language is one of the languages set
 6 forth in Section 1632.

7 (H) Shall not require a compulsory agreement with any other
 8 party. *A debt settlement provider may require that the consumer*
 9 *obtain a dedicated settlement account and provide a list of*
 10 *preferred vendors, however a payment processor who receives*
 11 *compensation from the consumer for payment processing services*
 12 *must supply its own contract to the consumer for engagement.*

13 (I) Shall not be entered into by a consumer who is not already
 14 allegedly legally responsible for all the debt that will be enrolled
 15 in the debt settlement services. In the event multiple consumers
 16 engage in a single contract for debt settlement services, if any
 17 consumer is not proficient in English and speaks a language set
 18 forth in Section 1632, a translated copy of the disclosures and
 19 contract shall be provided to the consumer in that language and in
 20 a manner that complies with this subdivision.

21 (J) Shall not be effective until ~~a consumer has made a payment~~
 22 ~~for debt settlement services~~. *five calendar days after full execution.*

23 (c) A debt settlement provider *and a payment processor* shall
 24 not engage in unfair, abusive, or deceptive acts or practices when
 25 providing debt settlement *services or payment processing* services.
 26 Without limiting the general application of the foregoing, in
 27 connection with providing debt settlement *services and payment*
 28 *processing* services, an act or practice is unfair, abusive, or
 29 deceptive if the act or practice consists of any of the following:

30 (1) ~~Failing to comply with the requirements for prorsaters under~~
 31 ~~Section 12323 of the Financial Code.~~ *For a debt settlement*
 32 *provider and payment processor, offering to lend money or extend*
 33 *credit to the consumer, or purchase an enrolled debt.*

34 (2) ~~Offering,~~ *For a debt settlement provider and payment*
 35 *processor, offering, paying, or giving any cash, fee, gift, bonus,*
 36 *premium, reward, or other compensation to any person for referring*
 37 *any prospective consumer to the debt settlement provider.*
 38 “Referring” does not mean providing a hyperlink in an
 39 advertisement on an internet website or in a software application.

40 (3) ~~Accepting~~

1 (3) For a debt settlement provider and payment processor,
2 accepting any cash, fee, gift, bonus, premium, reward, or other
3 compensation from any person other than the consumer in
4 connection with debt settlement services.

5 ~~(4) The following subparagraphs apply to a debt settlement~~
6 ~~provider that engages in the following, or that does not itself engage~~
7 ~~in the following practices if it assists or facilitates debt settlement~~
8 ~~company servicing the same consumer is providing debt settlement~~
9 ~~services in a manner that does either of the following:~~

10 (4) For a debt settlement provider requesting or receiving
11 payment of any fee or consideration for debt settlement services,
12 unless and until all of the following occur:

13 (A) The debt settlement provider has renegotiated, settled,
14 reduced, or otherwise altered the terms of at least one debt
15 pursuant to a settlement agreement approved and executed by the
16 consumer.

17 (B) The consumer has made at least one payment pursuant to
18 that settlement agreement between the consumer and the creditor.

19 (C) To the extent that debts enrolled in a debt settlement service
20 are negotiated, settled, or modified individually, the fee or
21 consideration must either:

22 (i) Bear the same proportional relationship to the total fee for
23 renegotiating, settling, reducing, or altering the terms of the entire
24 debt balance as the individual debt amount bears to the entire debt
25 amount. The individual debt amount and the entire debt amount
26 are those owed at the time the debt was enrolled in the service.

27 (ii) Represent a percentage of the amount saved as a result of
28 the renegotiation, settlement, reduction, or alteration. The
29 percentage charged cannot change from one individual debt to
30 another. The amount saved is the difference between the amount
31 owed at the time the debt was enrolled in the service and the
32 amount agreed pursuant to the settlement agreement between the
33 consumer and the creditor to satisfy the debt.

34 (5) For a payment processor, facilitating the distribution of
35 payment of any fee or consideration for debt settlement services
36 before the requirements set forth in paragraph (4) have been met.

37 ~~(A) Failing~~

38 (6) For a payment processor, failing to distribute a statement
39 of accounting to a consumer at least once a month while the
40 contract is in effect, consumer is engaged with the payment

1 *processor*, as well as on or before the fifth business day after a
 2 consumer requests a statement of accounting.
 3 ~~(B) Failing to include in any statement of accounting the~~
 4 ~~following information to the extent applicable:~~
 5 ~~(i) The amount of money that the consumer has deposited into~~
 6 ~~the consumer’s settlement account and all withdrawals starting~~
 7 ~~from the outset of the contract.~~
 8 (A) *When an accounting is available to the consumer online,*
 9 *the payment processor must make prominent and ongoing the*
 10 *ability for a consumer to opt in to a paper accounting to be mailed*
 11 *to the consumer under the terms of this section.*
 12 (B) *The statement of accounting must contain the following*
 13 *information to the extent applicable:*
 14 (i) *The amount of money that the consumer has deposited into*
 15 *the consumer’s settlement account and all withdrawals starting*
 16 *from the outset of the contract.*
 17 (ii) *The fees that the debt settlement provider has billed and*
 18 *collected in connection with each of the debts settled.*
 19 (iii) *The fees that the payment processor has billed and collected*
 20 *in connection with payment processing services.*
 21 (iv) *The amount of money that the consumer holds in the*
 22 *consumer’s settlement account.*
 23 (7) *For a debt settlement provider, failing to distribute a*
 24 *statement of accounting to a consumer at least once a month while*
 25 *the contract for debt settlement services is in effect, as well as on*
 26 *or before the fifth business day after a consumer requests a*
 27 *statement of accounting.*
 28 (A) *When an accounting is available to the consumer online,*
 29 *the debt settlement provider must make prominent and ongoing*
 30 *the ability for a consumer to opt in to a paper accounting to be*
 31 *mailed to the consumer under the terms of this section.*
 32 (B) *The statement of accounting must contain the following*
 33 *information to the extent applicable:*
 34 ~~(ii)~~
 35 (i) *The amounts, dates, and creditors associated with each*
 36 *settlement obtained by the debt settlement provider on behalf of*
 37 *the consumer.*
 38 ~~(iii)~~
 39 (ii) *The fees that the debt settlement provider has billed and*
 40 *collected in connection with each of the debts settled.*

1 ~~(iv) The amount of money that the consumer holds in the~~
2 ~~consumer's settlement account.~~

3 ~~(v)~~

4 (iii) With respect to any debt settled by the debt settlement
5 provider on behalf of the consumer, all of the following
6 information:

7 (I) The total amount of money that the consumer paid *or will*
8 *pay* to the creditor to settle the debt.

9 (II) The amount of the debt at the time the debt settlement
10 provider and the consumer entered into the contract.

11 (III) The amount of the debt at the time the creditor agreed to
12 settle the debt.

13 (IV) The amount of compensation that the debt settlement
14 provider received, or may receive, to settle the debt.

15 (d) (1) A consumer may terminate a contract for debt settlement
16 services at any time without a fee or penalty of any sort by
17 notifying the debt settlement provider in writing, electronically,
18 or orally.

19 (2) The notice described in paragraph (1) shall be deemed
20 effective immediately upon being ~~sent~~: *sent if made electronically,*
21 *including via text message or orally. When the notice is sent via*
22 *certified mail, notice shall be deemed effective upon receipt. When*
23 *written notice is sent via non-certified mail, notice shall be deemed*
24 *effective five calendar days from the date of mailing.*

25 (3) Upon *effective* notice of request for cancellation of the
26 contract, the debt settlement provider shall do all of the following:

27 (A) Immediately cancel the contract.

28 (B) ~~Immediately refund to the consumer all unearned money~~
29 ~~held in the consumer's settlement account.~~ *notify the payment*
30 *processor that the consumer has canceled the debt settlement*
31 *services and instruct the payment processor to stop accumulating*
32 *service fees and refund any unearned fees from the payment*
33 *processor and debt settlement provider.*

34 (C) Provide, within three business days, a detailed accounting
35 of the amount refunded and amount retained by the debt settlement
36 provider.

37 (D) Provide within three business days copies of all documents,
38 notices, or other communications it has received from any creditor
39 on behalf of the consumer.

1 (4) The items in subparagraphs (C) and (D) of paragraph (3)
 2 shall be sent by United States mail or by electronic means
 3 reasonably calculated to reach the consumer.

4 (5) *Upon notice of cancellation from the consumer or debt
 5 settlement provider, the payment processor shall stop accumulating
 6 service fees and refund to the consumer any unearned fees from
 7 the payment processor and debt settlement provider. When the
 8 payment processor receives notice of cancellation from the debt
 9 settlement provider, the payment processor shall contact the
 10 consumer and provide the dates, amount to be paid, and the name
 11 of each creditor in a settlement with the consumer after the
 12 following information:*

13 *“You have terminated your debt settlement plan. If you wish to
 14 continue to use (name of company) as a payment processor to
 15 process payment for any debts that are currently in a settlement
 16 plan for your creditor, you do not have to do anything. You will
 17 continue to be charged (dollar amount over time period) for these
 18 services. If you would like to arrange for payment under your
 19 current settlement plan with your creditor with a different payment
 20 processor such as your bank, you must contact (name of company)
 21 to provide information about how to receive a refund of your funds
 22 in the settlement account. You will be responsible for contacting
 23 your creditors to arrange payments under your settlement plan
 24 with your payment processor. Notice must be received by (name
 25 of company) at least three business days prior to the payment date
 26 for your settlement payments in order to stop payment to the
 27 creditor and the incurrence of payment processing fees. The date
 28 of payment for your settlements are provided below.”*

29 (e) If a debt settlement provider receives notice of a lawsuit on
 30 an enrolled debt from any person other than the consumer, the debt
 31 settlement provider shall immediately forward that notice to the
 32 consumer, either by United States mail or by electronic means
 33 reasonably calculated to reach the consumer.

34

35 CHAPTER 2. APPLICATION OF THE FAIR DEBT SETTLEMENT
 36 PRACTICES ACT

37

38 1788.303. This title applies to persons providing *payment*
 39 *processing services*, debt settlement ~~services~~ *services*, and persons

1 purporting to engage in debt settlement services, regardless of
2 whether or not these persons actually provide those services.

3 1788.304. This title does not apply to any of the following:

4 ~~(a) Subdivisions (a), (b), and (d) to (l), inclusive, of Section~~
5 ~~12100 of the Financial Code.~~

6 *(a) Any person, or the person's authorized agent, doing business*
7 *under license and authority of the Commissioner of Financial*
8 *Institutions under Divisions 1.1 (commencing with Section 1000),*
9 *1.8 (commencing with Section 4981), and 5 (commencing with*
10 *Section 14000) of the Financial Code or under any law of this*
11 *state or of the United States relating to banks or credit unions.*

12 (b) Any nonprofit business organization that is certified as
13 tax-exempt by the Internal Revenue Service and that does not
14 receive compensation from the consumer for providing debt
15 settlement services.

16 (c) Attorneys and law firms that meet all of the following
17 criteria:

18 (1) The services rendered by the attorney or law firm do not
19 result in charges or costs regulated by this title and the attorney or
20 law firm does not charge for services regulated by this title.

21 (2) The fees and disbursements are not charges or costs shared,
22 directly or indirectly, with a debt settlement provider.

23 (3) Any of the following is true:

24 (A) The attorney or law firm is retained by a consumer for the
25 purpose of legal representation in consumer debt litigation.

26 (B) The attorney or law firm provides debt settlement services
27 pursuant to representation by retainer for a debt collection matter
28 that does not involve consumer debt.

29 (C) The attorney or law firm is retained by the consumer
30 primarily for purposes other than the settlement of consumer debt.

31 *(d) A merchant-owned credit or creditors association, or a*
32 *member-owned, member-controlled, or member-directed*
33 *association whose principal function is that of servicing the*
34 *community as a reporting agency.*

35 *(e) The services of a person licensed as a certified public*
36 *accountant or a public accountant in this state, when the person*
37 *renders services in the course of practice as a certified public*
38 *accountant or a public accountant, and the fees and disbursements*
39 *of the person, whether paid by the consumer or other person, are*
40 *not charges or costs and expenses regulated by or subject to the*

1 *limitations of this chapter. These fees and disbursements shall not*
2 *be shared, directly or indirectly, with a payment processor or debt*
3 *settlement provider.*

4

5 CHAPTER 3. ENFORCEMENT OF THE FAIR DEBT SETTLEMENT
6 PRACTICES ACT

7

8 1788.305. (a) A debt settlement provider *and a payment*
9 *processor* shall comply with this title.

10 (b) A consumer may bring a cause of action against a debt
11 settlement provider *and a payment processor* for violation of any
12 provision of this title in order to recover or obtain any of the
13 following:

14 (1) Damages in an amount equal to the sum of the following:

15 (A) Statutory damages in an amount to be determined by the
16 court of no less than one thousand dollars (\$1,000) and no more
17 than five thousand dollars (\$5,000) per violation of this title.

18 (B) Any actual damages sustained by the consumer as a result
19 of the violation.

20 (2) Injunctive relief.

21 (3) Any other relief that the court deems proper.

22 (c) (1) In the case of any successful cause of action under this
23 section, the court shall award costs of the action, together with
24 reasonable attorney’s fees as determined by the court.

25 (2) Reasonable attorney’s fees may be awarded to a prevailing
26 debt settlement provider *and a prevailing payment processor* upon
27 a finding by the court that the consumer’s prosecution of the cause
28 of action was not in good faith.

29 (d) A debt settlement provider *or a prevailing payment*
30 *processor* shall have no civil liability for damages under this
31 section if the debt settlement provider *or a prevailing payment*
32 *processor* shows by a preponderance of evidence that the violation
33 was not intentional and resulted from a bona fide error, and
34 occurred notwithstanding the maintenance of procedures reasonably
35 adopted to avoid any error.

36 (e) A cause of action brought under this section shall be brought
37 within four years of the latter of the following dates:

38 (1) The last payment by or on behalf of the ~~consumer pursuant~~
39 ~~to the contract.~~ *consumer.*

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

4 1788.306. Any waiver of the provisions of this title is contrary
5 to public policy, and is void and unenforceable.

6 1788.307. The provisions of this title are severable. If any
7 provision of this title or its application is held invalid, that
8 invalidity shall not affect other provisions or applications that can
9 be given effect without the invalid provision or application.

O