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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~~ *who, for compensation*, provides debt settlement services, as 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 *proposed* written contract ~~that between the debt settlement provider and the consumer would enter.~~ *consumer*. 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 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~~ *noncertified* mail. The bill would specify requirements *for* the debt settlement provider upon effective notice of termination, including immediately 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 fees,~~

close the settlement account, and deliver to the consumer the balance of the settlement account within 7 days. The bill would require the debt settlement provider to immediately forward ~~that notice~~ any notice of a lawsuit or settlement agreement 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:

12 (a) “Debt settlement provider” means a person ~~who~~ who, for
13 compensation, provides debt settlement services.

14 (b) “Debt settlement services” means any of the following:

15 (1) Providing advice, or offering to act or acting as an
16 intermediary, including, but not limited to, offering debt

1 negotiation, debt reduction, or debt relief services between a
2 consumer and one or more of the consumer’s creditors, if the
3 primary purpose of that advice or action is to obtain a settlement
4 for less than the full amount of the debt.

5 (2) Advising, encouraging, ~~assisting~~, or counseling a consumer
6 to accumulate funds in an account for future payment of a reduced
7 amount of debt to one or more of the consumer’s creditors.

8 (c) “Settlement account” means a depository account established
9 and used for the purpose of holding funds of a consumer to be
10 distributed to a creditor in the event of a settlement of a consumer’s
11 debt with the creditor.

12 (d) “Consumer” means a person who is allegedly legally
13 responsible for a debt.

14 (e) “Person” means a natural person or entity, whether a
15 corporation, partnership, association, trust, limited liability
16 company, cooperative, or other organization.

17 (f) “Creditor” means the person who originated the debt or is
18 assigned, or has purchased for collection, a debt for which a
19 consumer is allegedly legally responsible.

20 (g) “Debt” means money, whether in principal, interest, fees,
21 or other charges, which is due or owing or alleged to be due or
22 owing from a natural person to another person and incurred
23 primarily for personal, family, or household purposes.

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

26 (i) “Payment processing services” means accepting, maintaining,
27 holding, or distributing ~~funds funds, or facilitating the acceptance,~~
28 *maintenance, holding, or distribution of funds*, on behalf of a
29 consumer for the purpose of facilitating debt settlement services.

30 1788.302. (a) A debt settlement provider shall not engage in
31 false, deceptive, or misleading acts or practices when providing
32 debt settlement services. Without limiting the general application
33 of the foregoing, an act or practice is false, deceptive, or
34 misleading, in connection with providing debt settlement services,
35 if the act or practice consists of any of the following:

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

39 (2) Posting directly, or indirectly causing to be posted, an online
40 review or ranking on an internet website if the debt settlement

1 provider, or its agent, provided anything of value in exchange for
2 favorable treatment in that review or ranking.

3 (3) Omitting any material information.

4 (b) A debt settlement provider shall provide to the consumer
5 the following disclosures along with an unsigned copy of the
6 written contract proposed to be entered into between the debt
7 settlement provider and the consumer no less than three calendar
8 days prior to the execution of that contract by the consumer. A
9 fully executed copy of the contract shall be delivered to the
10 consumer by the debt settlement provider immediately after the
11 ~~consumer executes~~ *debt settlement provider receives* the contract.

12 (1) The contract shall be preceded by a disclosure that contains
13 all of the following information in conspicuous boldface type that
14 is larger than the typeface provided in the contract typeface:

15 (A) There is no guarantee that any particular debt or all of the
16 consumer's enrolled debts will be reduced, eliminated, or otherwise
17 settled.

18 (B) ~~The payments~~ *deposits* made pursuant to the contract will
19 not be distributed to the creditor until a settlement is obtained. This
20 may take months to achieve.

21 (C) If the consumer stops paying any creditor, any of the
22 following may occur:

23 (i) The creditors may still try to collect.

24 (ii) The creditors may sue.

25 (iii) ~~The~~ *If a creditor obtains a judgment against the consumer,*
26 *the* creditor may garnish the consumer's wages or levy the
27 consumer's bank account or accounts, or both garnish the
28 consumer's wages and levy the consumer's bank account or
29 accounts.

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

32 (D) Failing to pay debts on time may adversely affect the
33 consumer's credit rating or credit scores.

34 (E) Specific results cannot be predicted or guaranteed, and the
35 debt settlement provider cannot require a creditor to negotiate or
36 settle a debt.

37 (F) A consumer may cancel the debt settlement contract at any
38 ~~time:~~ *time without any penalty.*

39 (G) Debt settlement services may not be suitable for all
40 individuals.

1 (H) Bankruptcy may provide an alternative to debt settlement.

2 (I) Canceled debt may be counted as income under federal tax
3 law, and the consumer may have to pay income taxes on the
4 amount of forgiven or reduced debt.

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 between a consumer and debt settlement
17 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~~ *within 30 calendar days earlier*
25 *of the date of the contract.*

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

29 (C) Shall provide the amount of time necessary to achieve the
30 represented results.

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

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

37 (F) Shall provide a telephone number at which the consumer
38 may speak, during normal business hours, with a live representative
39 of the debt settlement provider during normal business hours who
40 is able to access information about the consumer's account.

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

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

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

19 ~~(J) Shall not be effective until five calendar days after full~~
20 ~~execution.~~

21 *(3) A debt settlement provider shall not communicate with any*
22 *of a consumer's creditors until five calendar days after full*
23 *execution of a contract for debt settlement services.*

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

31 (1) For a debt settlement provider and payment processor,
32 offering to lend money or extend credit to the consumer, or
33 purchase an enrolled debt.

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

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) For a debt settlement provider requesting or receiving
6 payment of any fee or consideration for debt settlement services,
7 unless and until all of the following occur:

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

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

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

16 (i) Bear the same proportional relationship to the total fee for
17 renegotiating, settling, reducing, or altering the terms of the entire
18 debt balance as the individual debt amount bears to the entire debt
19 amount. The individual debt amount and the entire debt amount
20 are those owed at the time the debt was enrolled in the service.

21 (ii) Represent a percentage of the amount saved as a result of
22 the renegotiation, settlement, reduction, or alteration. The
23 percentage charged cannot change from one individual debt to
24 another. The amount saved is the difference between the amount
25 owed at the time the debt was enrolled in the service and the
26 amount agreed pursuant to the settlement agreement between the
27 consumer and the creditor to satisfy the debt.

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

31 (6) For a payment processor, failing to distribute a statement of
32 accounting to a consumer at least once a month while the consumer
33 is engaged with the payment processor, as well as on or before the
34 fifth business day after a consumer requests a statement of
35 accounting.

36 (A) When an accounting is available to the consumer online,
37 the payment processor must make prominent and ongoing the
38 ability for a consumer to opt in to a paper accounting to be mailed
39 to the consumer under the terms of this section.

1 (B) The statement of accounting must contain the following
2 information to the extent applicable:

3 ~~(i) The amount of money that the consumer has deposited into~~
4 ~~the consumer's settlement account and all withdrawals starting~~
5 ~~from the outset of the contract.~~

6 *(i) A list of deposits made into, and withdrawals from, the*
7 *consumer's settlement account during the previous month.*

8 (ii) The fees that the debt settlement provider has billed and
9 collected in connection with each of the debts ~~settled~~. *settled during*
10 *the previous month.*

11 (iii) The fees that the payment processor has billed and collected
12 in connection with payment processing ~~services~~. *services during*
13 *the previous month.*

14 (iv) The amount of money that the consumer holds in the
15 consumer's settlement account.

16 (C) *Within five business days of a consumer's request, a payment*
17 *processor shall provide a consolidated statement of accounting*
18 *containing all of the following:*

19 *(i) A list of deposits made into, and withdrawals from, the*
20 *consumer's settlement account starting from the outset of the*
21 *contract.*

22 *(ii) A list of fees that the debt settlement provider has billed and*
23 *collected in connection with each of the debts settled starting from*
24 *the outset of the contract.*

25 *(iii) A list of fees that the payment processor has billed and*
26 *collected in connection with payment processing services starting*
27 *from the outset of the contract.*

28 *(iv) The amount of money that the consumer holds in the*
29 *consumer's settlement account.*

30 (7) For a debt settlement provider, failing to distribute a
31 statement of accounting to a consumer at least once a month while
32 the contract for debt settlement services is in effect, as well as on
33 or before the fifth business day after a consumer requests a
34 statement of accounting.

35 (A) When an accounting is available to the consumer online,
36 the debt settlement provider must make prominent and ongoing
37 the ability for a consumer to opt in to a paper accounting to be
38 mailed to the consumer under the terms of this section.

39 (B) The statement of accounting must contain the following
40 information to the extent applicable:

1 (i) The amounts, dates, and creditors associated with each
2 settlement obtained by the debt settlement provider on behalf of
3 the consumer.

4 (ii) The fees that the debt settlement provider has billed and
5 collected in connection with each of the debts settled.

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

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

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

13 (III) The amount of the debt at the time the creditor agreed to
14 settle the debt.

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

17 (8) *For a payment processor, providing payment processing*
18 *services unless the payment processor is a licensed money*
19 *transmitter pursuant to Division 1.2 (commencing with Section*
20 *2000) of the Financial Code or expressly exempt from licensure*
21 *pursuant to Section 2010 of the Financial Code.*

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

26 (2) The notice described in paragraph (1) shall be deemed
27 effective immediately upon being sent if made electronically,
28 including via text message or orally. When the notice is sent via
29 certified mail, notice shall be deemed effective upon receipt. When
30 written notice is sent via ~~non-certified~~ *noncertified* mail, notice
31 shall be deemed effective ~~five~~ *seven* calendar days from the date
32 of mailing.

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

35 (A) Immediately cancel the contract.

36 (B) Immediately notify the payment processor that the consumer
37 has canceled the debt settlement services and ~~instruct the payment~~
38 ~~processor to stop accumulating service fees and refund any~~
39 ~~unearned fees from the payment processor and debt settlement~~
40 ~~provider.~~ *transmit to the payment processor the consumer's*

1 *instruction to close the settlement account and deliver the balance*
2 *in the settlement account to the consumer.*

3 (C) Provide, within three business days, a detailed accounting
4 ~~of the amount refunded and amount retained by the debt settlement~~
5 ~~provider. any amounts received or expected to be received by the~~
6 ~~debt settlement provider from the consumer's settlement account~~
7 ~~after the debt settlement provider received effective notice of~~
8 ~~request for cancellation. The detailed accounting shall include an~~
9 ~~explanation of how the amounts were calculated in accordance~~
10 ~~with the requirements of paragraph (4) of subdivision (c).~~

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

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

17 (5) Upon *receipt of notice of cancellation of the contract* from
18 the consumer or debt settlement provider, the payment processor
19 shall stop accumulating service fees and refund to the consumer
20 any unearned fees from the payment processor and debt settlement
21 provider. ~~When the payment processor receives notice of~~
22 ~~cancellation from the debt settlement provider, the payment~~
23 ~~processor shall contact the consumer and provide the dates, amount~~
24 ~~to be paid, and the name of each creditor in a settlement with the~~
25 ~~consumer after the following information: fees, close the settlement~~
26 ~~account, and deliver to the consumer the balance in the settlement~~
27 ~~account within seven days. The payment processor shall provide,~~
28 ~~within 10 business days, a detailed accounting of the amount~~
29 ~~refunded and any amounts sent to the debt settlement provider~~
30 ~~after or upon the payment processor receiving notice of the~~
31 ~~cancellation of the contract.~~

32 ~~“You have terminated your debt settlement plan. If you wish to~~
33 ~~continue to use (name of company) as a payment processor to~~
34 ~~process payment for any debts that are currently in a settlement~~
35 ~~plan for your creditor, you do not have to do anything. You will~~
36 ~~continue to be charged (dollar amount over time period) for these~~
37 ~~services. If you would like to arrange for payment under your~~
38 ~~current settlement plan with your creditor with a different payment~~
39 ~~processor such as your bank, you must contact (name of company)~~
40 ~~to provide information about how to receive a refund of your funds~~

1 in the settlement account. You will be responsible for contacting
 2 your creditors to arrange payments under your settlement plan
 3 with your payment processor. Notice must be received by (name
 4 of company) at least three business days prior to the payment date
 5 for your settlement payments in order to stop payment to the
 6 creditor and the incurrance of payment processing fees. The date
 7 of payment for your settlements are provided below.”

8 (e) If a debt settlement provider receives notice of a lawsuit
 9 on an enrolled debt from any person other than the consumer, the
 10 debt settlement provider shall immediately forward that notice *the*
 11 *following notices* to the consumer, either by United States mail or
 12 by electronic means reasonably calculated to reach the ~~consumer.~~
 13 *consumer:*

14 (1) Any notice of a lawsuit on an enrolled debt from any person
 15 other than the consumer.

16 (2) Any settlement agreement that a debt settlement provider
 17 has negotiated on the consumer’s behalf.

18

19 CHAPTER 2. APPLICATION OF THE FAIR DEBT SETTLEMENT
 20 PRACTICES ACT

21

22 1788.303. This title applies to persons providing payment
 23 processing services, debt settlement services, and persons
 24 purporting to engage in debt settlement services.

25 1788.304. This title does not apply to any of the following:

26 (a) Any person, or the person’s authorized agent, doing business
 27 under license and authority of the Commissioner of Financial
 28 ~~Institutions Protection and Innovation~~ *Protection and Innovation* under Divisions 1.1
 29 (commencing with Section 1000), ~~1.8 (commencing with Section~~
 30 ~~4981), 2 (commencing with Section 5000), and 5 (commencing~~
 31 with Section 14000) of the Financial Code or under any law of
 32 this state or of the United States relating to banks or credit unions.

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

37 (c) Attorneys and law firms that meet all of the following
 38 criteria:

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

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

6 (3) Any of the following is true:

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

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

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

14 (d) A merchant-owned credit or creditors association, or a
15 member-owned, member-controlled, or member-directed
16 association whose principal function is that of servicing the
17 community as a reporting agency.

18 ~~(e) The services of a person licensed as a certified public~~
19 ~~accountant or a public accountant in this state, when the person~~
20 ~~renders services in the course of practice as a certified public~~
21 ~~accountant or a public accountant, and the fees and disbursements~~
22 ~~of the person, whether paid by the consumer or other person, are~~
23 ~~not charges or costs and expenses regulated by or subject to the~~
24 ~~limitations of this chapter. These fees and disbursements shall not~~
25 ~~be shared, directly or indirectly, with a payment processor or debt~~
26 ~~settlement provider.~~

27
28 CHAPTER 3. ENFORCEMENT OF THE FAIR DEBT SETTLEMENT
29 PRACTICES ACT
30

31 1788.305. (a) A debt settlement provider and a payment
32 processor shall comply with this title.

33 (b) A consumer may bring a cause of action against a debt
34 settlement provider and a payment processor for violation of any
35 provision of this title in order to recover or obtain any of the
36 following:

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

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

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

3 (2) Injunctive relief.

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

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

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

12 (d) A debt settlement provider or a prevailing payment processor
13 shall have no civil liability for damages under this section if the
14 debt settlement provider or a prevailing payment processor shows
15 by a preponderance of evidence that the violation was not
16 intentional and resulted from a bona fide error, and occurred
17 notwithstanding the maintenance of procedures reasonably adopted
18 to avoid any error.

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

21 (1) The last payment by or on behalf of the consumer.

22 (2) The date on which the consumer discovered or reasonably
23 should have discovered the facts giving rise to the consumer’s
24 claim.

25 1788.306. Any waiver of the provisions of this title is contrary
26 to public policy, and is void and unenforceable.

27 1788.307. The provisions of this title are severable. If any
28 provision of this title or its application is held invalid, that
29 invalidity shall not affect other provisions or applications that can
30 be given effect without the invalid provision or application.