

AMENDED IN ASSEMBLY APRIL 1, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 2293

Introduced by Assembly Member Liu

February 21, 2002

An act to add Title 1.6G (commencing with Section 1789.40) to Part 4 of Division 3 of the Civil Code, and to amend Section 12100 of, to add Section 12101 to, to add Chapter 2.5 (commencing with Section 12150) to Division 3 of, and to repeal Section 12104 of, the Financial Code, relating to credit counseling.

LEGISLATIVE COUNSEL'S DIGEST

AB 2293, as amended, Liu. Nonprofit consumer credit counseling organizations.

The Check Sellers, Bill Payers and Proraters Law provides for licensing and regulation by the Commissioner of Corporations of various licensees. That law provides for licensing and regulation of proraters, defined as persons who receive money from a debtor for the purpose of distributing the money among the debtor's creditors in full or partial payment of the debtor's obligations. Existing law provides an exemption from licensing and regulation under these provisions for certain nonprofit community service organizations that provide prorating services if those organizations comply with certain requirements.

This bill would ~~require nonprofit community service organizations that provide prorating services to register with the commissioner. The bill would~~ establish new regulatory provisions applicable to ~~these nonprofit community service organizations~~ relative to their prorating

activities. The bill would require the commissioner, by regulation, to impose registration fees, and would authorize the commissioner to impose civil penalties for a violation of the bill’s regulatory provisions. ~~The bill would also provide that a willful violation of these provisions is a crime, thereby imposing a state-mandated local program.~~ The bill would make other related changes.

~~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 no*.

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

1 SECTION 1. *Title 1.6G (commencing with Section 1789.40)*
2 *is added to Part 4 of Division 3 of the Civil Code, to read:*

3

4 TITLE 1.6G. NONPROFIT CREDIT COUNSELING
5 ORGANIZATIONS

6

7 1789.40. (a) *This title applies to nonprofit community service*
8 *organizations that are acting as proraters pursuant to Section*
9 *12002.1 of the Financial Code and that are subject to the Nonprofit*
10 *Public Benefit Corporation Law (Part 2 (commencing with*
11 *Section 5110) of Division 2 of Title 1 of the Corporations Code) or*
12 *are subject to the Nonprofit Mutual Benefit Corporation Law (Part*
13 *3 (commencing with Section 7110) of Division 2 of Title 1 of the*
14 *Corporations Code).*

15 (b) *Nothing in this title exempts a nonprofit community service*
16 *organization from the provisions of Chapters 3 (commencing with*
17 *Section 12200), 4 (commencing with Section 12300), and 5*
18 *(commencing with Section 12400) of Division 3 of the Financial*
19 *Code with respect to activities described in Section 12002 of the*
20 *Financial Code.*

21 1789.41. *For purposes of this title, the following terms have*
22 *the following meanings:*



1 (a) A “nonprofit community service organization” or
2 “nonprofit consumer credit counseling organization” means any
3 nonprofit corporation that is engaged in the business of offering
4 guidance, administering educational programs, or administering
5 debt management programs for the purpose of fostering the
6 responsible use of credit and debt management. Any organization
7 or person providing debt management services to a California
8 resident either in person or by electronic transmission, telephone,
9 mail, or facsimile, whether or not the principal business location
10 is within the state, is subject to the provisions of this title.

11 (b) A “debtor” means an individual who owes money to
12 creditors.

13 (c) A “creditor” means a person for whose benefit moneys are
14 collected and disbursed by a licensee.

15 (d) A “debt management program” means a program in which
16 individuals are assisted in liquidating their debt through the
17 repayment of creditors over a defined period of time.

18 1789.42. (a) A nonprofit community service organization
19 subject to this title shall not impose a charge upon a consumer for
20 arranging or administering debt settlement plans that exceeds 6.5
21 percent of the money disbursed monthly, or twenty dollars (\$20)
22 per month, whichever is the lesser, to offset expenses.

23 (b) An organization may not charge the debtor a fee or any
24 other related charge associated with a debt management plan,
25 including a fee to terminate the voluntary agreement between the
26 debtor and the organization.

27 1789.43. No more than 40 percent of the members of the board
28 of directors of a nonprofit community service organization subject
29 to this title shall have as their principal employer any corporation,
30 association, or institution that offers credit to the general public.

31 1789.44. (a) A nonprofit community service organization
32 shall keep its business books, accounts, and records in accordance
33 with sound accounting practices to determine whether the
34 organization is in violation of the provisions of this title. The
35 organization shall preserve the books, accounts, and records for at
36 least seven years after making the final entry on each transaction
37 recorded therein. The books, accounts, and records shall be kept
38 current, shall be maintained at the main office of the organization,
39 and shall be available for inspection on demand during regular
40 business hours. The organization shall not disclose personal



1 information about the debtor to third parties unless the debtor
2 completes an informed consent form authorizing the release of this
3 information.

4 (b) Nothing in this title shall be construed to require any
5 organization to keep an individual record of each individual fee
6 charged in each transaction but the organization shall be required
7 to keep a record of the total charges made for any accounting
8 period.

9 (c) A nonprofit community service organization shall maintain
10 an appropriate fidelity bond and insurance. The organization shall
11 arrange for independent biannual audits to be made of its
12 operations, including its compliance with paragraph (3) of
13 subdivision (e), and shall forward a copy of the audit to the
14 Department of Corporations.

15 (d) Any money received from a debtor by a nonprofit
16 community service organization subject to this chapter may be
17 deposited in an interest-bearing trust account in a bank, state or
18 federal savings bank, state or federal savings and loan
19 association, or state or federal credit union located in this state.

20 (e) A nonprofit community service organization that
21 establishes an interest-bearing trust account in a financial
22 institution, as set forth in subdivision (d), shall do so subject to all
23 of the following:

24 (1) The debtor shall waive in writing all rights to the interest
25 earned on his or her payments.

26 (2) The rate of interest payable on any interest-bearing trust
27 account shall be not less than the rate paid by the financial
28 institution to its regular depositors.

29 (3) The organization shall use any interest earned on the
30 average daily balance in the account for educational purposes
31 directly related to consumer credit education and counseling on
32 consumer credit problems and family budgets.

33 1789.45. (a) A nonprofit community service organization
34 shall deliver a copy of any voluntary written agreement, or consent
35 form between the organization and a debtor to the debtor
36 immediately after the debtor executes it, and the debtor's copy
37 shall evidence execution by the organization. A written agreement
38 shall not be effective until a debtor has made a payment to the
39 organization for distribution to his or her creditors.



1 (b) An organization shall also provide the debtor with a written
2 budget analysis indicating that the debtor can meet the financial
3 requirements of the proposed debt management plan. This analysis
4 shall include the name and address of the debtor, the debtor's
5 marital status, the debtor's number of dependents, all sources and
6 amounts of the debtor's income, the debtor's gross and net income,
7 all of the debtor's fixed payments and total amounts of living
8 expenses, the creditors included in the debt management plan, and
9 the amount of money to be paid to creditors under the plan.

10 1789.46. (a) Prior to entering into a written agreement with
11 a debtor, a nonprofit community service organization shall inform
12 the debtor of all available options, including filing for bankruptcy,
13 and shall, on a separate written form, notify all creditors listed in
14 the proposed written agreement between the debtor and the
15 organization, and obtain the consent of those creditors that wish
16 to participate in the debt management plan. The notification shall
17 include a notice as to the proposed monthly payment to be made
18 to each creditor. Consent of a creditor shall be recorded on a form
19 or an electronic transmission that shall include a list of all
20 creditors, the manner in which a creditor's consent was obtained
21 (telephone, facsimile, mail, e-mail), the date the consent of each
22 creditor was obtained, the name of the person contacted and his
23 or her response, and any special conditions or arrangements
24 required by a creditor. The executed written agreement between an
25 organization and a debtor shall list every debt to be handled by the
26 organization, the creditor's name, and disclose the total of all
27 debts.

28 (b) If a creditor does not respond within 10 days of receiving the
29 form or electronic transmission, it will be presumed the creditor
30 has consented to the form or electronic transmission and its
31 contents.

32 (c) An organization shall not guarantee, either in person or
33 through an advertisement, that a debtor's creditor will participate
34 in the debt management plan or make any other concessions on
35 behalf of the creditor.

36 1789.47. A nonprofit consumer service organization shall, on
37 a monthly basis, provide a statement to the debtor that itemizes the
38 total amount received from the debtor, the total amount paid to
39 each creditor, and the fees charged by the organization that are
40 deducted from payments received. The organization shall, in



1 addition, provide a written statement containing this information
2 to a debtor within seven business days upon receipt of a written
3 demand from the debtor.

4 1789.48. A written agreement between a nonprofit consumer
5 service organization and a debtor shall do all of the following:

6 (a) Contain the name of each creditor that has consented to the
7 debt management plan and the amount of payment to each creditor.

8 (b) State the total amount of monthly fees to be charged by the
9 organization for its services, subject to the limitations in Section
10 1789.42.

11 (c) State the beginning and estimated ending date of the written
12 agreement.

13 (d) State the estimated number of months required to liquidate
14 the debt in full.

15 (e) State the name, business street address, and business license
16 or registration number of the organization.

17 (f) Require the organization to make remittance to creditors
18 within seven business days after receipt of funds by the debtor or
19 within some other period of time agreed to by the debtor and the
20 organization.

21 (g) Include information regarding interest on trust accounts,
22 including that the interest earned on the trust account will be
23 returned to the organization and will be used by the organization
24 for educational purposes, and state that the debtor waives his or
25 her right to receive this interest income.

26 (h) (1) State that the debtor understands that entering the debt
27 management program is a voluntary agreement between the
28 debtor, the nonprofit organization, and a participating creditor.

29 (2) The organization may not charge the debtor a fee to
30 terminate the voluntary agreement between the debtor and the
31 organization.

32 (i) Disclose that the debtor understands the debt management
33 plan may negatively reflect upon the debtor's credit rating.

34 1789.49. (a) The Department of Corporations may, after
35 appropriate notice and opportunity for hearing, by order levy
36 administrative penalties against a person who violates any
37 provision of this title, and the person shall be liable for
38 administrative penalties of not more than two thousand five
39 hundred dollars (\$2,500) for each violation. Except for licensing
40 agencies exempt from the provisions of the Administrative



1 *Procedure Act (Chapter 5 (commencing with Section 11500) of*
2 *Part 1 of Division 3 of Title 2 of the Government Code), any*
3 *hearing shall be held in accordance with the Administrative*
4 *Procedure Act, and the licensing agency shall have all the powers*
5 *granted under that act.*

6 *(b) Any person, or nonprofit consumer credit counseling*
7 *organization who willfully and knowingly violates any provision*
8 *of this title shall be liable for a civil penalty of not more than*
9 *twenty-five thousand dollars (\$25,000) for each violation which*
10 *shall be assessed and recovered in a civil action brought in the*
11 *name of the people of the State of California by the licensing*
12 *agency in any court of competent jurisdiction.*

13 *(c) The Department or Corporations may exercise any and all*
14 *authority and powers available to it under any other provisions of*
15 *law, to administer and enforce this title, including, but not limited*
16 *to, investigating and examining the person's or nonprofit*
17 *consumer credit counseling organization's, books and records,*
18 *and charging and collecting the reasonable costs for these*
19 *activities. The department shall not charge a fee twice for the same*
20 *service. Any civil, criminal, and administrative authority and*
21 *remedies available to the department may be sought and employed*
22 *in any combination deemed advisable by the department to enforce*
23 *the provisions of this division.*

24 *(d) If the department determines that it is in the public interest,*
25 *the department may include, in any action for penalties authorized*
26 *by subdivision (b), a claim for relief in addition to the penalties,*
27 *including a claim for restitution or disgorgement, and the court*
28 *shall have jurisdiction to award the additional relief.*

29 *(e) Nothing in this section shall be construed to impair or*
30 *impede the Attorney General from representing the Department of*
31 *Corporations in bringing an action to enforce this division at the*
32 *request and on behalf of the department.*

33 *(f) In any action brought by the Department of Corporations,*
34 *or the Attorney General acting at the request and at the behest of*
35 *the department, under this title in which a judgment against a*
36 *person or organization is rendered, the department or the Attorney*
37 *General shall be entitled to recover costs which, in the discretion*
38 *of the court, may include an amount representing reasonable*
39 *attorney's fees and investigative expenses for services rendered for*
40 *deposit in the appropriate fund of the department.*



1 (g) *The amounts collected under subdivisions (a) and (b) shall*
2 *be deposited in the appropriate fund of the Department of*
3 *Corporations to be used by the department, subject to*
4 *appropriation by the Legislature, for the purposes of education*
5 *and enforcement in connection with abusive credit counseling*
6 *practices.*

7 (h) *A person, or nonprofit consumer credit counseling*
8 *organization, who fails to comply with the provisions of this title*
9 *is civilly liable to the consumer in an amount equal to any actual*
10 *damages suffered by the consumer, plus attorneys fees and costs.*
11 *For a willful and knowing violation of this title, the person shall*
12 *be liable to the consumer in the amount of fifteen thousand dollars*
13 *(\$15,000) or the consumer's actual damages, whichever is greater,*
14 *plus attorneys fees and costs.*

15 SEC. 2. Section 12100 of the Financial Code is amended to
16 read:

17 12100. This division does not apply to any of the following:

18 (a) Persons or their authorized agents doing business under
19 license and authority of the Commissioner of Financial
20 Institutions under Division 1 (commencing with Section 99), or
21 under any law of this state or of the United States relating to banks,
22 trust companies, building or savings associations, industrial loan
23 companies, personal property brokers, credit unions, title
24 insurance companies or underwritten title companies (as defined
25 in Section 12402 of the Insurance Code), escrow agents subject to
26 Division 6 (commencing with Section 17000), or consumer
27 finance lenders or commercial finance lenders subject to Division
28 9 (commencing with Section 22000).

29 (b) (1) Any person that is licensed under Chapter 14A
30 (commencing with Section 1851) of Division 1 or any agent of
31 such person when selling any travelers check (as defined in Section
32 1852) that is issued by such person.

33 (2) Any person that is licensed under Division 16 (commencing
34 with Section 33000) or any agent of the person, when selling any
35 payment instrument (as defined in Section 33059) that is issued by
36 the person.

37 (c) The services of a person licensed to practice law in this state,
38 when the person renders services in the course of his or her practice
39 as an attorney at law, and the fees and disbursements of such person
40 whether paid by the debtor or other person, are not charges or costs



1 and expenses regulated by or subject to the limitations of this
2 chapter; provided, these fees and disbursements shall not be
3 shared, directly or indirectly with the prorater or check seller.

4 (d) Any transaction in which money or other property is paid
5 to a “joint control agent” for disbursal or use in payment of the
6 cost of labor, materials, services, permits, fees, or other items of
7 expense incurred in construction of improvements upon real
8 property.

9 (e) A merchant-owned credit or creditors association, or a
10 member-owned or member-controlled or member-directed
11 association whose principal function is that of servicing the
12 community as a reporting agency.

13 (f) Any person subject to Chapter 2.5 (commencing with
14 Section 18895) of Division 8 of the Business and Professions
15 Code, when acting in any capacity provided for under that chapter.

16 (g) Any person licensed under Part 1 (commencing with
17 Section 10000) of Division 4 of the Business and Professions
18 Code, when acting in any capacity for which he or she is licensed
19 under that part.

20 (h) A common law or statutory assignment for the benefit of
21 creditors or the operation or liquidation of property or a business
22 enterprise under supervision of a creditor’s committee.

23 (i) The services of a person licensed as a certified public
24 accountant or a public accountant in this state, when the person
25 renders services in a course of his or her practice as a certified
26 public accountant or a public accountant, and the fees and
27 disbursements of the person whether paid by the debtor or other
28 person, are not charges or costs and expenses regulated by or
29 subject to the limitations of this chapter; provided, these fees and
30 disbursements shall not be shared, directly or indirectly, with the
31 prorater or check seller.

32 (j) *Nonprofit community service organizations that are subject*
33 *to the Nonprofit Public Benefit Corporation Law (Part 2*
34 *commencing with Section 5110) of Division 2 of Title 1 of the*
35 *Corporations Code) or are subject to the Nonprofit Mutual Benefit*
36 *Corporation Law (Part 3 commencing with Section 7110) of*
37 *Division 2 of Title 1 of the Corporations Code) and whose*
38 *membership consists exclusively of retailers, lenders in the*
39 *consumer credit field, educators, attorneys, social service*
40 *organizations, employers’ or employees’ organizations, and*



1 *related groups, if the principal functions of these organizations*
2 *are: (1) consumer credit education; (2) counseling on consumer*
3 *credit problems and family budgets; and (3) arranging, and in*
4 *certain cases administering, debt settlement plans, for which the*
5 *only charge that may be made is for administrative services in*
6 *association with a debt management plan of 6.5 percent of the*
7 *money disbursed monthly, or twenty dollars (\$20) per month,*
8 *whichever is the lesser; to offset expenses; provided essential*
9 *records are kept in accordance with sound accounting practices,*
10 *consumer funds are banked in a trust account and appropriate*
11 *fidelity bond and insurance are maintained, that reports are made*
12 *to debtors, and independent audits made; and further provided,*
13 *however, that this subdivision shall exempt these organizations*
14 *from this division only with respect to those activities described in*
15 *Section 12002.1 and not with respect to those activities described*
16 *in Section 12002.*

17 (k) Any person licensed under Chapter 14 (commencing with
18 Section 1800) of Division 1 or any agent of such person, when
19 selling any check or draft which is drawn by the person and which
20 is of the type described in paragraph (3) of subdivision (a) of
21 Section 1800.5.

22 ~~(k)~~

23 (l) Any group of banks each of which is organized under the
24 laws of a nation other than the United States and one or more of
25 which are licensed by the Commissioner of Financial Institutions
26 under Article 3 (commencing with Section 1750) of Chapter 13.5
27 of Division 1, or any agent of such group, when selling any foreign
28 currency traveler's check (as defined in Section 1852) issued by
29 such group, provided that each bank which is a member of the
30 group is jointly and severally liable to pay such foreign currency
31 traveler's check.

32 ~~(l)~~

33 (m) Any transaction of the type described in Section 1854.1.

34 ~~SEC. 2.~~

35 ~~SEC. 3.~~ Section 12101 is added to the Financial Code, to read:
36 12101. Chapters 3, 4, and 5 of this division do not apply to a
37 nonprofit community service organization that engages in the
38 activities of a prorater pursuant to Section 12002.1 and that is in
39 compliance with ~~Chapter 2.5 (commencing with Section 12150)~~



1 *Title 1.6G (commencing with Section 1789.40) of Part 4 of*
2 *Division 3 of the Civil Code.*

3 ~~SEC. 3.~~

4 ~~SEC. 4.~~ Section 12104 of the Financial Code is repealed.

5 ~~SEC. 4.~~ Chapter 2.5 (commencing with Section 12150) is
6 added to Division 3 of the Financial Code, to read:

7

8 ~~CHAPTER 2.5.—NONPROFIT CREDIT COUNSELING ORGANIZATIONS~~

9

10 ~~12150. (a) This chapter applies to nonprofit community~~
11 ~~service organizations that are acting as proraters pursuant to~~
12 ~~Section 12002.1 and that are subject to the Nonprofit Public~~
13 ~~Benefit Corporation Law (Part 2 (commencing with Section 5110)~~
14 ~~of Division 2 of Title 1 of the Corporations Code) or are subject~~
15 ~~to the Nonprofit Mutual Benefit Corporation Law (Part 3~~
16 ~~(commencing with Section 7110) of Division 2 of Title 1 of the~~
17 ~~Corporations Code).~~

18 ~~(b) Nothing in this chapter exempts a nonprofit community~~
19 ~~service organization from the provisions of Chapters 3, 4, and 5~~
20 ~~with respect to activities described in Section 12002.~~

21 ~~12150.5. For purposes of this chapter, the following terms~~
22 ~~have the following meanings:~~

23 ~~(a) A “nonprofit community service organization” or~~
24 ~~“nonprofit consumer credit counseling organization” means any~~
25 ~~nonprofit corporation that is engaged in the business of offering~~
26 ~~guidance, administering educational programs, or administering~~
27 ~~debt management programs for the purpose of fostering the~~
28 ~~responsible use of credit and debt management. Any organization~~
29 ~~or person providing debt management services to a California~~
30 ~~resident either in person or by electronic transmission, phone,~~
31 ~~mail, or facsimile, whether or not the principle business location~~
32 ~~is within the state, is subject to the provisions of this chapter.~~

33 ~~(b) A “debtor” means an individual who owes money to~~
34 ~~creditors.~~

35 ~~(c) A “creditor” means a person for whose benefit moneys are~~
36 ~~collected and disbursed by a licensee.~~

37 ~~(d) A “debt management program” means a program in which~~
38 ~~individuals are assisted in liquidating their debt through the~~
39 ~~repayment of creditors over a defined period of time.~~



1 ~~12151. (a) A nonprofit community service organization shall~~
2 ~~file a notice of registration with the commissioner.~~

3 ~~(b) The commissioner shall adopt necessary regulations~~
4 ~~regarding the imposition of any filing fees required to carry out~~
5 ~~these provisions.~~

6 ~~12152. (a) A nonprofit community service organization~~
7 ~~subject to this chapter shall not impose a charge upon a consumer~~
8 ~~for arranging or administering debt settlement plans that exceeds~~
9 ~~6.5 percent of the money disbursed monthly, or twenty dollars~~
10 ~~(\$20) per month, whichever is the lesser, to offset expenses.~~
11 ~~However, the commissioner shall, by regulation, provide for an~~
12 ~~increase in the amounts in this section based upon an~~
13 ~~inflation-based formula.~~

14 ~~(b) An organization may not charge the debtor a fee to~~
15 ~~terminate the voluntary agreement between the debtor and the~~
16 ~~organization.~~

17 ~~12153. (a) A nonprofit community service organization shall~~
18 ~~keep its business books, accounts, and records in accordance with~~
19 ~~sound accounting practices in order to enable the commissioner to~~
20 ~~determine whether the organization is in violation of the~~
21 ~~provisions of this chapter or the rules and regulations adopted by~~
22 ~~the commissioner pursuant to this chapter. The organization shall~~
23 ~~preserve the books, accounts, and records for at least seven years~~
24 ~~after making the final entry on each transaction recorded therein.~~
25 ~~The books, accounts, and records shall be kept current, shall be~~
26 ~~maintained at the main office of the organization, and shall be~~
27 ~~available for inspection by the commissioner on demand during~~
28 ~~regular business hours. The organization shall not disclose~~
29 ~~personal information about the debtor to third parties unless the~~
30 ~~debtor completes an informed consent form authorizing the~~
31 ~~release of this information.~~

32 ~~(b) Nothing in this chapter shall be construed to require any~~
33 ~~organization to keep an individual record of each individual fee~~
34 ~~charged in each transaction but the organization shall be required~~
35 ~~to keep a record of the total charges made for any accounting~~
36 ~~period.~~

37 ~~(c) A nonprofit community service organization shall maintain~~
38 ~~an appropriate fidelity bond and insurance. The organization shall~~
39 ~~arrange for independent biannual audits to be made of its~~



1 operations and shall forward a copy of the audit to the Department
2 of Corporations.

3 ~~(d) Any money received from a debtor by a nonprofit~~
4 ~~community service organization subject to this chapter may be~~
5 ~~deposited in an interest-bearing trust account in a bank, state or~~
6 ~~federal savings bank, state or federal savings and loan association,~~
7 ~~or state or federal credit union located in this state.~~

8 ~~(e) A nonprofit community service organization that~~
9 ~~establishes an interest-bearing trust account in a financial~~
10 ~~institution, as set forth in subdivision (a), shall do so subject to all~~
11 ~~of the following:~~

12 ~~(1) The debtor shall waive in writing all rights to the interest~~
13 ~~earned on his or her payments.~~

14 ~~(2) The rate of interest payable on any interest-bearing trust~~
15 ~~account shall be not less than the rate paid by the financial~~
16 ~~institution to its regular depositors.~~

17 ~~(3) The organization shall use any interest earned on the~~
18 ~~average daily balance in the account for educational purposes~~
19 ~~directly related to consumer credit education and counseling on~~
20 ~~consumer credit problems and family budgets.~~

21 ~~12154. (a) A nonprofit community service organization shall~~
22 ~~deliver a copy of any voluntary written agreement, or consent form~~
23 ~~between the organization and a debtor to the debtor immediately~~
24 ~~after the debtor executes it, and the debtor's copy shall evidence~~
25 ~~execution by the organization. A written agreement shall not be~~
26 ~~effective until a debtor has made a payment to the organization for~~
27 ~~distribution to his or her creditors.~~

28 ~~(b) An organization shall also provide the debtor with a written~~
29 ~~budget analysis indicating that the debtor can meet the financial~~
30 ~~requirements of the proposed debt management plan. This analysis~~
31 ~~shall include the name and address of the debtor, the debtor's~~
32 ~~marital status, the debtor's number of dependents, all sources and~~
33 ~~amounts of the debtor's income, the debtor's gross and net income,~~
34 ~~all of the debtor's fixed payments and total amounts of living~~
35 ~~expenses, the creditors included in the debt management plan, and~~
36 ~~the amount of money to be paid to creditors under the plan.~~

37 ~~12155. (a) Prior to entering into a written agreement with a~~
38 ~~debtor, a nonprofit community service organization shall, on a~~
39 ~~separate written form, notify all creditors listed in the proposed~~
40 ~~written agreement between the debtor and the organization, and~~



1 obtain the consent of those creditors that wish to participate in the
2 debt management plan. The notification shall include a notice as
3 to the proposed monthly payment to be made to each creditor.
4 Consent of a creditor shall be recorded on a form or an electronic
5 transmission that shall include a list of all creditors, the manner in
6 which a creditor's consent was obtained (telephone, facsimile,
7 mail, e-mail), the date the consent of each creditor was obtained,
8 the name of the person contacted and his or her response, and any
9 special conditions or arrangements required by a creditor. The
10 executed written agreement between an organization and a debtor
11 shall list every debt to be handled by the organization, the
12 creditor's name, and disclose the total of all debts.

13 (b) If a creditor does not respond within 10 days of receiving
14 the form or electronic transmission, it will be presumed the
15 creditor has consented to the form or electronic transmission and
16 its contents.

17 (c) An organization shall not guarantee, either in person or
18 through an advertisement, that a debtor's creditor will participate
19 in the debt management plan or make any other concessions on
20 behalf of the creditor.

21 12156. — A nonprofit consumer service organization shall, on a
22 monthly basis, provide a statement to the debtor that itemizes the
23 total amount received from the debtor, the total amount paid to
24 each creditor, and the fees charged by the organization that are
25 deducted from payments received. The organization shall, in
26 addition, provide a written statement containing this information
27 to a debtor within seven business days upon receipt of a written
28 demand from the debtor.

29 12157. — A written agreement between a nonprofit consumer
30 service organization and a debtor shall do all of the following:

31 (a) Contain the name of each creditor that has consented to the
32 debt management plan and the amount of payment to each creditor.

33 (b) State the total amount of monthly fees to be charged by the
34 organization for its services, subject to the limitations in Section
35 12152.

36 (c) State the beginning and estimated ending date of the written
37 agreement.

38 (d) State the estimated number of months required to liquidate
39 the debt in full.



1 ~~(e) State the name, business street address, and business license~~
2 ~~or registration number of the organization.~~

3 ~~(f) Require the organization to make remittance to creditors~~
4 ~~within seven business days after receipt of funds by the debtor or~~
5 ~~within some other period of time agreed to by the debtor and the~~
6 ~~organization.~~

7 ~~(g) Include information regarding interest on trust accounts,~~
8 ~~including that the interest earned on the trust account will be~~
9 ~~returned to the organization and will be used by the organization~~
10 ~~for educational purposes, and state that the debtor waives his or her~~
11 ~~right to receive this interest income.~~

12 ~~(h) (1) State that the debtor understands that entering the debt~~
13 ~~management program is a voluntary agreement between the~~
14 ~~debtor, the nonprofit organization, and a participating creditor.~~

15 ~~(2) The organization may not charge the debtor a fee to~~
16 ~~terminate the voluntary agreement between the debtor and the~~
17 ~~organization.~~

18 ~~(i) Disclose that the debtor understands the debt management~~
19 ~~plan may negatively reflect upon the debtor's credit rating.~~

20 ~~12158. (a) The commissioner, by regulation, may adopt a~~
21 ~~schedule of civil penalties applicable to violations of this chapter.~~

22 ~~(b) (1) Any person who willfully violates any provision of this~~
23 ~~chapter, or who willfully violates any rule or order under this~~
24 ~~chapter, shall, upon conviction, be fined not more than fifty~~
25 ~~thousand dollars (\$50,000), or imprisoned in the state prison or in~~
26 ~~a county jail for not more than one year, or be punished by that fine~~
27 ~~and imprisonment, but no person may be imprisoned for the~~
28 ~~violation of any provision unless he or she had knowledge of the~~
29 ~~provision.~~

30 ~~(2) The commissioner shall provide information to the public~~
31 ~~on how to file a complaint against an organization for violating the~~
32 ~~provisions of this chapter.~~

33 ~~12159. Whenever in the opinion of the commissioner any~~
34 ~~organization is violating any provision of this chapter, the~~
35 ~~commissioner may order the organization to desist and to refrain~~
36 ~~from engaging in the activities regulated by this chapter or further~~
37 ~~violating this chapter. If, after an order is made, a request for a~~
38 ~~hearing is filed in writing and no hearing is held within 30 days,~~
39 ~~the order shall be deemed to have been rescinded.~~



1 ~~12160. (a) The commissioner may commence and prosecute~~
2 ~~actions and proceedings to enjoin violations of this chapter or~~
3 ~~violations of orders or decisions of the commissioner rendered~~
4 ~~pursuant to this chapter, and for the enforcement and collection of~~
5 ~~civil penalties provided for by this chapter.~~

6 ~~(b) The commissioner may conduct investigations as necessary~~
7 ~~to enforce the provisions of this chapter.~~

8 ~~SEC. 5. No reimbursement is required by this act pursuant to~~
9 ~~Section 6 of Article XIII B of the California Constitution because~~
10 ~~the only costs that may be incurred by a local agency or school~~
11 ~~district will be incurred because this act creates a new crime or~~
12 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
13 ~~for a crime or infraction, within the meaning of Section 17556 of~~
14 ~~the Government Code, or changes the definition of a crime within~~
15 ~~the meaning of Section 6 of Article XIII B of the California~~
16 ~~Constitution.~~

