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**Introduced by Senator Peace**

February 12, 2002

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An act to amend Section 1785.31 of the Civil Code, relating to consumer credit.

LEGISLATIVE COUNSEL'S DIGEST

SB 1387, as introduced, Peace. Consumer credit reporting agencies: actions.

The Consumer Credit Reporting Agencies Act provides that any person who willfully violates any requirement of the act may be liable for punitive damages in a class action. Existing law requires a court, in determining the amount of an award in a class action, to consider the actual damages awarded, the frequency of the violations, the resources of the violator, and the number of persons affected.

This bill would require a court, in determining the amount of an award in a class action, also to consider the number of violations.

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. Section 1785.31 of the Civil Code is amended  
2 to read:  
3 1785.31. (a) Any consumer who suffers damages as a result  
4 of a violation of this title by any person may bring an action in a  
5 court of appropriate jurisdiction against that person to recover the  
6 following:

- 1 (1) In the case of a negligent violation, actual damages,  
2 including court costs, loss of wages, attorney's fees and, when  
3 applicable, pain and suffering.
- 4 (2) In the case of a willful violation:
- 5 (A) Actual damages as set forth in paragraph (1) above:
- 6 (B) Punitive damages of not less than one hundred dollars  
7 (\$100) nor more than five thousand dollars (\$5,000) for each  
8 violation as the court deems proper;
- 9 (C) Any other relief that the court deems proper.
- 10 (3) In the case of liability of a natural person for obtaining a  
11 consumer credit report under false pretenses or knowingly without  
12 a permissible purpose, an award of actual damages pursuant to  
13 paragraph (1) or subparagraph (A) of paragraph (2) shall be in an  
14 amount of not less than two thousand five hundred dollars  
15 (\$2,500).
- 16 (b) Injunctive relief shall be available to any consumer  
17 aggrieved by a violation or a threatened violation of this title  
18 whether or not the consumer seeks any other remedy under this  
19 section.
- 20 (c) Notwithstanding any other provision of this section, any  
21 person who willfully violates any requirement imposed under this  
22 title may be liable for punitive damages in the case of a class action,  
23 in an amount that the court may allow. In determining the amount  
24 of award in any class action, the court shall consider among  
25 relevant factors the amount of any actual damages awarded, *the*  
26 *number and* the frequency of the violations, the resources of the  
27 violator and the number of persons adversely affected.
- 28 (d) Except as provided in subdivision (e), the prevailing  
29 plaintiffs in any action commenced under this section shall be  
30 entitled to recover court costs and reasonable attorney's fees.
- 31 (e) If a plaintiff brings an action pursuant to this section against  
32 a debt collector, as defined in subdivision (c) of Section 1788.2,  
33 and the basis for the action is related to the collection of a debt,  
34 whether issues relating to the debt collection are raised in the same  
35 or another proceeding, the debt collector shall be entitled to  
36 recover reasonable attorney's fees upon a finding by the court that  
37 the action was not brought in good faith.
- 38 (f) If a plaintiff only seeks and obtains injunctive relief to  
39 compel compliance with this title, court costs and attorney's fees



- 1 shall be awarded pursuant to Section 1021.5 of the Code of Civil
- 2 Procedure.
- 3 (g) Nothing in this section is intended to affect remedies
- 4 available under Section 128.5 of the Code of Civil Procedure.

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