

Department of Legislative Services
Maryland General Assembly
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FISCAL AND POLICY NOTE
Revised

Senate Bill 646
Finance

(Senator Astle, *et al.*)

Economic Matters

Credit Regulation - Debt Management Services

This bill repeals the requirement that a licensed debt management services provider be a nonprofit entity, thus allowing a for-profit entity to become licensed. The bill requires the applicant, in addition to specified individuals associated with the applicant, to meet standards regarding debt management services. The bill also alters the requirements for a consumer education program and makes various other changes to the provisions governing debt management services businesses.

The bill takes effect June 1, 2008.

Fiscal Summary

State Effect: Special fund revenues would increase to the extent the bill results in new licensees. Special fund revenues of at least \$36,000 biennially would also be maintained if current licensees are able to retain their licenses because of the bill. Expenditures would not be affected. The bill's requirements could be handled by the Department of Labor, Licensing, and Regulation with existing budgeted resources.

Local Effect: The bill would not directly affect local finances or operations.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: Before providing counseling to a consumer, each debt management counselor employed by the applicant or the applicant's agent must receive comprehensive training in counseling skills, personal finance, budgeting, and credit and debt management.

A licensee must make a determination, based on the licensee's analysis of information provided by the consumer, before performing debt management services that debt management services are suitable; and the consumer will be able to meet the payment obligations under the debt management services agreement. The bill also requires a debt management services provider to provide a written notice stating specified information about credit counseling under federal bankruptcy law.

In addition to other requirements, a licensed debt management services provider may not provide the services for a consumer unless the licensee provides the consumer with a written summary of the counseling options and strategies for addressing the consumer's debt problems. The consumer must also sign an acknowledgment stating that the consumer has reviewed the summary and has decided to proceed with entering into an agreement with the licensee.

The annual report provided by a licensee to the Commissioner of Financial Regulation must include, in addition to the current requirements:

- the percentage of all consumers who received a consumer education program and subsequently executed a debt management services agreement during the preceding year;
- the number of consumers who successfully completed a debt management plan during the preceding calendar year;
- the number of consumers who ceased participating in a debt management plan without successfully completing the plan during the preceding calendar year; and
- a representative sample of the written summary of the counseling options and strategies that the licensee must provide to consumers.

A licensee must retain for seven years, in addition to other items that must be retained during that period, a copy of each written summary of counseling option and strategies provided to consumers and a copy of each signed acknowledgement of receiving the summary and agreeing to proceed with the agreement by a consumer.

Current Law: To qualify for a license, an applicant must be a nonprofit organization and must satisfy the commissioner that each of the applicant's owners, officers, directors, principals, and agents has sufficient experience, character, financial responsibility, and general fitness to engage in the business of providing debt management services; warrant the belief that the business will be conducted lawfully, honestly, fairly, and efficiently; and command the confidence of the public.

Licenses are prohibited from various activities relating to the operation of their businesses, including purchasing a consumer's debt or obligation, lending money or providing credit to a consumer, and offering or paying compensation for referring a potential customer.

Licenses may not perform debt management services for a consumer unless the licensee has complied with specified requirements.

A licensee must report to the Commissioner of Financial Regulation by April 30 annually on the debt management services business conducted during the preceding calendar year. The report must include an audited financial statement, a list of debt management counselors, the number of consumers for whom the licensee provided services, the number of consumers who signed new service agreements during the year, the highest number of consumers for whom services were provided during any month during the year, and the amounts paid by consumers to the licensee.

To enable the commissioner to determine compliance with the Maryland Debt Management Services Act, licenses are required to make and preserve specified books, accounts, and records for at least seven years, including a general ledger, services agreements, and bank statements.

Background: The 2005 amendments to the federal Bankruptcy Act require most filers to receive credit counseling. An individual may not file a bankruptcy petition unless within 180 days preceding the filing the individual has received an individual or group briefing that outlines the opportunities for credit counseling and assists the individual in performing a budget analysis. The individual must file a certificate from an approved nonprofit budget and credit counseling agency describing the services provided along with a copy of the debt repayment plan, if any. An individual may be allowed to file bankruptcy without a briefing by a credit counselor under limited circumstances, if a waiver is granted. In addition to receiving pre-bankruptcy counseling, all Chapter 7 and 13 filers must complete a financial management course before receiving a discharge of debts.

The Internal Revenue Service recently revoked the tax-exempt status of several debt management firms, including several formerly licensed debt management services companies in Maryland, because they were deemed to be for-profit entities. The bill would allow for-profit organizations to become licensed debt management service providers in Maryland, and any such organization that has had its license revoked would be allowed to remain licensed and continue to provide services to Maryland consumers. Debt management firms assist consumers by helping consumers obtain lower interest rates, waivers of late fees, and favorable debt repayment plans.

Chapter 574 of 2005 amended the licensing fee structure for debt management services providers. Under Chapter 574, the biennial fee depends on the licensee's gross annual revenue. The licensing scheme and special fund for debt management providers was created by Chapters 374 and 375 of 2003, and is managed by the Commissioner of Financial Regulation.

State Revenues: Of the 36 currently licensed debt management services companies, 9 are still challenging determinations by the IRS to revoke their tax-exempt status. It is unclear whether those appeals will be successful. If not, the bill would allow them to remain licensees. These nine companies currently pay a total of approximately \$36,000 every other year in licensing fees. In early 2007, there were 42 licensed debt management services companies, with 11 of these challenging determinations by the IRS.

The IRS recently announced that it will be auditing the nonprofit status of an additional 80 debt management services companies nationwide. It is unknown how many of those companies are licensed in Maryland.

It is assumed that at least three additional debt management services providers would apply for licensure under the bill. If so, special fund revenues would increase in fiscal 2009 by \$1,000 for each investigation of an applicant performed. Special fund revenues from licensing fees would also increase, but those fees would depend on the size of the licensee and when the application is made since license fees in odd-numbered years are half the amount of even-numbered years. *For illustrative purposes*, if three firms with gross annual revenues ranging from \$6,000,001 to \$15,000,000 became licensed in fiscal 2009, special fund revenues would increase by \$6,000 initially and \$12,000 biennially beginning in fiscal 2010.

Additional Information

Prior Introductions: Similar bills – SB 367 of 2007 as amended and SB 673 of 2006 as amended – passed the Senate. Both were referred to the House Economic Matters Committee where no further action was taken in either case. Another similar bill, HB 1385 of 2006, received a hearing in Economic Matters but no further action was taken.

Cross File: HB 947 (Delegate Feldman, *et al.*) – Economic Matters.

Information Source(s): Department of Labor, Licensing, and Regulation; Department of Legislative Services

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