

Department of Legislative Services
Maryland General Assembly
2014 Session

FISCAL AND POLICY NOTE

Senate Bill 160
Finance

(Senator Pugh, *et al.*)

Economic Matters

Commercial Law - Debt Settlement Services - Sunset and Reporting Extension

This bill extends the termination date of the Debt Settlement Services Act by one year to June 30, 2016. The bill extends specified reporting periods of registered debt settlement services providers to encompass the additional year. Likewise, the bill delays the due date for a report to specified committees of the General Assembly by the Office of the Commissioner of Financial Regulation (in consultation with the Consumer Protection Division of the Office of the Attorney General) by one year.

Fiscal Summary

State Effect: The bill's changes can be absorbed within budgeted resources. Special fund revenues do not increase in FY 2016 for an additional year of registration because there is no additional cost to the providers. The bill's continued imposition of penalty provisions does not have a material impact on State finances or operations.

Local Effect: The bill's continued imposition of penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary/Current Law: Under Chapters 280 and 281 of 2011, the Maryland Debt Settlement Services Act terminates June 30, 2015, three years and nine months after its effective date. The bill extends the termination date by one year to June 30, 2016, thereby maintaining required registration of debt settlement services providers for an additional year.

Under the original acts, registered debt settlement services providers are required to report to the Commissioner of Financial Regulation on the debt settlement services business conducted during the preceding calendar year on or before March 15 each year, beginning in 2012 and ending in 2014. The report must include specified information on consumers who received debt settlement services from the registrant, those who completed a program, those who did not (due to inactivity, cancellation, or termination) and fees collected. The report must also include a profit and loss statement of debt settlement services provided to Maryland consumers for the previous calendar year prepared by an independent certified public accountant in accordance with generally accepted accounting principles. The bill extends the reporting period by one year to 2015.

Under the Maryland Debt Settlement Services Act, a person may not offer, provide, or attempt to provide debt settlement services unless the person is either registered with the commissioner or exempt from registration. In order to register with the commissioner a person must (1) pay an initial \$1,000 registration fee and \$1,000 for each subsequent registration renewal and (2) submit an application form including specified information. A registration expires on December 31 of each odd-numbered year unless renewed for an additional two-year term on or before December 1 of the year of expiration. The bill extends the expiration or a renewal of a registration of a debt settlement services provider with an expiration date of December 1, 2015, automatically to June 1, 2016, without payment of an additional fee or submission of an application.

Violation of the Maryland Debt Settlement Services Act is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Under Chapters 280 and 281, the Office of the Commissioner of Financial Regulation, in consultation with the Consumer Protection Division, must report to the Senate Finance Committee and the House Economic Matters Committee by December 1, 2014, on findings and recommendations regarding changes to the Maryland Debt Settlement Services Act. That report must include whether to transition from a registration requirement to a licensure requirement and whether a cap on debt settlement services fees would be beneficial to consumers and fair to the debt settlement services industry. The bill extends the deadline for the report by one year to December 1, 2015.

Background: As of July 2013, 21 debt settlement services providers were registered with the Commissioner of Financial Regulation.

Prior to the Maryland Debt Settlement Services Act, regulation of debt settlement companies was not required by State law. Once the Act terminates (currently, on June 30, 2015), debt settlement companies will not be regulated under State law unless further action is taken.

Commissioner of Financial Regulation Study and the Maryland Debt Settlement Services Act

Chapters 338 and 339 of 2010 required the Commissioner of Financial Regulation, in consultation with the Consumer Protection Division of the Attorney General, to conduct a study of the debt settlement industry and report its findings to the Senate Finance and House Economic Matters committees. The study, finalized in December 2010, found that the increase in the number of consumers who were unable to pay unsecured debt had created a significant growth in the demand for debt relief services. The report made the following recommendations, among others: (1) enact a period of an interim registration of companies engaging in the business of debt settlement for a period of two years with a \$500 per year fee, during which the commissioner would determine whether a licensing scheme should be adopted; and (2) distinguish from debt management and debt settlement companies in any proposed legislation.

In light of the commissioner's report and recommendations, the Maryland Debt Settlement Services Act was established to:

- register providers of debt settlement services;
- specify requirements for debt settlement services agreements;
- prohibit providers from charging customers fees for consultation or for obtaining a consumer's credit report or from requiring a voluntary contribution from a consumer for any provider services;
- prohibit providers from charging debt settlement services fees until after a debt settlement services agreement has been executed between the provider and the consumer; the provider has renegotiated, settled, reduced, or otherwise altered the terms of at least one individual debt specified in the agreement; and the consumer has made at least one payment in accordance with the debt settlement services agreement;
- allow providers to request or require consumers to deposit funds in an account to be used for debt settlement services fees and payments to creditors;
- establish other duties for providers; and
- require revenue received from registration of providers to be placed in the Debt Management Services Fund for use in covering expenses incurred in the registration of providers.

Recent Activity Involving the Maryland Debt Settlement Services Act

Under Chapters 280 and 281, the Office of the Commissioner of Financial Regulation, in consultation with the Consumer Protection Division, was provided three years to report study findings and recommendations to the General Assembly. The Office of the Commissioner of Financial Regulation advises that the average debt settlement contract

SB 160/ Page 3

period is between three and four years; thus, the majority of the debt settlement contracts in the data set to be studied will not have run a full contract cycle by the end of the original study period.

Small Business Effect: To the extent that any debt settlement services providers are small businesses, they may incur an additional year of costs associated with data compilation and record retention to comply with this bill. Moreover, the businesses may incur additional costs ranging from several hundred to several thousand dollars in hiring a certified public accountant to prepare a profit and loss statement. The cost associated with the preparation of the profit and loss statement is dependent on numerous factors, particularly the complexity of the statement associated with higher volumes of business performed by the company.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Department of Labor, Licensing, and Regulation; Department of Legislative Services

Fiscal Note History: First Reader - January 20, 2014
ns/ljm

Analysis by: Joshua A. Lowery

Direct Inquiries to:
(410) 946-5510
(301) 970-5510