

BY: Finance Committee

AMENDMENTS TO SENATE BILL NO. 821

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 5, after "Regulation;" insert "altering the penalty for violations of a certain prohibition against engaging in the business of debt management services; prohibiting a certain organization from imposing certain charges or fees on, or requesting or accepting certain voluntary contributions from, certain persons;"; and in line 23, after "circumstances;" insert "authorizing the Commissioner to adopt certain regulations; authorizing the Commissioner to require the maintenance of certain insurance;".

On page 2, in line 2, after "circumstances;" insert "authorizing the Commissioner to take certain cease and desist and other affirmative actions; specifying that the Commissioner shall consider certain factors in determining the amount of a certain penalty;"; and in line 20, strike "12-923" and substitute "12-927".

AMENDMENT NO. 2

On page 2, in line 36, strike "misdemeanor" and substitute "FELONY"; in line 37, strike "6 months" and substitute "5 YEARS"; and in line 38, strike "\$500" and substitute "\$1,000 FOR THE FIRST VIOLATION AND NOT EXCEEDING \$5,000 FOR EACH SUBSEQUENT VIOLATION".

AMENDMENT NO. 3

On page 3, in line 4, after "bank" insert ", CREDIT UNION,"; in line 9, after "that" insert a colon; in line 11, before "IS" insert:

(I);

in line 12, after "CODE" insert ";

(Over)

(II) DISTRIBUTES ALL MONEY RECEIVED FROM MEMBERS AND CUSTOMERS AMONG SPECIFIED CREDITORS IN ACCORDANCE WITH AN AGREED PLAN THAT DOES NOT:

1. IMPOSE A CHARGE OR FEE ON THE MEMBERS OR CUSTOMERS FOR INITIAL ENROLLMENT OR MAINTENANCE OR ADMINISTRATION OF THE PLAN; OR

2. REQUEST OR ACCEPT A VOLUNTARY CONTRIBUTION FROM THE MEMBERS OR CUSTOMERS FOR INITIAL ENROLLMENT OR MAINTENANCE OR ADMINISTRATION OF THE PLAN;”;

and in the same line, after “AND” insert:

“(III)”.

On page 4, in line 9, strike “SCHEDULE” and substitute “, NOT EXCEEDING \$4,000,”; in the same line, after “ISSUANCE” insert “OF REGISTRATIONS”; in lines 9 and 10, strike “AND RENEWAL OF REGISTRATIONS”; in line 10, strike “AND”; after line 10, insert:

“(2) A FEE, NOT EXCEEDING \$4,000, FOR RENEWAL OF REGISTRATIONS UNDER THIS SUBTITLE; AND”;

in line 11, strike “(2)” and substitute “(3)”; and in the same line, after “FEE” insert “, NOT EXCEEDING \$1,000,”.

On page 5, in line 26, after “ORGANIZATION” insert “:

(1) DISTRIBUTES ALL MONEY RECEIVED FROM MEMBERS AND CUSTOMERS AMONG SPECIFIED CREDITORS IN ACCORDANCE WITH AN AGREED PLAN THAT DOES NOT:

(I) IMPOSE A CHARGE OR FEE ON THE MEMBERS OR CUSTOMERS FOR INITIAL ENROLLMENT OR MAINTENANCE OR ADMINISTRATION OF

THE PLAN; OR

(II) REQUEST OR ACCEPT A VOLUNTARY CONTRIBUTION FROM THE MEMBERS OR CUSTOMERS FOR INITIAL ENROLLMENT OR MAINTENANCE OR ADMINISTRATION OF THE PLAN; AND

(2)”;

in line 31, after “MEMBERS” insert “OR CUSTOMERS”; in line 32, after “MEMBERS” insert “OR CUSTOMERS OR REQUESTING OR ACCEPTING A VOLUNTARY CONTRIBUTION FROM THE MEMBERS OR CUSTOMERS”; and in line 34, strike “DIRECTORS,”.

AMENDMENT NO. 4

On page 6, after line 13, insert:

“(II) IF THE APPLICANT HAS MORE THAN ONE LOCATION OR BRANCH, THE BUSINESS ADDRESS AND TELEPHONE NUMBER FOR EACH LOCATION OR BRANCH;”;

in lines 14, 16, 18, 25, and 28, strike “(II)”, “(III)”, “(IV)”, “(V)”, and “(VI)”, respectively, and substitute “(III)”, “(IV)”, “(VI)”, “(VII)”, and “(VIII)”, respectively; and after line 17, insert:

“(V) THE MOST RECENT, UNCONSOLIDATED FINANCIAL STATEMENT OF THE APPLICANT THAT:

1. IS PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES APPLIED ON A CONSISTENT BASIS;

2. INCLUDES A CERTIFIED OPINION AUDIT PREPARED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT; AND

3. WAS PREPARED NO MORE THAN 12 MONTHS BEFORE THE DATE OF APPLICATION;”.

(Over)

On page 7, in line 20, strike “12-907” and substitute “12-903”; and in line 33, strike “12-921” and substitute “12-923”.

On page 9, in line 18, strike “\$10,000” and substitute “\$5,000”; and after line 35, insert:

“(4) THE LIABILITY OF A SURETY:

(I) IS NOT AFFECTED BY THE INSOLVENCY OR BANKRUPTCY OF THE REGISTRANT OR BY ANY MISREPRESENTATION, BREACH OF WARRANTY, FAILURE TO PAY A PREMIUM, OR OTHER ACT OR OMISSION OF THE REGISTRANT; AND

(II) CONTINUES AS TO ALL TRANSACTIONS OF THE REGISTRANT FOR NO LONGER THAN 2 YEARS AFTER THE REGISTRANT CEASES, FOR ANY REASON, TO BE REGISTERED.

(5) THE COMMISSIONER MAY PERMIT THE SURETY BOND TO BE REDUCED OR ELIMINATED BEFORE THE 2-YEAR PERIOD REQUIRED UNDER PARAGRAPH (4)(II) OF THIS SUBSECTION IF THE AMOUNT OF THE REGISTRANT’S MEMBER OR CUSTOMER PAYMENT LIABILITY IN THIS STATE IS REDUCED.

(6) (I) A REGISTRANT OR SURETY MAY CANCEL A BOND BY GIVING THE COMMISSIONER NOTICE OF THE CANCELLATION BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, BEARING A POSTMARK FROM THE UNITED STATES POSTAL SERVICE.

(II) THE CANCELLATION IS NOT EFFECTIVE UNTIL 90 DAYS AFTER THE COMMISSIONER RECEIVES THE NOTICE.

(7) A PENALTY IMPOSED UNDER § 12-924 OF THIS SUBTITLE MAY BE REPAID AND COLLECTED FROM THE PROCEEDS OF A SURETY BOND OR CASH IN LIEU OF A BOND REQUIRED UNDER THIS SECTION.”.

On page 10, after line 7, insert:

“(E) THE COMMISSIONER MAY ADOPT REGULATIONS THAT ALLOW AN APPLICANT OR REGISTRANT TO FILE EVIDENCE OF A DEPOSIT OF CASH OR OTHER PERMISSIBLE INVESTMENT IN LIEU OF A SURETY BOND.”

12-913.

THE COMMISSIONER MAY REQUIRE AN APPLICANT OR REGISTRANT TO MAINTAIN GENERAL LIABILITY OR FIDELITY INSURANCE TO BE USED FOR THE BENEFIT OF ANY PERSON INJURED BY THE APPLICANT OR REGISTRANT BECAUSE OF A FRAUDULENT OR DISHONEST ACT OF THE APPLICANT OR REGISTRANT, OR OF AN EMPLOYEE OF THE APPLICANT OR REGISTRANT.

12-914.

THE COMMISSIONER MAY ADOPT REGULATIONS THAT ESTABLISH A CODE OF CONDUCT FOR REGISTRANTS PROVIDING DEBT MANAGEMENT SERVICES.”;

and in lines 8, 15, and 26, strike “12-913.”, “12-914.”, and “12-915.”, respectively, and substitute “12-915.”, “12-916.”, and “12-917.”, respectively.

AMENDMENT NO. 5

On page 10, after line 20, insert:

“(3) THE COMMISSIONER MAY REQUIRE THAT AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT OPINION AUDIT AND THE INTERNAL REVENUE SERVICE 990 FORM BE INCLUDED AS PART OF, OR IN LIEU OF, THE ANNUAL REPORT.”;

and in line 22, after “CONSIDERS” insert “REASONABLY”.

On page 11, in line 16, strike “12-916.” and substitute “12-918.”.

(Over)

AMENDMENT NO. 6

On page 12, in lines 1, 21, 28, 33, and 34, strike “12-917.”, “12-918.”, “12-919.”, “12-920.”, and “12-921”, respectively, and substitute “12-919.”, “12-920.”, “12-921.”, “12-922.”, and “12-923”, respectively; after line 21, insert:

“(A) SUBJECT TO SUBSECTION (B) OF THIS SECTION, A REGISTRANT SHALL INCLUDE IN ITS ADVERTISEMENT A STATEMENT THAT THE REGISTRANT IS REGISTERED.

(B)”;

and after line 27, insert:

“(C) IF A PERSON THAT PROVIDES DEBT MANAGEMENT SERVICES ON THE INTERNET DOES NOT WISH TO BE REGISTERED IN MARYLAND, THE PERSON SHALL DISCLOSE ON ITS WEBSITE THAT THE PERSON IS NOT REGISTERED IN MARYLAND AND MAY NOT PROVIDE DEBT MANAGEMENT SERVICES TO MARYLAND RESIDENTS.”.

On page 13, in lines 16 and 17, strike “FITNESS AND QUALIFICATION” and substitute “ETHICAL CONDUCT”.

AMENDMENT NO. 7

On page 14, in lines 7, 10, 15, and 21, strike “12-921.”, “12-920”, “12-922.”, and “12-923.”, respectively and substitute “12-923.”, “12-922”, “12-926.”, and “12-927.”, respectively; and after line 14, insert:

“12-924.

(A) (1) THE COMMISSIONER MAY ENFORCE THE PROVISIONS OF THIS SUBTITLE BY ISSUING AN ORDER:

(I) TO CEASE AND DESIST FROM THE VIOLATION AND ANY

FURTHER SIMILAR VIOLATIONS; AND

(II) REQUIRING THE VIOLATOR TO TAKE AFFIRMATIVE ACTION TO CORRECT THE VIOLATION, INCLUDING THE RESTITUTION OF MONEY OR PROPERTY TO ANY PERSON AGGRIEVED BY THE VIOLATION.

(2) IF A VIOLATOR FAILS TO COMPLY WITH AN ORDER ISSUED UNDER PARAGRAPH (1) OF THIS SUBSECTION, THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY OF UP TO \$1,000 FOR THE FIRST VIOLATION AND \$5,000 FOR EACH SUBSEQUENT VIOLATION FROM WHICH THE VIOLATOR FAILED TO CEASE AND DESIST OR FOR WHICH THE VIOLATOR FAILED TO TAKE AFFIRMATIVE ACTION.

(B) THE COMMISSIONER MAY FILE A PETITION IN THE CIRCUIT COURT FOR ANY COUNTY SEEKING ENFORCEMENT OF AN ORDER ISSUED UNDER THIS SECTION.

(C) IN DETERMINING THE AMOUNT OF FINANCIAL PENALTY TO BE IMPOSED UNDER SUBSECTION (A) OF THIS SECTION, THE COMMISSIONER SHALL CONSIDER THE FOLLOWING:

(1) THE SERIOUSNESS OF THE VIOLATION;

(2) THE GOOD FAITH OF THE VIOLATOR;

(3) THE VIOLATOR'S HISTORY OF PREVIOUS VIOLATIONS;

(4) THE DELETERIOUS EFFECT OF THE VIOLATION ON THE PUBLIC;

(5) THE ASSETS OF THE VIOLATOR; AND

(6) ANY OTHER FACTORS RELEVANT TO THE DETERMINATION OF THE FINANCIAL PENALTY.

A PERSON THAT ENGAGES IN THE BUSINESS OF DEBT MANAGEMENT SERVICES IS SUBJECT TO THE ENFORCEMENT PROVISIONS OF §§ 2-114 THROUGH 2-116 OF THIS ARTICLE IF THE PERSON IS NOT REGISTERED UNDER THIS SUBTITLE.”.