

Department of Legislative Services
 Maryland General Assembly
 2002 Session

FISCAL NOTE
Revised

Senate Bill 821

(Senator Hogan, *et al.*)

Finance

Commerce and Government Matters

Maryland Debt Management Services Registration Act

This bill requires nonprofit debt management service organizations to register with the Commissioner of Financial Regulation. The bill establishes a special fund to pay for the costs of regulation.

Fiscal Summary

State Effect: Special fund expenditures could increase by approximately \$131,200 in FY 2003. Special fund revenues could increase by \$117,000 in FY 2003, which reflects a prorated first year registration. Out-years reflect 7% growth in the number of registrants, 5% industry attrition, and the two-year registration cycle.

(in dollars)	FY 2003	FY 2004	FY 2005	FY 2006	FY 2007
SF Revenue	\$117,000	\$170,000	\$9,000	\$195,000	\$9,000
SF Expenditure	131,200	157,100	163,000	171,300	179,100
Net Effect	(\$14,200)	\$12,900	(\$154,000)	\$23,700	(\$170,100)

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The criminal penalty provision of this bill is not expected to significantly affect local finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill establishes the felony of engaging in the business of providing “debt management services” under the newly created provisions of the Commercial Law

Article, replacing the current misdemeanor of engaging in the business of “debt adjusting.” Under the bill, violators are subject to a maximum of five years’ imprisonment and/or a fine of \$1,000 for the first violation and \$5,000 for subsequent violations. The bill restricts the exemption from criminal liability applicable to nonprofit organizations.

The bill requires a 501(c)(3) tax-exempt organization to register with the commissioner before providing debt management services. To qualify for registration, an applicant must: (1) provide debt management services exclusively for its members without imposing a charge or fee on the members; and (2) provide evidence that the applicant or its owners, officers, directors, and principals have sufficient experience, character, financial responsibility, and general fitness to: (a) engage in the business of providing debt management services; (b) warrant the belief that the business will be conducted lawfully, honestly, fairly, and efficiently; and (c) command the confidence of the public.

The bill establishes application procedures and requires applicants for new and renewing registrations to provide fingerprints for criminal background checks by the Maryland Department of Public Safety and Correctional Services Criminal Justice Information System Central Repository and the Federal Bureau of Investigation. The applicant must pay all applicable fees. If the applicant or registrant is a corporation, the fingerprinting and record check requirements apply to the president and any other officer, director, principal, or owner of the corporation as required by the commissioner.

The bill establishes the Debt Management Services Fund as a special fund to pay for all of the expenditures of the Division of Financial Regulation in regulating debt management services. The bill requires the commissioner to establish registration and investigation fees up to a maximum of \$4,000 for a new or renewal license fee and \$1,000 for an investigation fee. The fees, in turn, are paid into the fund. However, any fines and penalties collected under the bill inure to the State’s general fund.

The commissioner must register applicants that meet the bill’s requirements. For applicants that do not meet the bill’s requirements, the commissioner must notify the applicant of the denial immediately and refund the registration fee. The commissioner may retain the investigation fee.

Registrants may not: (1) charge a fee for their services; or (2) request or accept a voluntary contribution from members or customers for initial enrollment or maintenance or administration of a debt management plan. Registrants may provide services exclusively for their members. A registration under the bill may not be assigned, transferred, or pledged. Registrations expire on December 31 of each odd-numbered year unless renewed and last two years. Registrants must post a surety bond of at least \$5,000

and up to \$1 million, as determined by the commissioner under the bill's guidelines. Registrants are required to file an annual report with the commissioner and must pay a fine of \$25 per day for each day the report is late.

The commissioner may require an applicant or registrant to maintain general liability or fidelity insurance to be used for the benefit of a person injured because of a fraudulent or dishonest act by the applicant or registrant.

The commissioner may investigate the businesses of registrants and non-registrants for violations of the bill. Persons being investigated are required to pay the commissioner's investigation costs. The commissioner may conduct an on-site examination of a registrant with or without notice, and the registrant must pay the commissioner's examination costs.

An internet debt management services business that does not wish to be registered must disclose on its website that it is not registered in Maryland and may not provide debt management services to Maryland residents.

The bill specifies activities for which the commissioner may deny registration to an applicant, reprimand a registrant, or suspend or revoke a registration and the criteria which the commissioner must consider in making such a decision. The commissioner may also issue cease and desist orders to violators. Violators who fail to comply with a cease and desist order could be liable for a civil penalty of up to \$1,000 for the first violation and \$5,000 for subsequent violations.

Knowing and willful violation of the bill is a felony. Violators are subject to a fine of up to \$1,000 for the first violation and \$5,000 for each subsequent violation and/or five years' imprisonment.

The bill requires the commissioner to study other states' debt management service laws and report to the Senate Finance Committee and the House Commerce and Government Matters Committee by December 1, 2002 on the commissioner's findings and recommendations on any changes to the bill.

The bill authorizes current debt management services organizations to continue providing services without registration pending approval by the commissioner, if the organization: (1) applies within 60 days of application forms becoming available; and (2) complies with all of the bill's other provisions.

Current Law: Engaging in the business of debt adjusting is a misdemeanor, punishable by a fine of up to \$500 and/or six months' imprisonment. Debt adjusting is the making of

a contract, expressed or implied, with a debtor and another person engaged in the debt adjusting business by which the debtor agrees to pay a certain amount of money periodically to the other who, for consideration, distributes the money among specified creditors in accordance with an agreed plan. The following persons are exempt from prosecution when engaged in the regular course of their businesses and professions: (1) a lawyer; (2) a bank or fiduciary; (3) a title insurer or abstract company while doing an escrow business; (5) a nonprofit, religious, fraternal, or cooperative organization that offers debt management service exclusively for members, if a charge is not made and a fee not imposed; (6) a certified public accountant; and (7) a trade or mercantile association in the course of arranging the adjustment of debts with a business establishment.

State Fiscal Effect: This represents a new area of regulation for the Division of Financial Regulation. The bill establishes a special fund and requires all expenditures related to the regulation of debt management services be made from that fund. Special fund expenditures could increase by an estimated \$131,200 in fiscal 2003, which accounts for the bill's October 1, 2002 effective date. This estimate reflects the cost of three positions (two financial examiners and one administrative officer) to conduct financial examinations and process licensing materials and reports under the bill. It includes salaries, fringe benefits, one-time start-up costs, examiner travel to locations within and outside the State, and ongoing operating expenses.

Salaries and Fringe Benefits	\$105,100
Examiner Travel	9,800
Other Operating Expenses	<u>16,300</u>
Total FY 2003 State Expenditures	\$131,200

Future year expenditures reflect: (1) full salaries with 3.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating.

The bill requires that all expenditures related to regulating debt management service organizations be paid through the special fund established in the bill. While the exact number of potential registrants is unknown, it is estimated that 39 nonprofit organizations currently provide debt management services in the State. If the fees were set at the maximum allowable under the bill, special fund revenues would increase by \$117,000 in fiscal 2003.

It is assumed that the commissioner could begin to register organizations in January 2003. It is further assumed that the first year's registration fees would be prorated because they would expire within one year. This would occur in fiscal 2003. Beginning

in fiscal 2004, revenues would be greater in even-numbered fiscal years because registrations must be renewed in December of odd-numbered calendar years.

Nonprofit debt management service organizations may be located throughout the United States and could reach Maryland residents through the internet or other means. Because of this, additional organizations could register under the bill in the out years. Fees could be adjusted, within the bill's limits, in the out-years depending on whether the number of registrants increases.

The bill's civil and criminal penalty provisions are not expected to significantly affect State revenues or expenditures.

Small Business Effect: It is assumed that most debt management service organizations are not small businesses; however, small debt management service organizations would be subject to regulation by the Commissioner of Financial Regulation and fees sufficient to cover the cost of regulation.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of Administrative Hearings; Department of Labor, Licensing, and Regulation; Department of Public Safety and Correctional Services; Department of Legislative Services

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Analysis by: Ryan Wilson

Direct Inquiries to:
John Rixey, Coordinating Analyst
(410) 946-5510
(301) 970-5510