

BY: Economic Matters Committee

AMENDMENTS TO SENATE BILL NO. 339

(Third Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 6, strike “authorizing” and substitute “requiring”; in line 10, after “applicant” insert a comma; in the same line, strike “and” and substitute “a”; in the same line, after “licensee” insert “, and certain other individuals”; in line 17, after the first “a” insert “certain”; in line 19, after “Commissioner;” insert “requiring a licensee to give certain notice to and obtain approval of the Commissioner in connection with certain proposed changes;”; in the same line, strike “establishing” and substitute “authorizing”; in line 25, after “circumstances;” insert “requiring a licensee to disclose certain services and charges to a consumer; prohibiting a licensee from requiring a voluntary contribution; authorizing a licensee to accept a voluntary contribution under certain circumstances; providing that a debt management services agreement shall be void and the licensee shall return to the consumer certain fees, charges, funds, or payments under certain circumstances; providing a specific right of modification or rescission for a consumer and notification within a certain period of time;”; and in line 27, strike “a licensee” and substitute “certain persons”.

On page 2, in line 2, after “form;” insert “providing that certain government officials may disclose certain information only in accordance with certain provisions of law;”; and in line 7, after “circumstances;” insert “requiring the Commissioner to deny a license to an applicant and suspend or revoke the license of a licensee under certain circumstances;”.

AMENDMENT NO. 2

On page 3, after line 25, insert:

“(B) “CONSULTATION FEE” MEANS A FEE PAID BY A CONSUMER TO A DEBT MANAGEMENT SERVICES PROVIDER IN CONNECTION WITH THE PROCESSING OF ANY APPLICATION THAT THE CONSUMER MAKES FOR DEBT MANAGEMENT SERVICES.”;

(Over)

and in lines 26 and 30, strike “(B)” and “(C)”, respectively, and substitute “(C)” and “(D)”, respectively.

On page 4, in lines 1, 5, 12, 16, 19, 21, 23, 27, and 29, strike “(D)”, “(E)”, “(F)”, “(G)”, “(H)”, “(I)”, “(J)”, “(K)”, and “(L)”, respectively, and substitute “(E)”, “(F)”, “(G)”, “(H)”, “(I)”, “(J)”, “(K)”, “(L)”, and “(M)”, respectively; in line 8, strike the first “PAYMENT” and substitute “FULL”; and strike in their entirety lines 34 through 36, inclusive.

On page 6, in line 15, strike the first “PAYMENT” and substitute “FULL”.

On page 11, in line 20, after “APPLICANT’S” insert “FINANCIAL ANALYSIS AND”; in line 21, after “PLAN” insert “, INCLUDING ANY FORM OR ELECTRONIC MODEL,”; in the same line, strike “IS” and substitute “ARE”; and in lines 21 and 22, strike “DEBT OBLIGATIONS” and substitute “FINANCIAL CONDITION”.

On page 12, in line 22, after “SUBTITLE” insert “, AND ANY AGENT OF THE LICENSEE WHO HAS ACCESS TO THE ACCOUNT,”.

AMENDMENT NO. 3

On page 15, in line 12, after “LICENSEE” insert “OR AN AGENT OF A LICENSEE, INCLUDING AN AGENT MANAGING A TRUST ACCOUNT”; in line 22, strike “\$250,000” and substitute “\$350,000”; in line 25, after “LICENSEE” insert “AND ITS AGENT”; in line 30, after “LICENSEE” insert “OR ITS AGENT”; in line 31, after “LICENSEE” insert “OR ITS AGENT”; and in line 32, after “LICENSEE” insert “, AND TRANSACTIONS OF ITS AGENT ON BEHALF OF THE LICENSEE,”.

On page 17, in line 15, after “(A)” insert “(1)”; in lines 17, 19, 21, 23, 25, 28, and 33, strike “(1)”, “(2)”, “(I)”, “(II)”, “(3)”, “(4)”, and “(5)”, respectively, and substitute “(I)”, “(II)”, “1.”, “2.”, “(III)”, “(IV)”, and “(V)”, respectively; in line 20, after “ORGANIZATION” insert a comma; in line 21, after “PREPARED” insert “A FINANCIAL ANALYSIS OF AND”; in line 22, strike “AND”; in line 23, after “THE” insert “FINANCIAL ANALYSIS AND THE”; in line 24, after the semicolon insert “AND”

3. PROVIDED TO THE CONSUMER, FOR ALL CREDITORS

IDENTIFIED BY THE CONSUMER, A LIST OF:

A. THE CREDITORS THAT THE LICENSEE REASONABLY EXPECTS TO PARTICIPATE IN THE MANAGEMENT OF THE CONSUMER'S DEBT UNDER THE DEBT MANAGEMENT SERVICES AGREEMENT; AND

B. THE CREDITORS THAT THE LICENSEE REASONABLY EXPECTS NOT TO PARTICIPATE IN THE MANAGEMENT OF THE CONSUMER'S DEBT UNDER THE DEBT MANAGEMENT SERVICES AGREEMENT;";

in lines 28 and 29, strike "GOOD FAITH BELIEF" and substitute "REASONABLE EXPECTATION BASED ON THE LICENSEE'S PAST EXPERIENCE"; in line 29, after "LISTED" insert "AS A PARTICIPATING CREDITOR"; and after line 34, insert:

"(2) (I) A LICENSEE MAY PROVIDE TO A CONSUMER THE MATERIALS REQUIRED UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION USING THE INTERNET IF:

1. A DEBT MANAGEMENT COUNSELOR OF THE LICENSEE HAS REVIEWED AND APPROVED THE COMPUTER PROGRAM OR APPLICATION USED TO CREATE THE FINANCIAL ANALYSIS AND INITIAL BUDGET PLAN; AND

2. THE CONSUMER IS:

A. ADVISED OF THE AVAILABILITY OF COUNSELING;
AND

B. AFFORDED THE OPPORTUNITY FOR COUNSELING AND FOR DISCUSSION OF THE FINANCIAL ANALYSIS AND INITIAL BUDGET PLAN WITH A DEBT MANAGEMENT COUNSELOR AT ANY TIME.

(II) TITLE 21 OF THE COMMERCIAL LAW ARTICLE APPLIES TO

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THE PROVISION OF MATERIALS AND ASSOCIATED TRANSACTIONS UNDER THIS PARAGRAPH.”.

On page 18, in line 15, strike “CANCEL” and substitute “RESCIND”; in line 16, strike “CANCELLATION” and substitute “RESCISSION”; in line 27, strike “1.”; in the same line, after the first “OF” insert “:

1. A.”;

in the same line, after “EACH” insert “PARTICIPATING”; in lines 29 and 30, strike “2.” and “3.”, respectively, and substitute “B.” and “C.”, respectively; in line 31, after “EACH” insert “PARTICIPATING”; and in line 33, after the semicolon insert “AND

2. EACH CREDITOR THAT THE LICENSEE REASONABLY EXPECTS NOT TO PARTICIPATE IN THE MANAGEMENT OF THE CONSUMER’S DEBT UNDER THE DEBT MANAGEMENT SERVICES AGREEMENT.”.

On page 19, after line 4, insert:

“(XI) A DISCLOSURE THAT THE LICENSEE MAY NOT REQUIRE A VOLUNTARY CONTRIBUTION FROM A CONSUMER FOR ANY SERVICE PROVIDED BY THE LICENSEE TO THE CONSUMER.”;

and in lines 5, 12, and 15, strike “(XI)”, “(XII)”, and “(XIII)”, respectively, and substitute “(XII)”, “(XIII)”, and “(XIV)”, respectively.

AMENDMENT NO. 4

On page 20, in line 7, after “(A)” insert “WITH RESPECT TO THE PROVISION OF DEBT MANAGEMENT SERVICES,”; in line 10, strike “(G)(2)” and substitute “(G)(3)”; in the same line, strike “(H)” and substitute “(I)”; in lines 14 and 16, in each instance, strike “SET-UP” and substitute “CONSULTATION”; strike beginning with “10%” in line 19 down through “CREDITORS” in line 20 and substitute “\$8 FOR EACH CREDITOR OF A CONSUMER THAT IS”; in line 23, strike “\$50” and substitute “\$40”; in line 28, after “PREPARE” insert “A FINANCIAL ANALYSIS OR”; and in line 32, strike “CANCEL” and substitute “RESCIND”.

On page 21, in line 2, strike “ANY” and substitute “A DEBT MANAGEMENT”; in line 4, after “CONSUMER” insert “FOR DEBT MANAGEMENT SERVICES”; in line 7, after “(1)” insert “BEFORE PROVIDING DEBT MANAGEMENT SERVICES TO A CONSUMER, A LICENSEE SHALL PROVIDE THE CONSUMER A LIST OF SERVICES AND THEIR CHARGES DESCRIBING:”

(I) THOSE SERVICES THAT THE LICENSEE OFFERS:

1. FREE OF CHARGE IF THE CONSUMER ENTERS INTO A DEBT MANAGEMENT SERVICES AGREEMENT WITH THE LICENSEE; AND

2. FOR A CHARGE IF THE CONSUMER DOES NOT ENTER INTO A DEBT MANAGEMENT SERVICES AGREEMENT WITH THE LICENSEE; AND

(II) THOSE SERVICES THAT THE LICENSEE OFFERS FOR A CHARGE THAT ARE NOT OFFERED AS A PART OF DEBT MANAGEMENT SERVICES.

(2)”;

in line 11, strike “(2)” and substitute “(3)”; after line 14, insert:

“(H) (1) IN ADDITION TO ANY OTHER RIGHT OF RESCISSION CONTAINED IN THE DEBT MANAGEMENT SERVICES AGREEMENT, A CONSUMER MAY MODIFY OR RESCIND A DEBT MANAGEMENT SERVICES AGREEMENT IF THE CONSUMER IS NOTIFIED OF A CREDITOR’S NONPARTICIPATION UNDER THIS SUBSECTION.

(2) IF A CREDITOR THAT IS LISTED AS PARTICIPATING IN THE DEBT MANAGEMENT SERVICES AGREEMENT DECLINES TO PARTICIPATE IN DEBT MANAGEMENT SERVICES UNDER THE AGREEMENT, THE LICENSEE SHALL NOTIFY THE CONSUMER BY CERTIFIED MAIL, OR OTHER VERIFIABLE MEANS APPROVED BY THE CONSUMER, AT LEAST 5 BUSINESS DAYS BEFORE THE CONSUMER’S NEXT SCHEDULED PAYMENT UNDER THE AGREEMENT.

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(3) THE NOTICE SHALL INCLUDE:

(I) THE IDENTITY OF THE CREDITOR; AND

(II) THE RIGHT OF THE CONSUMER TO MODIFY OR RESCIND
THE AGREEMENT.

(4) A CONSUMER WHO RESCINDS A DEBT MANAGEMENT SERVICES
AGREEMENT UNDER THIS SUBSECTION IS ENTITLED TO A REFUND OF ALL
UNEXPENDED FUNDS THAT THE CONSUMER HAS PAID TO THE LICENSEE FOR THE
REDUCTION OF THE CONSUMER'S DEBT.”;

in line 15, strike “(H)” and substitute “(I)”; and in line 20, strike “(I)” and substitute “(J) WITH
RESPECT TO THE PROVISION OF DEBT MANAGEMENT SERVICES.”.

On page 22, in line 17, strike “MATERIAL”; and in line 35, strike “UNLESS:” and substitute
a period.

On page 23, strike in their entirety lines 1 through 4, inclusive.

On page 24, in line 19, strike “OR” and substitute a comma; in the same line, after
“DIRECTORS,” insert “OR DEBT MANAGEMENT COUNSELORS.”; in line 22, strike the
second “OR”; in the same line, after “PRINCIPALS,” insert “OR DEBT MANAGEMENT
COUNSELORS.”; in line 24, strike “AND”; in line 26, strike the second “OR”; in the same line,
after “PRINCIPALS,” insert “OR DEBT MANAGEMENT COUNSELORS.”; in line 27, after
“BUSINESS” insert “; AND”

(VI) A LIST OF ALL THIRD-PARTY VENDORS AND OTHER
SERVICE PROVIDERS THAT THE LICENSEE USED IN PROVIDING DEBT MANAGEMENT
SERVICES AT ANY TIME IN THE PRECEDING CALENDAR YEAR”;

and in line 35, strike “\$25” and substitute “A SURCHARGE NOT EXCEEDING \$50”.

On page 25, in line 4, strike “3” and substitute “7”.

AMENDMENT NO. 5

On page 25, in line 31, after “(E)” insert “(1)”; and after line 34, insert:

“(2) A DULY AUTHORIZED GOVERNMENT OFFICIAL MAY DISCLOSE INFORMATION OBTAINED UNDER PARAGRAPH (1) OF THIS SUBSECTION ONLY IN ACCORDANCE WITH TITLE 10, SUBTITLE 6 OF THE STATE GOVERNMENT ARTICLE.

(F) THE REQUIREMENTS OF THIS SECTION ALSO APPLY TO BOOKS, ACCOUNTS, AND RECORDS IN THE POSSESSION OF A SUBSIDIARY, AFFILIATE, OR OTHER PERSON THAT RELATE TO THE OPERATION OF AND SERVICES PROVIDED BY THE LICENSEE’S DEBT MANAGEMENT SERVICES BUSINESS.”.

On page 27, in line 12, after “EXAMINATION” insert “, INCLUDING THE BOOKS, ACCOUNTS, AND RECORDS IN THE POSSESSION OF A SUBSIDIARY, AFFILIATE, OR OTHER PERSON THAT RELATE TO THE OPERATION OF AND SERVICES PROVIDED BY THE LICENSEE’S DEBT MANAGEMENT SERVICES BUSINESS”;

and in line 20, after “(A)” insert “EXCEPT AS PROVIDED IN SUBSECTION (C) OF THIS SECTION, AND”.

On page 28, after line 29, insert:

“(C) SUBJECT TO THE HEARING PROVISIONS OF § 12-927 OF THIS SUBTITLE, THE COMMISSIONER SHALL DENY A LICENSE TO AN APPLICANT AND SUSPEND OR REVOKE THE LICENSE OF A LICENSEE IF THE APPLICANT OR LICENSEE OR AN OWNER, OFFICER, DIRECTOR, OR PRINCIPAL OF THE APPLICANT OR LICENSEE HAS:

(1) COMMITTED A VIOLATION OF SUBSECTION (A) OF THIS SECTION THAT DIRECTLY RESULTS IN PROPERTY DAMAGE OR MONETARY LOSS BY ANY OTHER PERSON; AND

(2) HAS NOT RESTORED THE PROPERTY OR MONEY TO THE PERSON

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OR PAID THE VALUE OF THE PROPERTY TO THE PERSON.”.

On page 29, after line 27, insert:

“(2) AN ORDER ISSUED UNDER THIS SUBSECTION MAY APPLY TO A LICENSEE’S AGENT THAT VIOLATES ANY PROVISION OF THIS SUBTITLE OR THE REGULATIONS ADOPTED UNDER THIS SUBTITLE.”;

and in line 28, strike “(2)” and substitute “(3)”.

On page 30, in line 20, after “SUBTITLE” insert “, INCLUDING COURT COSTS AND REASONABLE ATTORNEY’S FEES”.