

BY: Finance Committee

AMENDMENTS TO SENATE BILL NO. 339

(First Reading File Bill)

AMENDMENT NO. 1

On page 1, in line 3, after “services” insert “to certain consumers”.

On page 2, in line 4, after “Act;” insert “providing that a consumer may bring a civil action to recover for damages caused by a certain violation;”; in line 9, after “circumstances;” insert “establishing the expiration date of a license issued within a certain time period; requiring the Commissioner to report on certain information and recommendations to certain committees of the General Assembly on or before a certain date;”; and in line 18, strike “12-930” and substitute “12-931”.

AMENDMENT NO. 2

On page 3, in line 17, after “WHO” insert “:

(1) RESIDES IN THE STATE; AND

(2);

in line 23, after “PROVIDER” insert “OR ITS AGENT”; in line 24, strike “DEBT MANAGEMENT ADVICE” and substitute “COUNSELING TO CONSUMERS”; in line 26, strike the colon; in line 27, strike “(1)”; in the same line, after “FUNDS” insert “PERIODICALLY”; in the same line, after “CONSUMER” insert “UNDER AN AGREEMENT WITH THE CONSUMER”; in line 29, strike “; OR” and substitute a period; and strike in their entirety lines 30 and 31.

On page 4, in line 5, strike “IN THE STATE”; in line 25, after “INSTITUTION” insert “THAT IS FEDERALLY INSURED”; and strike beginning with “IMPRESSED” in line 28 down through “PROCESS” in line 29 and substitute “DESIGNATED AS A “TRUST ACCOUNT” OR BY ANOTHER APPROPRIATE DESIGNATION INDICATING THAT THE FUNDS IN THE

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ACCOUNT ARE NOT THE FUNDS OF THE LICENSEE OR ITS OFFICERS, EMPLOYEES, OR AGENTS”.

On page 5, strike beginning with “BANK” in line 8 down through “COMPANY” in line 9 and substitute “BANKING INSTITUTION, OTHER-STATE BANK, NATIONAL BANKING ASSOCIATION, CREDIT UNION, OR SAVINGS AND LOAN ASSOCIATION;”

(V) A PERSON THAT:

1. PROVIDES BILL PAYER SERVICES, AS DEFINED IN § 12-401 OF THIS TITLE;

2. DOES NOT INITIATE ANY CONTRACT WITH INDIVIDUAL CREDITORS OF THE DEBTOR TO COMPROMISE A DEBT OR ARRANGE A NEW PAYMENT SCHEDULE; AND

3. DOES NOT PROVIDE ANY DEBT COUNSELING SERVICES;

(VI) A PERSON THAT PROVIDES ACCELERATED MORTGAGE PAYMENT SERVICES, AS DEFINED IN § 12-401 OF THIS TITLE;

(VII) AN APPROVED SERVICER, AS DEFINED IN § 11-522 OF THIS ARTICLE”;

in lines 10 and 11, strike “(V)” and “(VI)”, respectively, and substitute “(VIII)” and “(IX)”, respectively; in line 10, after “INSURER” insert “, TITLE INSURANCE AGENCY,”; in line 15, strike “OR”; in line 17, after “ESTABLISHMENT” insert “; OR”

(4) A MORTGAGE LENDER, AS DEFINED IN § 11-501 OF THIS ARTICLE, THAT:

(I) IS LICENSED BY THE COMMISSIONER; AND

(II) DOES NOT RECEIVE FUNDS FROM A CONSUMER FOR THE PURPOSE OF DISTRIBUTING THE FUNDS AMONG THE CONSUMER'S CREDITORS IN PAYMENT OR PARTIAL PAYMENT OF THE CONSUMER'S DEBTS";

and strike beginning with "PROVIDE" in line 25 down through "INFORMATION" in line 27 and substitute "EXCHANGE INFORMATION ABOUT A DEBT MANAGEMENT SERVICES PROVIDER, INCLUDING INFORMATION OBTAINED DURING AN EXAMINATION, WITH ANY STATE OR FEDERAL AGENCY HAVING AUTHORITY OVER THE DEBT MANAGEMENT SERVICES PROVIDER".

AMENDMENT NO. 3

On page 5, in line 30, after "(1)" insert "(I)"; in the same line, strike "\$1,000" and substitute "\$2,000"; and in line 31, after "SUBTITLE" insert "IN AN EVEN-NUMBERED YEAR; AND

(II) A FEE, NOT EXCEEDING \$1,000, FOR THE ISSUANCE OF A LICENSE UNDER THIS SUBTITLE IN AN ODD-NUMBERED YEAR".

On page 6, in line 1, strike "\$1,000" and substitute "\$2,000".

On page 7, strike beginning with "IF" in line 20 down through "STATE" in line 22 and substitute "TO CONSUMERS"; and in line 22, strike "THAT" and substitute "THE".

On page 8, in line 16, strike "THE PUBLIC" and substitute "CONSUMERS".

On page 9, in line 17, after "APPLICANT" insert "OR ANY CONSUMER".

On page 10, strike beginning with "COVERAGE" in line 14 down through "THE" in line 15 and substitute "THAT INSURES AGAINST"; in line 18, after "PROGRAM" insert "THAT IS PROVIDED TO CONSUMERS"; in line 19, strike "FINANCIAL ANALYSIS" and substitute "INITIAL BUDGET"; in line 20, strike "FINANCIAL CONDITION" and substitute "DEBT OBLIGATIONS"; and in line 24, strike "EMPLOYED BY THE APPLICANT".

On page 11, in line 20, strike "MAY" and substitute "SHALL".

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On page 13, in line 22, strike “LOCATED IN THE STATE”; in line 33, after “ANY” insert “ADMINISTRATIVE,”; and in the same line, after “CIVIL” insert a comma.

On page 14, in line 10, strike “INDIVIDUAL WHO RESIDES IN THE STATE AND” and substitute “CONSUMER”; in line 11, strike “HAS BEEN” and substitute “IS”; strike in their entirety lines 13 through 19, inclusive; and in lines 20, 28, and 35, strike “(3)”, “(4)”, and “(5)”, respectively, and substitute “(2)”, “(3)” and “(4)”, respectively.

On page 15, in line 1, strike “(6)” and substitute “(5)”.

AMENDMENT NO. 4

On page 14, in line 22, strike “\$1,000,000” and substitute “\$250,000”.

On page 15, in line 4, after “LICENSEE” insert “AND THE AGENT OF THE APPLICANT OR LICENSEE”; in line 27, after “(A)” insert “(1)”; in line 29, strike “10” and substitute “30”; in the same line, strike “AFTER” and substitute “BEFORE”; and after line 30, insert:

“(2) THE LICENSEE SHALL PROVIDE WITH THE NOTICE EVIDENCE THAT, AFTER THE CHANGE DESCRIBED IN THE NOTICE, THE LICENSEE WILL CONTINUE TO SATISFY THE SURETY BOND REQUIREMENT UNDER § 12-914 OF THIS TITLE.”.

On page 16, in line 15, strike “HAS PROVIDED” and substitute “PROVIDES”; in line 17, after “(2)” insert “THE LICENSEE, THROUGH”; in the same line, strike “SERVICES”; in line 19, strike “A FINANCIAL ANALYSIS OF” and substitute “AN INITIAL BUDGET PLAN FOR”; in line 21, strike “FINANCIAL ANALYSIS” and substitute “INITIAL BUDGET PLAN”; in line 26, strike “ESTABLISHED AN AGREEMENT, WITH” and substitute “A GOOD FAITH BELIEF THAT”; in line 28, strike “, FOR THE” and substitute “WILL ACCEPT”; in line 29, after “CREDITOR” insert “AS PROVIDED IN THE CONSUMER’S DEBT MANAGEMENT SERVICES AGREEMENT”; and in line 34, after “INCLUDE” insert “, IN AT LEAST 12 POINT TYPE”.

On page 17, in lines 16 and 17, strike “FOR DISBURSEMENT TO THE CONSUMER’S

CREDITORS.”; in line 17, after “INCLUDING” insert “:

1.”;

in the same line, strike “AND DATE”; in the same line, after “PAYMENT” insert “AND THE DATE ON WHICH EACH PAYMENT IS DUE; AND

2. AN ITEMIZATION OF THE MAINTENANCE FEES THAT WILL BE RETAINED BY THE DEBT MANAGEMENT SERVICES PROVIDER, AND THE AMOUNT OF MONEY THAT WILL BE PAID TO THE CONSUMER’S CREDITORS, FROM EACH PAYMENT THE CONSUMER MAKES TO THE DEBT MANAGEMENT SERVICES PROVIDER”;

in line 22, strike “MUST” and substitute “WILL”; in the same line, after “CREDITOR” insert “FROM THE CONSUMER’S PAYMENTS”; in line 23, strike “AND DATE”; in the same line, after “PAYMENT” insert “AND THE DATE ON WHICH EACH PAYMENT WILL BE MADE”; after line 26, insert:

“(X) A DISCLOSURE THAT THE LICENSEE MAY NOT, AS A CONDITION OF ENTERING INTO A DEBT MANAGEMENT SERVICES AGREEMENT, REQUIRE A CONSUMER TO PURCHASE FOR A FEE A COUNSELING SESSION, AN EDUCATIONAL PROGRAM, OR MATERIALS AND SUPPLIES;”;

and in lines 27, 33, and 36, strike “(X)”, “(XI)”, and “(XII)”, respectively, and substitute “(XI)”, “(XII)”, and “(XIII)”, respectively.

AMENDMENT NO. 5

On page 18, in line 14, strike “THE CONSUMER” and substitute “CONSUMERS”; in line 21, strike “5” and substitute “8”; and in line 34, after “(1)” insert “EXCEPT AS PROVIDED IN SUBSECTIONS (G)(2) AND (H) OF THIS SECTION.”.

On page 19, in line 4, after “SUBSECTION” insert a comma; strike beginning with “\$5” in line 5 down through “IS” in line 6 and substitute “10% OF THE TOTAL AMOUNT PAYABLE EACH MONTH TO THE CONSUMER’S CREDITORS”; after line 13, insert:

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“(1) PREPARE AN INITIAL BUDGET PLAN FOR THE CONSUMER;”;

in lines 14, 15, and 17, strike “(1)”, “(2)”, and “(3)”, respectively, and substitute “(2)”, “(3)”, and “(4)”, respectively; in line 15, strike the second “A” and substitute “THE”; in the same line, after “PROGRAM” insert “DESCRIBED IN THE LICENSEE’S LICENSE APPLICATION”; after line 17, insert:

“(F) (1) A LICENSEE MAY NOT REQUIRE A VOLUNTARY CONTRIBUTION FROM A CONSUMER FOR ANY SERVICE PROVIDED BY THE LICENSEE TO THE CONSUMER.

(2) A LICENSEE MAY ACCEPT A VOLUNTARY CONTRIBUTION FROM A CONSUMER FOR ANY SERVICE PROVIDED BY THE LICENSEE TO THE CONSUMER IF THE AGGREGATE AMOUNT OF THE VOLUNTARY CONTRIBUTION AND ANY OTHER FEES RECEIVED BY THE LICENSEE FROM THE CONSUMER DOES NOT EXCEED THE TOTAL AMOUNT THE LICENSEE IS AUTHORIZED TO CHARGE THE CONSUMER UNDER SUBSECTIONS (B) AND (C) OF THIS SECTION.

(G) (1) A LICENSEE MAY NOT, AS A CONDITION OF ENTERING INTO A DEBT MANAGEMENT SERVICES AGREEMENT, REQUIRE A CONSUMER TO PURCHASE FOR A FEE A COUNSELING SESSION, AN EDUCATIONAL PROGRAM, OR MATERIALS AND SUPPLIES.

(2) A LICENSEE MAY CHARGE A CONSUMER A FEE FOR A COUNSELING SESSION, AN EDUCATIONAL PROGRAM, OR MATERIALS AND SUPPLIES IF THE CONSUMER DOES NOT ENTER INTO A DEBT MANAGEMENT SERVICES AGREEMENT WITH THE LICENSEE.

(H) IF A PAYMENT BY A CONSUMER UNDER THIS SECTION TO A LICENSEE IS DISHONORED, THE LICENSEE MAY CHARGE THE CONSUMER THE AMOUNT ALLOWABLE FOR DISHONORED CHECKS OR OTHER INSTRUMENTS UNDER § 15-802 OF THE COMMERCIAL LAW ARTICLE, WHETHER OR NOT THE CONSUMER HAS ENTERED INTO A DEBT MANAGEMENT SERVICES AGREEMENT WITH THE

LICENSEE.”;

and in line 18, strike “(F)” and substitute “(I)”.

AMENDMENT NO. 6

On page 20, strike beginning with “ENGAGE” in line 15 down through “CONSUMERS” in line 17 and substitute “MAKE ANY FALSE, MISLEADING, OR DECEPTIVE REPRESENTATIONS OR OMISSIONS OF MATERIAL INFORMATION IN CONNECTION WITH THE OFFER, SALE, OR PERFORMANCE OF ANY SERVICE”; in line 27, strike “INURES SOLELY TO THE BENEFIT OF” and substitute “BENEFITS”; and after line 27, insert:

“(B) (1) NOTWITHSTANDING ANY OTHER PROVISION OF STATE LAW, A LICENSEE MAY NOT, DIRECTLY OR INDIRECTLY, COLLECT ANY FEE FOR REFERRING, ADVISING, PROCURING, ARRANGING, OR ASSISTING A CONSUMER IN OBTAINING ANY EXTENSION OF CREDIT OR OTHER CONSUMER SERVICE FROM A LENDER OR SERVICE PROVIDER IF THE LICENSEE, OR ANY OWNER, OFFICER, DIRECTOR, PRINCIPAL, OR EMPLOYEE OF THE LICENSEE, IS AN OWNER, PARTNER, DIRECTOR, OFFICER, OR EMPLOYEE OF THE LENDER OR SERVICE PROVIDER UNLESS:

(I) THE LICENSEE HAS OBTAINED PRIOR APPROVAL OF THE COMMISSIONER; AND

(II) THE CONSUMER IS PROVIDED WITH A WRITTEN DISCLOSURE OF THE RELATIONSHIP.

(2) THIS SUBSECTION DOES NOT PROHIBIT A LICENSEE FROM REFERRING, ADVISING, PROCURING, ARRANGING, OR ASSISTING A CONSUMER IN OBTAINING ANY EXTENSION OF CREDIT OR OTHER CONSUMER SERVICE FROM A LENDER OR SERVICE PROVIDER OF WHICH THE LICENSEE, OR ANY OWNER, OFFICER, DIRECTOR, PRINCIPAL, OR EMPLOYEE OF THE LICENSEE, IS AN OWNER, PARTNER, DIRECTOR, OFFICER, OR EMPLOYEE, IF:

(I) THE LICENSEE DOES NOT DIRECTLY OR INDIRECTLY

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COLLECT ANY FEE; AND

(II) THE CONSUMER IS PROVIDED WITH A WRITTEN DISCLOSURE OF THE RELATIONSHIP.”.

On page 21, in line 6, strike “EMPLOYED BY” and substitute “WHO PROVIDED SERVICES FOR”; and in lines 8, 11, 14, and 18, in each instance, strike “IN THE STATE”.

On page 22, in line 12, strike “LICENSEE SHALL PAY TO THE”; in the same line, after “COMMISSIONER” insert “MAY REQUIRE THE LICENSEE TO PAY”; and in line 17, strike “5” and substitute “3”.

On page 23, in line 30, after “(C)” insert “IF, AFTER AN INVESTIGATION CONDUCTED UNDER THIS SUBSECTION, THE COMMISSIONER FINDS THAT THE PERSON THAT WAS INVESTIGATED VIOLATED THIS SUBTITLE OR ANY REGULATION ADOPTED UNDER THIS SUBTITLE,”; in the same line, strike “BEING INVESTIGATED”; in line 31, strike “AN” and substitute “THE”; and in the same line, strike “CONDUCTED UNDER THIS SECTION”.

On page 24, in line 6, strike “OF” and substitute “DIRECTLY RELATED TO”; and in line 7, after “SECTION” insert “, INCLUDING THE TRAVEL EXPENSES, LODGING EXPENSES, AND A PER DIEM FOR EXAMINERS”.

On page 26, strike in their entirety lines 12 through 24, inclusive, and substitute:

“(A) (1) THE COMMISSIONER MAY ENFORCE THE PROVISIONS OF THIS SUBTITLE AND REGULATIONS ADOPTED UNDER THIS SUBTITLE BY:

(I) ISSUING AN ORDER REQUIRING THE VIOLATOR:

1. TO CEASE AND DESIST FROM THE VIOLATION AND ANY FURTHER SIMILAR VIOLATIONS; AND

2. TO TAKE AFFIRMATIVE ACTION TO CORRECT THE VIOLATION INCLUDING THE RESTITUTION OF MONEY OR PROPERTY TO ANY PERSON AGGRIEVED BY THE VIOLATION; AND

(II) IMPOSING A CIVIL PENALTY NOT EXCEEDING \$1,000 FOR EACH VIOLATION.

(2) IF A VIOLATOR FAILS TO COMPLY WITH AN ORDER ISSUED UNDER PARAGRAPH (1)(I) OF THIS SUBSECTION, THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY NOT EXCEEDING \$1,000 FOR EACH VIOLATION FROM WHICH THE VIOLATOR FAILED TO CEASE AND DESIST OR FOR WHICH THE VIOLATOR FAILED TO TAKE CORRECTIVE AFFIRMATIVE ACTION.”;

and in lines 25 and 27, strike “(C)” and “(D)”, respectively, and substitute “(B)” and “(C)”, respectively.

AMENDMENT NO. 7

On page 27, after line 8, insert:

“12-930.

IN ADDITION TO ANY OTHER REMEDIES PROVIDED IN THIS SUBTITLE, A CONSUMER MAY BRING A CIVIL ACTION TO RECOVER FOR ANY DAMAGES CAUSED BY A VIOLATION OF THIS SUBTITLE.”;

in line 9, strike “12-930.” and substitute “12-931.”; in lines 14 and 15, in each instance, strike “in the State” and substitute “to Maryland consumers”; after line 20, insert:

“SECTION 3. AND BE IT FURTHER ENACTED, That, notwithstanding § 12-912(a) of the Financial Institutions Article, as enacted by Section 1 of this Act, a license issued on or after October 1, 2003, and on or before December 31, 2003, expires on December 31, 2005, unless it is renewed for a 2-year term as provided in § 12-912(b) of the Financial Institutions Article, as enacted by Section 1 of this Act.

SECTION 4. AND BE IT FURTHER ENACTED, That, on or before January 1, 2004, the Commissioner of Financial Regulation shall report, in accordance with § 2-1246 of the State

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Government Article, to the Senate Finance Committee and the House Economic Matters Committee on the number of licenses that the Commissioner has issued under this Act and any recommendations for changes to the Maryland Debt Management Services Act, as enacted by Section 1 of this Act.”;

and in line 21, strike “3.” and substitute “5.”.