

Department of Legislative Services
 Maryland General Assembly
 2003 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 339
 Finance

(Senator Hogan, *et al.*)

Economic Matters

Maryland Debt Management Services Act

This bill requires debt management service businesses to become licensed 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 \$171,500 in FY 2004. Special fund revenues could increase by \$316,000 in FY 2004, which reflects examination charges for new licensees. Out-years reflect 7% growth in the number of licensees, 1% industry attrition, and the two-year licensing cycle.

(in dollars)	FY 2004	FY 2005	FY 2006	FY 2007	FY 2008
SF Revenue	\$316,000	\$50,200	\$330,400	\$50,400	\$334,800
SF Expenditure	171,500	209,700	221,800	234,900	249,200
Net Effect	\$144,500	(\$159,500)	\$108,600	(\$184,500)	\$85,600

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: With limited exceptions, the bill requires a person to obtain a license from the commissioner before providing “debt management services.” Under the bill,

debt management services means receiving funds from a consumer in order to distribute funds among the consumer's creditors to pay the consumer's debts.

To qualify for a license, an applicant must be an organization and must satisfy the commissioner that each of the applicant's owners, officers, directors, principals, and agents has 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 applicant must also have a net worth of at least \$50,000 plus an additional \$10,000 for each location, up to a maximum requirement of \$500,000.

The bill establishes application procedures and requires applicants for new and renewing licenses to provide fingerprints for criminal background checks by the Maryland Department of Public Safety and Correctional Services Criminal Justice Information System (CJIS) Central Repository and the Federal Bureau of Investigation (FBI). The applicant must pay all applicable fees. If the applicant or licensee 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. Applicants and renewing licensees must post a surety bond of at least \$10,000 and up to \$350,000, as determined by the commissioner under the bill's guidelines.

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 initial licensing, renewal, and investigation fees of up to a maximum of: (1) \$2,000 for a new license in even-numbered years and \$1,000 in odd-numbered years; (2) \$2,000 for a renewal license; and (3) \$1,000 for an investigation. The commissioner must also establish a fee of up to \$100 for each location at which the licensee provides debt management services, payable upon initial licensure and each renewal. 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 approve or deny an application for a license within 60 days after the date on which the complete application and surety bond are filed and the date on which the fees are paid. 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.

Licensees must have executed a debt management agreement with a consumer before collecting any fees from the consumer. Licensees must also furnish a consumer with a

written accounting at least once per quarter and upon cancellation or termination of the agreement. Licensees may charge a consultation fee of up to \$50 and a monthly maintenance fee of up to \$8 for each of the consumer's creditors listed in the agreement, up to \$40 per month. Licensees may only charge fees authorized under the bill. Charging of unauthorized fees, except as a result of an accidental and bona fide error render the agreement void.

A license under the bill may not be assigned, transferred, or pledged. Licenses expire on December 31 of each odd-numbered year unless renewed and last two years. Licensees are required to file an annual report with the commissioner by April 30. The commissioner may require a licensee to pay \$25 per day for each day the report is late.

The commissioner may require an applicant or licensee 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 licensees and nonlicensees for violations of the bill. Persons being investigated who violate the bill or regulations adopted under the bill are required to pay the commissioner's investigation costs. The commissioner may conduct an on-site examination of a licensee with or without notice, and the licensee must pay the commissioner's directly related examination costs, including travel expenses, lodging expenses, and a per diem for examiners.

The bill specifies activities for which the commissioner may deny licensure to an applicant, reprimand a licensee, or suspend or revoke a license and the criteria which the commissioner must consider in making such a decision. The commissioner may also issue cease and desist orders or orders to take affirmative corrective action, including restitution, 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 each violation. The commissioner may file a petition in circuit court seeking enforcement of an order. A consumer may also bring a civil action to recover any damages caused by a violation of the bill.

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

The bill requires the commissioner to report, by January 1, 2004, to the Senate Finance Committee and the House Economic Matters Committee on the number of licenses issued and any recommendations for changes to the bill's 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; (4) 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; (5) a certified public accountant; and (6) 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 \$171,500 in fiscal 2004, which accounts for the bill's October 1, 2003 effective date. This estimate reflects the cost of four positions (two financial examiners, one financial specialist, and one administrative officer) to conduct financial examinations, investigate fraud and nonlicensed entities, and process licensing materials and reports under the bill. It includes salaries, fringe benefits, one-time start-up costs, examiner and investigator travel to locations within and outside the State (which is reimbursable under the bill), and ongoing operating expenses.

Salaries and Fringe Benefits	\$135,900
Examiner Travel	15,000
Other Operating Expenses	<u>20,600</u>
Total FY 2004 State Expenditures	\$171,500

Future year expenditures reflect: (1) full salaries with 4.5% annual increases and 3% employee turnover; and (2) 1% annual increases in ongoing operating expenses.

The bill requires that all expenditures related to regulating debt management service businesses be paid through the special fund established in the bill. While the exact number of potential licensees is unknown, it is estimated that 25 to 60 debt management

service businesses currently operate within the State. In addition, approximately 100 to 200 debt management businesses located outside the State market their services to Maryland residents through television or radio advertising or over the Internet. If the fees were set at the maximum allowable under the bill and approximately 150 of the possible licensees became licensed under the bill, special fund revenues would increase by \$316,000 in fiscal 2004, including \$15,000 for examination expense reimbursements and \$1,000 for licensees with multiple locations.

It is assumed that the commissioner could begin to license businesses in January 2004, which is during fiscal 2004. Revenues would be greater in even-numbered fiscal years because licenses must be renewed in December of odd-numbered calendar years.

Debt management service businesses may be located throughout the United States and could reach Maryland residents through the Internet or other means. Reimbursable examiner travel expenses would reflect this. Also because of the varied locations of potential licensees, additional persons could become licensed under the bill in future years. Fees could be adjusted, within the bill's limits, in future years depending on whether the number of licensees increases.

The total maximum cost of each criminal history record check is \$52, which includes State and national background checks plus fingerprinting. The CJIS Central Repository is authorized by law to collect an \$18 fee established for Maryland criminal history record checks. This fee represents cost recovery for processing and administration and is revenue/cost neutral. The FBI charges a fee of \$24 for a national criminal history record check. There is also normally a \$10 fee for two fingerprint cards (\$5 for the State card; \$5 for the separate FBI card). The CJIS Central Repository must collect the records fees from the applicant, or other payer, and reimburse the FBI through that agency's monthly billing.

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 businesses are not small businesses; however, small debt management service businesses would be subject to regulation by the Commissioner of Financial Regulation. These small businesses would have the added expenses of the bill's fee provisions. Licensees would also be subject to the costs associated with compliance, including the cost of purchasing surety bonds required under the bill.

Additional Information

Prior Introductions: A similar bill, SB 821, was introduced during the 2002 session. SB 821 was amended and passed the Senate. It was referred to the House Commerce and Government Matters Committee, where no further action was taken.

Cross File: HB 640 (Delegates McIntosh and Bobo) – Economic Matters.

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

Fiscal Note History: First Reader - February 14, 2003
mld/jr Revised - Senate Third Reader - March 24, 2003
Revised - Enrolled Bill - May 2, 2003

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