

Chapter 339

(House Bill 392)

AN ACT concerning

Commercial Law – Debt Settlement Services – Study

FOR the purpose of ~~prohibiting a person from offering, providing, or attempting to provide debt settlement services in the State except as allowed under this Act; prohibiting a debt settlement services provider from receiving certain funds or payments or imposing certain fees or charges on a consumer, except for certain fees for certain services, until a debt settlement services agreement is executed and the debt settlement services are completed; limiting to a certain amount the fee that a debt settlement services provider may charge for debt settlement services; prohibiting a debt settlement services provider from charging a fee for certain services or to rescind a debt settlement services agreement; prohibiting a debt settlement services provider from making a certain representation; requiring or advising a consumer to stop making certain payments, or requiring a consumer to make a certain contribution; requiring that a debt settlement services agreement be signed and dated by the debt settlement services provider and the consumer and include certain information and disclosures; requiring that an advertisement for debt settlement services include certain disclosures; providing that a violation of this Act is an unfair or deceptive trade practice within the meaning of the Maryland Consumer Protection Act and is subject to certain enforcement and penalty provisions; providing for the application of this Act; establishing a certain short title; defining certain terms; requiring the Office of the Commissioner of Financial Regulation in the Department of Labor, Licensing, and Regulation, in consultation with the Consumer Protection Division of the Office of the Attorney General, to conduct a study of the debt settlement services industry; requiring the study to determine how best to regulate the debt settlement services industry in the State; requiring the Office, in consultation with the Division, to establish a workgroup comprised of certain representatives; requiring the Office, in consultation with the Division, to report certain findings and recommendations on or before a certain date to certain committees of the General Assembly; and generally relating to debt settlement services and debt settlement services providers.~~

~~BY repealing and reenacting, with amendments,
Article — Commercial Law
Section 13 — 301(14)(xxvi)
Annotated Code of Maryland
(2005 Replacement Volume and 2009 Supplement)~~

~~BY repealing and reenacting, without amendments,~~

~~Article — Commercial Law
Section 13-301(14)(xxvii)
Annotated Code of Maryland
(2005 Replacement Volume and 2009 Supplement)~~

~~BY adding to~~

~~Article — Commercial Law
Section 13-301(14)(xxviii); and 14-3801 through 14-3811 to be under the new
subtitle “Subtitle 38. Debt Settlement Services Act”
Annotated Code of Maryland
(2005 Replacement Volume and 2009 Supplement)~~

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That ~~the Laws of Maryland read as follows:~~

(a) (1) The Office of the Commissioner of Financial Regulation in the Department of Labor, Licensing, and Regulation, in consultation with the Consumer Protection Division of the Office of the Attorney General, shall conduct a study of the debt settlement services industry.

(2) The study shall determine how the debt settlement services industry would best be regulated in the State, including the option of establishing a licensure requirement, and the fiscal impact of regulating the industry if licensure were required.

(b) In conducting its study, the Office of the Commissioner of Financial Regulation, in consultation with the Consumer Protection Division, shall establish a workgroup that is comprised of representatives of relevant stakeholders, including:

(1) representatives of:

(i) the Office of the Commissioner of Financial Regulation;

(ii) the Consumer Protection Division;

(iii) the debt settlement services industry, including representatives of the various debt settlement services providers with differing models of debt settlement services practices;

(iv) the Maryland Consumer Rights Coalition; and

(v) the debt management industry; and

(2) any other person that the Office of the Commissioner of Financial Regulation or the Consumer Protection Division considers appropriate.

(c) On or before December 1, 2010, the Office of the Commissioner of Financial Regulation, in consultation with the Consumer Protection Division, shall report, in accordance with § 2-1246 of the State Government Article, its findings and recommendations, including draft legislation, if any, to the Senate Finance Committee and the House Economic Matters Committee.

~~Article—Commercial Law~~

~~13-301.~~

~~Unfair or deceptive trade practices include any:~~

~~(14) Violation of a provision of:~~

~~(xxvi) Title 6, Subtitle 13 of the Environment Article; [or]~~

~~(xxvii) Section 7-405(c)(2)(ii) of the Health Occupations Article; or~~

~~(xxviii) TITLE 14, SUBTITLE 38 OF THIS ARTICLE; OR~~

~~SUBTITLE 38. DEBT SETTLEMENT SERVICES ACT.~~

~~14-3801.~~

~~(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.~~

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

~~(C) “CONSUMER” MEANS AN INDIVIDUAL WHO:~~

~~(1) RESIDES IN THE STATE; AND~~

~~(2) IS SEEKING DEBT SETTLEMENT SERVICES OR HAS ENTERED INTO A DEBT SETTLEMENT SERVICES AGREEMENT.~~

~~(D) “DEBT MANAGEMENT SERVICES” HAS THE MEANING STATED IN § 12-901 OF THE FINANCIAL INSTITUTIONS ARTICLE.~~

~~(E) (1) “DEBT SETTLEMENT SERVICES” MEANS ACTING OR OFFERING OR ATTEMPTING TO ACT FOR CONSIDERATION AS AN INTERMEDIARY BETWEEN~~

~~A CONSUMER AND THE CONSUMER'S CREDITORS FOR THE PURPOSE OF SETTLING OR IN ANY WAY ALTERING THE TERMS OF PAYMENT OF ANY DEBT.~~

~~(2) "DEBT SETTLEMENT SERVICES" DOES NOT INCLUDE DEBT MANAGEMENT SERVICES.~~

~~(F) "DEBT SETTLEMENT SERVICES AGREEMENT" MEANS A WRITTEN CONTRACT, PLAN, OR AGREEMENT BETWEEN A DEBT SETTLEMENT SERVICES PROVIDER AND A CONSUMER FOR THE PERFORMANCE OF DEBT SETTLEMENT SERVICES.~~

~~(G) "DEBT SETTLEMENT SERVICES FEE" MEANS A FEE EARNED BY A DEBT SETTLEMENT SERVICES PROVIDER FOR PERFORMING DEBT SETTLEMENT SERVICES FOR A CONSUMER.~~

~~(H) "DEBT SETTLEMENT SERVICES PROVIDER" MEANS A PERSON THAT PROVIDES OR OFFERS TO PROVIDE DEBT SETTLEMENT SERVICES TO A CONSUMER.~~

~~14-3802.~~

~~THE PROVISIONS OF THIS SUBTITLE ARE IN ADDITION TO AND NOT IN SUBSTITUTION FOR ANY OTHER PROVISION OF LAW.~~

~~14-3803.~~

~~THIS SUBTITLE DOES NOT APPLY TO:~~

~~(1) THE FOLLOWING PERSONS WHEN ENGAGED IN THE REGULAR COURSE OF THEIR RESPECTIVE BUSINESSES AND PROFESSIONS:~~

~~(i) AN ATTORNEY AT LAW WHO IS ADMITTED TO PRACTICE IN THE STATE AND IS NOT PRINCIPALLY ENGAGED IN PROVIDING DEBT SETTLEMENT SERVICES;~~

~~(ii) AN ESCROW AGENT;~~

~~(iii) A CERTIFIED PUBLIC ACCOUNTANT;~~

~~(iv) A BANKING INSTITUTION, OTHER STATE BANK, NATIONAL BANKING ASSOCIATION, CREDIT UNION, OR SAVINGS AND LOAN ASSOCIATION;~~

~~(v) A PERSON THAT:~~

~~1. PROVIDES A BILL PAYER SERVICE, AS DEFINED IN § 12-401 OF THE FINANCIAL INSTITUTIONS ARTICLE;~~

~~2. DOES NOT INITIATE ANY CONTRACT WITH INDIVIDUAL CREDITORS OF A 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 AN ACCELERATED MORTGAGE PAYMENT SERVICE, AS DEFINED IN § 12-401 OF THE FINANCIAL INSTITUTIONS ARTICLE;~~

~~(VII) A TITLE INSURER, TITLE INSURANCE AGENCY, OR ABSTRACT COMPANY; OR~~

~~(VIII) A JUDICIAL OFFICER OR A PERSON ACTING UNDER A COURT ORDER;~~

~~(2) A PERSON WHILE PERFORMING SERVICES INCIDENTAL TO THE DISSOLUTION, WINDING UP, OR LIQUIDATION OF A PARTNERSHIP, CORPORATION, OR OTHER BUSINESS ENTERPRISE;~~

~~(3) A TRADE OR MERCANTILE ASSOCIATION ACTING IN THE COURSE OF ARRANGING THE ADJUSTMENT OF DEBTS WITH A BUSINESS ESTABLISHMENT; OR~~

~~(4) A MORTGAGE LENDER, AS DEFINED IN § 11-501 OF THE FINANCIAL INSTITUTIONS ARTICLE;~~

~~(I) THAT IS LICENSED BY THE COMMISSIONER OF FINANCIAL REGULATION; AND~~

~~(II) WHILE ENGAGED IN THE MORTGAGE LENDING BUSINESS AS DEFINED IN § 11-501 OF THE FINANCIAL INSTITUTIONS ARTICLE.~~

~~14-3804.~~

~~A PERSON MAY NOT OFFER, PROVIDE, OR ATTEMPT TO PROVIDE DEBT SETTLEMENT SERVICES IN THE STATE EXCEPT AS ALLOWED UNDER THIS SUBTITLE.~~

~~14-3805.~~

~~(A) EXCEPT AS PROVIDED IN SUBSECTIONS (B) AND (C) OF THIS SECTION, A DEBT SETTLEMENT SERVICES PROVIDER MAY NOT IMPOSE ANY FEES OR OTHER CHARGES ON A CONSUMER, OR RECEIVE ANY FUNDS OR OTHER PAYMENTS ON BEHALF OF A CONSUMER, IN CONNECTION WITH THE PROVISION OF DEBT SETTLEMENT SERVICES UNTIL AFTER:~~

~~(1) THE DEBT SETTLEMENT SERVICES PROVIDER AND THE CONSUMER HAVE EXECUTED A WRITTEN DEBT SETTLEMENT SERVICES AGREEMENT; AND~~

~~(2) THE DEBT SETTLEMENT SERVICES HAVE BEEN COMPLETED.~~

~~(B) (1) A DEBT SETTLEMENT SERVICES PROVIDER MAY CHARGE A CONSULTATION FEE NOT EXCEEDING \$50.~~

~~(2) THE COST OF A CREDIT REPORT ON A CONSUMER SHALL BE PAID FROM THE CONSULTATION FEE PAID BY THE CONSUMER.~~

~~(C) A DEBT SETTLEMENT SERVICES PROVIDER MAY CHARGE A CONSUMER A FEE NOT EXCEEDING \$50 FOR A COUNSELING SESSION, AN EDUCATIONAL PROGRAM, OR MATERIALS AND SUPPLIES IF THE CONSUMER DOES NOT ENTER INTO A DEBT SETTLEMENT SERVICES AGREEMENT WITH THE DEBT SETTLEMENT SERVICES PROVIDER.~~

~~(D) (1) ON COMPLETION OF DEBT SETTLEMENT SERVICES PROVIDED UNDER A DEBT SETTLEMENT SERVICES AGREEMENT, A DEBT SETTLEMENT SERVICES PROVIDER MAY CHARGE A DEBT SETTLEMENT SERVICES FEE IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION.~~

~~(2) THE DEBT SETTLEMENT SERVICES FEE MAY NOT EXCEED 15% OF THE TOTAL AMOUNT BY WHICH THE CONSUMER'S DEBT TO THE CONSUMER'S CREDITORS, AS SPECIFIED IN THE DEBT SETTLEMENT SERVICES AGREEMENT, WAS REDUCED DUE TO THE DEBT SETTLEMENT SERVICES PROVIDED UNDER THE DEBT SETTLEMENT SERVICES AGREEMENT.~~

~~14-3806.~~

~~EXCEPT AS PROVIDED IN § 14-3805(B) AND (C) OF THIS SUBTITLE, A DEBT SETTLEMENT SERVICES PROVIDER MAY NOT CHARGE A FEE TO:~~

~~(1) PREPARE A FINANCIAL ANALYSIS OR AN INITIAL BUDGET PLAN FOR A CONSUMER;~~

~~(2) COUNSEL A CONSUMER ABOUT DEBT MANAGEMENT OR DEBT SETTLEMENT;~~

~~(3) PROVIDE A CONSUMER WITH A CONSUMER EDUCATION PROGRAM; OR~~

~~(4) RESCIND A DEBT SETTLEMENT SERVICES AGREEMENT.~~

~~14-3807.~~

~~A DEBT SETTLEMENT SERVICES PROVIDER MAY NOT:~~

~~(1) MAKE A REPRESENTATION THAT A CONSUMER'S DEBT WILL BE SETTLED FOR A SPECIFIC AMOUNT OR REDUCED BY A SPECIFIC PERCENTAGE;~~

~~(2) REQUIRE OR ADVISE A CONSUMER TO STOP MAKING PAYMENTS TO A CREDITOR OF THE CONSUMER; OR~~

~~(3) REQUIRE A VOLUNTARY CONTRIBUTION FROM A CONSUMER FOR ANY SERVICE PROVIDED TO THE CONSUMER BY THE DEBT SETTLEMENT SERVICES PROVIDER.~~

~~14-3808.~~

~~A DEBT SETTLEMENT SERVICES AGREEMENT SHALL:~~

~~(1) BE SIGNED AND DATED BY THE DEBT SETTLEMENT SERVICES PROVIDER AND THE CONSUMER;~~

~~(2) INCLUDE, IN AT LEAST 12 POINT TYPE:~~

~~(i) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE CONSUMER;~~

~~(ii) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE DEBT SETTLEMENT SERVICES PROVIDER;~~

~~(iii) A DESCRIPTION OF THE DEBT SETTLEMENT SERVICES TO BE PROVIDED TO THE CONSUMER AND, SUBJECT TO THE PROVISIONS OF~~

~~THIS SUBTITLE, ANY FEES TO BE CHARGED TO THE CONSUMER FOR THE DEBT SETTLEMENT SERVICES;~~

~~(IV) THE IDENTITY OF EACH CREDITOR WHOSE DEBTS ARE TO BE SETTLED UNDER THE DEBT SETTLEMENT SERVICES AGREEMENT AND THE AMOUNT OF THE DEBT OWED TO EACH CREDITOR;~~

~~(V) THE NAME AND ADDRESS OF THE FINANCIAL INSTITUTION, IF ANY, IN WHICH FUNDS, DEPOSITED BY OR ON BEHALF OF THE CONSUMER FOR DISBURSEMENT TO THE CONSUMER'S CREDITORS, WILL BE HELD;~~

~~(VI) A DISCLOSURE THAT ENTERING INTO A DEBT SETTLEMENT SERVICES AGREEMENT WILL NOT STOP COLLECTION EFFORTS BY THE CONSUMER'S CREDITORS;~~

~~(VII) A DISCLOSURE THAT A DEBT SETTLEMENT SERVICES PROVIDER IS PROHIBITED BY LAW FROM REPRESENTING THAT IT CAN SETTLE A CONSUMER'S DEBT FOR A SPECIFIED AMOUNT OR REDUCE A CONSUMER'S DEBT BY A SPECIFIED PERCENTAGE;~~

~~(VIII) A DISCLOSURE THAT EXECUTION OF A DEBT SETTLEMENT SERVICES AGREEMENT MAY IMPACT THE CONSUMER'S CREDIT RATING AND CREDIT SCORES;~~

~~(IX) A DISCLOSURE THAT A DEBT SETTLEMENT SERVICES PROVIDER MAY NOT REQUIRE OR ADVISE A CONSUMER TO STOP MAKING PAYMENTS TO ANY CREDITOR OF THE CONSUMER;~~

~~(X) A DISCLOSURE THAT THE CONSUMER MAY BE REQUIRED TO PAY TAXES ON THE AMOUNT BY WHICH THE CONSUMER'S DEBT IS REDUCED; AND~~

~~(XI) A DISCLOSURE THAT A DEBT SETTLEMENT SERVICES PROVIDER MAY NOT REQUIRE A VOLUNTARY CONTRIBUTION FROM A CONSUMER FOR ANY SERVICE PROVIDED TO THE CONSUMER BY THE DEBT SETTLEMENT SERVICES PROVIDER.~~

~~14-3809.~~

~~AN ADVERTISEMENT FOR DEBT SETTLEMENT SERVICES SHALL CLEARLY AND CONSPICUOUSLY INCLUDE THE DISCLOSURES SET FORTH IN § 14-3808(2)(VI) THROUGH (X) OF THIS SUBTITLE.~~

~~14-3810.~~

~~A VIOLATION OF THIS SUBTITLE IS:~~

~~(1) AN UNFAIR OR DECEPTIVE TRADE PRACTICE WITHIN THE MEANING OF TITLE 13 OF THIS ARTICLE; AND~~

~~(2) SUBJECT TO THE ENFORCEMENT AND PENALTY PROVISIONS OF TITLE 13 OF THIS ARTICLE.~~

~~14-3811.~~

~~THIS SUBTITLE MAY BE CITED AS THE DEBT SETTLEMENT SERVICES ACT.~~

SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect ~~October~~ July 1, 2010.

Approved by the Governor, May 4, 2010.