

**Department of Legislative Services**  
Maryland General Assembly  
2011 Session

**FISCAL AND POLICY NOTE**  
**Revised**

Senate Bill 741

(Senators Pugh and Madaleno)

Finance

Economic Matters

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**Commercial Law - Debt Settlement Services**

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This bill establishes the Maryland Debt Settlement Services Act to register providers of such services, specify requirements for agreements, and establish duties for providers. Any revenue received from registration required under the bill must be placed in the existing Debt Management Services Fund. The bill also requires that the Office of the Commissioner of Financial Regulation, in consultation with the Consumer Protection Division of the Office of the Attorney General, report to the Senate Finance Committee and the House Economic Matters Committee by December 1, 2014, on recommendations regarding changes to the Maryland Debt Settlement Services Act, including whether to transition from a registration requirement to a licensure requirement and whether a cap on debt settlement services fees would be beneficial to consumers and fair to the debt settlement services industry.

Violation of the bill is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

The bill takes effect October 1, 2011, and terminates June 30, 2015.

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**Fiscal Summary**

**State Effect:** Special fund expenditures increase by \$18,700 in FY 2012 to establish and implement the registry program required by the bill. Future year expenditures reflect ongoing operating expenses, inflation, and termination of the bill. Special fund revenues increase by \$20,000 in FY 2012 and 2014 for registration of debt settlement service providers. The bill's imposition of existing penalty provisions does not have a material impact on State finances or operations. It is unclear how the bill will affect the amount of complaints handled by the Consumer Protection Division of the Office of the Attorney General; however, any increase or decrease is likely to be minimal and does not materially affect State finances or operations. The required report can be prepared within existing resources.

(in dollars)	FY 2012	FY 2013	FY 2014	FY 2015	FY 2016
SF Revenue	\$20,000	\$0	\$20,000	\$0	\$0
SF Expenditure	\$18,700	\$15,600	\$16,100	\$16,600	\$0
Net Effect	\$1,300	(\$15,600)	\$3,900	(\$16,600)	\$0

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

**Local Effect:** The bill’s imposition of existing penalty provisions does not have a material impact on local government finances or operations.

**Small Business Effect:** Meaningful.

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## Analysis

**Bill Summary:** The bill defines “debt settlement services” as any service or program represented, directly or by implication, to renegotiate, settle, reduce, or in any way alter the terms of payment or other terms of a debt between a consumer and one or more unsecured creditors or debt collectors, including a reduction in the balance, interest rate, or fees owed by a consumer to an unsecured creditor or debt collector. Debt settlement services do not include debt management services.

In order to carry out the provisions of the bill, the commissioner may adopt regulations; enter into cooperative and information-sharing agreements with specified federal and State regulatory agencies; and exchange information about a debt settlement services provider, including information obtained during an examination, with specified federal and State regulatory agencies.

### *Registration*

A person may not offer, provide, or attempt to provide debt settlement services unless the person is either registered with the commissioner or exempt from registration under the bill. In order to register with the commissioner (1) a person must pay an initial \$1,000 registration fee and \$1,000 for each subsequent registration renewal; and (2) submit an application form including specified information. Any registration fees must be deposited in the Debt Management Services Fund and used to cover the costs and expenses incurred in the registration of debt settlement services providers. A registration expires on December 31 of each odd-numbered year unless renewed for an additional two-year term on or before December 1 of the year of expiration.

On or before March 15 each year, beginning in 2012 and ending in 2014, a registrant must report to the commissioner on the debt settlement services business conducted during the preceding calendar year. The report must include specified information on consumers who received debt settlement services from the registrant, those who

completed a program, those who did not (due to inactivity, cancellation, or termination), and fees collected. The report must also include a profit and loss statement of debt settlement services provided to Maryland consumers for the previous calendar year prepared by an independent certified public accountant in accordance with generally accepted accounting principles.

### *Fees Charged to Consumers*

A registrant may not charge a consumer a fee for consultation or for obtaining a consumer's credit report or require a voluntary contribution from a consumer for any of the registrant's services. Additionally, a registrant may not charge a debt settlement services fee until after a debt settlement services agreement has been executed between the registrant and the consumer; the registrant has renegotiated, settled, reduced, or otherwise altered the terms of at least one individual debt specified in the debt settlement services agreement; and the consumer has made at least one payment in accordance with the debt settlement services agreement.

However, a registrant may request or require a consumer to deposit funds in an account to be used for debt settlement services fees and for payments to creditors or debt collectors in connection with a debt settlement services agreement if specified conditions are met. If a registrant establishes such an account, the registrant must file a surety bond meeting specified conditions with the commissioner. If the amount of the surety bond initially filed with the commissioner must be increased to meet these conditions, the registrant must file with the commissioner evidence of the increased bond amount in a form satisfactory to the commissioner.

A debt settlement services fee for each individual debt must *either* have the same proportional relationship to the fee for providing debt settlement services for the total amount of debts as the actual amount of the individual debt has to the total amount of debt *or* be calculated as a percentage of the amount by which the principal amount of the debt exceeds the amount paid to the creditor or debt collector to settle the debt.

### *Debt Settlement Services Agreements*

A "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.

A debt settlement services agreement must be signed and dated by the registrant and the consumer and include specified information in a clear and conspicuous manner, such as:

- the name, address, and telephone number of both the consumer and the registrant;
- a description of the debt settlement services to be provided to the consumer;
- any debt settlement services fees to be charged to the consumer and a statement that the registrant may not perform specified actions;
- information regarding each individual creditor or debt collector owed and the principal amount of the total debt;
- a good faith estimate as to when specified actions may occur; and
- a statement that the consumer may be required to pay taxes on the amount by which the consumer's debt is reduced.

A registrant must allow a consumer to withdraw from a debt settlement services agreement at any time. If the consumer withdraws, a registrant may not charge the consumer a penalty but may collect debt settlement services fees earned by the registrant in compliance with the bill. The debt settlement services agreement must include a statement notifying the consumer of his or her right to withdraw at any time and the possible consequences of a withdrawal.

Furthermore, if the registrant requests or requires the consumer to deposit funds in a dedicated account, the debt settlement services agreement must include a statement confirming that (1) the consumer owns the funds and any accrued interest; and (2) if the consumer requests to withdraw from the debt settlement services agreement, within seven days after the request, all funds in the account, including accrued interest but less any debt settlement services fees, must be paid to the consumer.

### *Advertisements*

To the extent that any aspect of the debt settlement services relies on or results in the consumer's failure to make timely payments to the consumer's creditors or debt collectors, an advertisement for debt settlement services must clearly and conspicuously disclose that the use of debt settlement services (1) will likely adversely affect the consumer's creditworthiness; (2) may result in the consumer being subject to collections or being sued by creditors or debt collectors; and (3) may increase the amount of money the consumer owes due to the accrual of fees and interest by creditors or debt collectors.

**Current Law/Background:** Regulation of debt settlement companies is not required by State law. Debt management companies, however, are subject to the licensing and regulatory provisions of the Maryland Debt Management Services Act. The Commissioner of Financial Regulation is responsible for enforcing that Act.

Chapter 374 and 375 of 2003 established 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 cost of initial licenses and renewals for the original offices of debt management companies ranges from \$1,000 to \$8,000. The commissioner typically grants 30 to 40 licenses each year. In fiscal 2010, the fund had an opening balance of \$23,226; with \$130,369 in revenues and \$95,878 in expenditures, the year-end balance was \$57,717.

### *Regulation in Other States*

Thirty-nine states regulate debt settlement companies, including seven which completely bar for-profit debt settlement services. Twenty-four of these states require companies to be licensed or registered before they can provide debt settlement services. Of the states that have a licensing or registration requirement, many limit the fees debt settlement companies can charge and require debt settlement companies to post performance bonds.

### *Legislative History*

The General Assembly considered legislation to regulate debt settlement companies during the 2008 session. House Bill 1223 of 2008, which was referred to an interim study by the House Economic Matters Committee, would have amended Maryland's Debt Management Services Act to include debt settlement companies in the Act's licensing and regulatory scheme.

As introduced, House Bill 1223 would have required that debt settlement companies obtain a license to operate in the State, meet bonding requirements, and submit annual reports to the Commissioner of Financial Regulation. The bill also would have required that debt settlement companies enter into a debt settlement agreement with a consumer and disclose certain information before providing debt settlement services. Another provision in the bill would have imposed limits on the fees charged by debt settlement companies.

Chapters 338 and 339 of 2010 required the commissioner, in consultation with the Consumer Protection Division of the Attorney General, to conduct a study of the debt settlement industry and report its findings to the Senate Finance and House Economic Matters committees.

### *Commissioner of Financial Regulation Study*

The study, finalized in December 2010, found that the increase in the number of consumers who are unable to pay unsecured debt has created a significant growth in the demand for debt relief services. One option for debt relief is a debt settlement service. According to the report, debt settlement services offer consumers the chance to settle their debt for a lesser amount than the total amount owed. Frequently, however,

consumers are unable to pay this amount immediately and must open an account with the debt settlement company in order to save enough money to relieve the debt. Once the account is opened, debt settlement companies may withdraw funds from the account to assess debt settlement fees and pay the consumer's creditors.

The report further notes that the Federal Trade Commission (FTC) reported that many debt settlement companies make false, misleading, or unsubstantiated representations in their advertisements. This practice may have led to an increased number of complaints with the Consumer Protection Division. The division reports that it has handled 239 complaints against debt settlement services since 2007, with 193 of these complaints, or 81%, in the past two years. FTC adopted a rule in July 29, 2010, (1) prohibiting debt relief providers from collecting fees until after services have been provided; (2) requiring debt relief services to make specific disclosures of material information about offered debt relief services; (3) prohibiting debt relief services from making specific misrepresentations about material aspects of debt relief services; and (4) extending coverage to include inbound calls made to debt relief companies in response to general media advertisements. These regulations, particularly the prohibition against advance fees, could have a significant effect on debt settlement companies.

### *Report Recommendations*

The report made the following recommendations:

- enact a period of an interim registration of companies engaging in the business of debt settlement for a period of two years with a \$500 per year fee, during which the commissioner will determine whether a licensing scheme should be adopted;
- apply the FTC rule to debt settlement services provided via the Internet, in face-to-face meetings, and to those intrastate activities;
- extend the FTC rule to cover nonprofit debt settlement service providers;
- include lead generators and others who assist debt settlement companies in any proposed legislation;
- implement a fee cap of approximately 30% of the savings against the enrolled debt;
- require that the written disclosures set forth in the FTC final rule be provided to consumers in both advertisements and in any form prior to the creation of the debt settlement agreement;
- exempt those not principally engaged in debt settlement services but admitted to practice law in the state from any licensing or registration legislation; and
- distinguish from debt management and debt settlement companies in any proposed legislation.

## MCPA

An unfair or deceptive trade practice under MCPA includes any false, falsely disparaging, or misleading oral or written statement, visual description, or other representation of any kind which has the capacity, tendency, or effect of deceiving or misleading consumers. The prohibition against engaging in any unfair or deceptive trade practice encompasses the offer for or actual sale, lease, rental, loan, or bailment of any consumer goods, consumer realty, or consumer service; the extension of consumer credit; and the collection of consumer debt.

The Consumer Protection Division is responsible for enforcing MCPA and investigating the complaints of aggrieved consumers. The division may attempt to conciliate the matter, hold a public hearing, seek an injunction, or bring an action for damages. A merchant who violates MCPA is subject to a fine of up to \$1,000 for the first violation and up to \$5,000 for each subsequent violation. In addition to any civil penalties that may be imposed, any person who violates MCPA is guilty of a misdemeanor and, on conviction, is subject to a fine of up to \$1,000 and/or imprisonment for up to one year.

**State Fiscal Effect:** DLLR advises that additional staffing is needed to implement the bill. The Department of Legislative Services (DLS) concurs and advises that a low level of support may be sufficient based on the anticipated registration activity, relatively minimal ongoing duties, and the June 30, 2015 termination date.

Specifically, DLS advises that it may be possible to achieve tasks such as creating a new registration form, entering data into the licensing system in odd-numbered years, reviewing surety bond information, and receiving and reviewing the annual reports in March of each year with a part-time administrative specialist working fewer than 20 hours a week on a contractual basis. This estimate is based on the likely small number of registrants and the biennial nature of the registration. The limited expenditures resulting from the use of contractual personnel will place less strain on the Debt Management Services Fund.

Accordingly, special fund expenditures increase by \$18,748 in fiscal 2012, which accounts for the bill's October 1, 2011 effective date. This estimate includes a salary, fringe benefits, one-time start-up costs, and ongoing operating expenses.

Contractual Position (full-time equivalent)	0.33
Salaries and Fringe Benefits	\$7,693
Registration System Development	8,000
Other Operating Expenses	<u>3,055</u>
<b>Total FY 2012 State Expenditures</b>	<b>\$18,748</b>

Future year expenditures reflect ongoing database maintenance, the annualized part-time salary with 4.4% annual increases and 7.2% employee turnover as well as 1% annual increases in ongoing operating expenses.

DLLR advises that 15 to 25 companies offer debt settlement services in the State and may register under the bill. While it is possible that the new FTC rules and the bill's requirements may compel some of these companies to stop offering debt settlement services, 20 companies is a reasonable estimate of registration activity as shown in **Exhibit 1**. The Debt Management Services Fund already exists; thus, the necessary infrastructure should be in place once the part-time administrative specialist is hired for the commissioner to register all possible registrants by the December 1 deadline to do so. DLS assumes the vast majority of registrants will register within a few months of the December 1 deadline, meaning all registration fees are collected in fiscal 2012 and 2014.

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**Exhibit 1**  
**Anticipated Special Fund Revenue Collections**  
**Fiscal 2012-2015**

	<u><b>FY 2012</b></u>	<u><b>FY 2013</b></u>	<u><b>FY 2014</b></u>	<u><b>FY 2015</b></u>
<b>Regulatory Activity</b>				
Registration Issued	20	0	20	0
<b>Anticipated Revenue</b>				
Registration @ \$1,000	\$20,000	\$0	\$20,000	\$0

Source: Department of Legislative Services

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It is clear with the bill's stated registration fee and the estimated number of registrations issued in odd-numbered calendar years, revenues most likely approximate expenditures in fiscal 2012 and 2014 but not fiscal 2013 and 2015. The surplus in fiscal 2012 and 2014 is about \$1,000 to \$4,000 while the deficit in fiscal 2013 and 2015 is approximately \$16,000. Thus, the new regulatory activity will be handled in part with new revenues but will also require use of fund balance. As noted above, the Debt Management Services Fund's ending balance is currently \$57,717.

Finally, as noted above, the Consumer Protection Division has received approximately 100 complaints in each of the previous two years. The division advises it is unclear how the bill will affect this number of complaints. However, any increase or decrease is likely to be minimal and will not materially affect State finances or operations.



**Small Business Effect:** To the extent that any debt settlement services providers are small businesses, the providers have to pay the biennial registration fee and conform to the new regulations. However, as some of these regulations are already prohibited by the FTC's new rules, any debt settlement services providers should already have most of these practices in place. Even so, in addition to the possibility of additional costs associated with data compilation and record retention in order to comply with the bill's reporting requirements, debt settlement services providers likely incur costs ranging from several hundred to several thousand dollars in hiring a certified public account to prepare a profit and loss statement. The cost associated with the preparation of the profit and loss statement is dependent on numerous factors, particularly the complexity of the statement associated with higher volumes of business performed by the company.

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### **Additional Information**

**Prior Introductions:** None.

**Cross File:** HB 1022 (Delegate Vaughn, *et al.*) - Economic Matters.

**Information Source(s):** Office of the Attorney General (Consumer Protection Division); Department of Labor, Licensing, and Regulation; Department of Legislative Services

**Fiscal Note History:** First Reader - February 28, 2011  
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