SB 303

Department of Legislative Services

Maryland General Assembly
2012 Session

FISCAL AND POLICY NOTE
Revised

Senate Bill 303 (Chair, Finance Committee)(By Request - Departmental - Labor, Licensing and Regulation)

Finance Economic Matters

Credit Regulation - Debt Management Services - Agreement and Prohibited Acts

This departmental bill clarifies that either party to a debt management services agreement may rescind the contract *at any time* by giving written notice to the other party. The bill also prohibits a person licensed by the Commissioner of Financial Regulation to provide debt management services from violating any provision of federal or State law governing debt management services or other related services.

The bill takes effect July 1, 2012.

Fiscal Summary

State Effect: The bill does not directly affect State governmental operations or finances.

Local Effect: The bill does not directly affect local governmental operations or finances.

Small Business Effect: The Department of Labor, Licensing, and Regulation has determined that this bill has minimal or no impact on small business (attached). Legislative Services concurs with this assessment. (The attached assessment does not reflect amendments to the bill.)

Analysis

Current Law: The licensing structure and special fund for debt management services providers was created by Chapters 374 and 375 of 2003 and is managed by the commissioner. As of January 2012, 36 debt management services providers were licensed in Maryland. A debt management services provider may not provide debt management services until, among other things, the provider and the consumer have executed a debt management services agreement that describes the debt management services to be performed. In this agreement, the consumer must be notified that, among other things, either party has the right to rescind the agreement.

The commissioner may enforce the Maryland Debt Management Services Act by issuing a cease and desist order, taking affirmative action to correct a violation, and imposing a civil penalty of up to $1,000 for each violation. A person who knowingly and willfully violates the Act is guilty of a felony and, on conviction, subject to a fine of up to $1,000 for the first violation and up to $5,000 for each subsequent violation or imprisonment of up to five years.

Background: Debt management services providers are already subject to the Credit Repair Organizations Act and the Telemarketing Sales Rule, but the bill's provisions authorize the commissioner to take action against any licensee engaged in debt management services that violate any federal or State law governing debt management services or other related services.

The federal Credit Repair Organizations Act was enacted in 1996 to ensure that credit repair organizations provide their customers with the information necessary to make an informed decision. Credit repair organizations offer consumers the improvement of the consumer's credit record, credit history, or credit rating. In general, the Act prohibits any person from engaging, directly or indirectly, in any fraud or deception on any person in connection with the offer or sale of the services of the credit repair organization.

The Credit Repair Organizations Act authorizes a consumer to rescind a contract within three business days after it is executed. However, the current Maryland law is more generous. It authorizes either party to rescind the contract without any reference to a time period. The commissioner reports that the lack of any specific time period has caused confusion when compared to the federal law. The bill aims to end this confusion by clarifying that both parties are authorized to rescind the contract at any time if written notice of rescission is provided to the other party.

Originally enacted in 1995, the Telemarketing Sales Rule provides the Federal Trade Commission with the ability to combat telemarketing fraud. Among other provisions, the rule requires sellers and telemarketers to disclose specified information regarding debt relief services; prohibits misrepresentations in the sale of debt relief services; and prohibits sellers and telemarketers from collecting any fees for a debt relief service from a customer before settling or otherwise resolving the consumer's debts.

Additional Information

Prior Introductions: None.

Cross File: None.

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

Fiscal Note History: First Reader - February 2, 2012
mc/ljm Revised - Senate Third Reader - March 15, 2012

Analysis by: Michael F. Bender

Direct Inquiries to:
(410) 946-5510
(301) 970-5510

ANALYSIS OF ECONOMIC IMPACT ON SMALL BUSINESSES

TITLE OF BILL: Credit Regulation – Debt Management Services – Agreement and Prohibited Acts

BILL NUMBER: SB 303

PREPARED BY: Department of Labor, Licensing and Regulation

PART A. ECONOMIC IMPACT RATING

This agency estimates that the proposed bill:

__X__ WILL HAVE MINIMAL OR NO ECONOMIC IMPACT ON MARYLAND SMALL BUSINESS

OR

___ WILL HAVE MEANINGFUL ECONOMIC IMPACT ON MARYLAND SMALL BUSINESSES

PART B. ECONOMIC IMPACT ANALYSIS

The proposed legislation will have no impact on small business in Maryland.