

Department of Legislative Services
Maryland General Assembly
2016 Session

FISCAL AND POLICY NOTE
First Reader

House Bill 1451
Economic Matters

(Delegate Vaughn)

Commercial Law - Debt Settlement Services - Miscellaneous Provisions

This bill specifies that a State-licensed attorney who is providing legal services in an attorney-client relationship cannot provide debt settlement services on a regular basis and still be exempt from the registration requirement under the Maryland Debt Settlement Services Act. The bill also prohibits a registered debt settlement services provider from charging a debt settlement services fee that exceeds 40% of the excess of the principal amount of the debt over the amount paid to the creditor or debt collector to settle the individual debt. Finally, the bill repeals a requirement that a registrant must submit an annual report to the commissioner on the debt settlement services business of the registrant conducted in the preceding calendar year.

The bill takes effect June 1, 2016.

Fiscal Summary

State Effect: Special fund revenues increase, likely minimally, beginning in FY 2016 as specified attorneys are required to register with the Department of Labor, Licensing, and Regulation (DLLR) as debt settlement services providers. Assuming reauthorization of the Maryland Debt Settlement Services Act, revenues also increase in FY 2018 and 2020 with biennial renewal. However, any increase in revenues depends on the number of attorneys that provide debt settlement services on a regular basis and cannot be reliably estimated at this time. Imposition of existing penalty provisions does not have a material impact on State finances or operations. Expenditures are not affected.

Local Effect: Imposition of existing penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Current Law: The Maryland Debt Settlement Services Act terminates June 30, 2016, four years and nine months after its effective date.

Under the Act, 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. To register with the Commissioner of Financial Regulation, a person must (1) pay an initial \$1,000 registration fee and \$1,000 for each subsequent registration renewal and (2) submit an application form including specified information. 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. Chapters 276 and 277 of 2014 extended the expiration or a renewal of a registration of a debt settlement services provider with an expiration date of December 1, 2015, automatically to June 1, 2016, without payment of an additional fee or submission of an application.

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

Background: Prior to the Maryland Debt Settlement Services Act, regulation of debt settlement companies was not required by State law. Once the Act terminates (currently, on June 30, 2016), debt settlement services providers will not be regulated under State law unless further action is taken.

Commissioner of Financial Regulation Study and the Maryland Debt Settlement Services Act

Chapters 338 and 339 of 2010 required the commissioner, in consultation with the Consumer Protection Division of the Office of the Attorney General, to conduct a study of the debt settlement services industry and report findings to the Senate Finance and House Economic Matters committees. The study, finalized in December 2010, found that the increase in the number of consumers who were unable to pay unsecured debt had created a significant growth in the demand for debt relief services. The report made the following recommendations, among others: (1) establish interim registration of companies engaging in the business of debt settlement, with each registration valid for a period of two years at a \$500 per-year fee, during which time the commissioner would determine whether a licensing scheme should be adopted; and (2) distinguish from debt management and debt settlement services companies in any proposed legislation.

In light of the commissioner's report and recommendations, the Maryland Debt Settlement Services Act was established by Chapters 280 and 281 of 2011 to:

- register providers of debt settlement services;
- specify requirements for debt settlement services agreements;
- prohibit providers from charging customers fees for consultation or for obtaining a consumer's credit report or from requiring a voluntary contribution from a consumer for any provider services;
- prohibit providers from charging debt settlement services fees until after a debt settlement services agreement has been executed between the provider and the consumer; the provider has renegotiated, settled, reduced, or otherwise altered the terms of at least one individual debt specified in the agreement; and the consumer has made at least one payment in accordance with the debt settlement services agreement;
- allow providers to request or require consumers to deposit funds in an account to be used for debt settlement services fees and payments to creditors;
- establish other duties for providers; and
- require revenue received from registration of providers to be placed in the Debt Management Services Fund for use in covering expenses incurred in the registration of providers.

Report on Implementation of the Maryland Debt Settlement Services Act

Chapters 280 and 281 of 2011, as amended by Chapters 276 and 277 of 2014, established that, on or before December 1, 2015, the Office of the Commissioner, in consultation with the Consumer Protection Division, had to report to the Senate Finance Committee and the House Economic Matters Committee on recommendations regarding changes to the Maryland Debt Settlement Services Act, including:

- whether to transition from a registration requirement to a licensure requirement for debt settlement services providers; and
- whether a cap on debt settlement services fees would be beneficial to consumers and fair to the debt settlement services industry.

According to the report issued by the commissioner and division in early 2016, as of 2015, 30 debt settlement services providers are registered with the commissioner. About 20% of the registered providers are located within the State, with the remaining 80% as foreign corporations authorized to do business in the State. From 2012 through 2015, registrants serviced an average of 2,750 Maryland consumers annually. From fiscal 2013 through 2015, the division received 9 complaints from Maryland consumers relating to the practice of debt settlement services. All of the complaints alleged misrepresentation of the debt

settlement services agreement and charging excessive fees; however, 89% of the complaints were filed against providers that were not registered in the State or entities that are exempt from registration.

Both the commissioner and the division recommended that a licensing requirement is not warranted, but they disagreed as to whether a limit on debt settlement services fees should be established.

- The commissioner recommended the fees should not be limited for various reasons, including a low level of complaints over the last several years, and because State and federal laws allow a consumer to reject a debt settlement service plan offer or cancel a debt settlement services plan agreement at any time without payment of a penalty or other financial obligation to the debt settlement services provider.
- The division recommended the fees be limited, based on a percentage of the amount the debt settlement services provider actually saved the consumer on the debts that were settled. The division advised that limiting fees to a percentage of the amount saved protects consumers while providing an incentive to the debt settlement services provider to settle all the consumers' debts.

The commissioner and division each made further recommendations. The commissioner recommended **against** continuing the registration requirement but advised that, if registration were to continue, a registrant should not have to continue to file an annual report. The division also recommended that the exemption for attorneys be studied to determine whether consumers who enter into debt settlement services agreements with attorneys face outcomes similar to those who contract with nonattorney debt settlement services providers.

State Revenues: Special fund revenues for DLLR increase, likely minimally, beginning in fiscal 2016, as additional debt settlement services providers that are not required to register under current law do so as a result of the bill. Registrants pay an initial \$1,000 registration fee and \$1,000 biennially thereafter. Any additional revenue received under the bill depends on the number of attorneys that regularly provide debt settlement services. Because the exact number of such providers is unknown, an exact magnitude of the increase in special fund revenues cannot be reliably estimated at this time. However, because there are only 30 debt settlement services providers currently registered with DLLR, this analysis assumes any increase in fee revenue is likely minimal.

Small Business Effect: Any attorneys that are small businesses and provide debt settlement services on a regular and continuing basis are required to register with the commissioner. Thus, under the bill they must pay the same \$1,000 initial registration fee and \$1,000 biennial renewal fee required for other debt settlement services providers.

In addition, existing debt settlement services providers may be affected to the extent that they charge a debt settlement services fee that exceeds 40% of the amount saved by the consumer.

Finally, small businesses registered as debt settlement services providers may benefit from the repeal of the requirement that they submit an annual report to DLLR with information on debt settlement services business activities.

Additional Comments: Although the Maryland Debt Settlement Services Act terminates on June 30, 2016, legislation has been introduced in the 2016 session that would extend the Act. Senate Bill 471 of 2016 and its cross file, House Bill 1450 of 2016, repeal the termination date of the Maryland Debt Settlement Services Act and require revenues received under the Act to be credited to a new special fund (the Nondepository Special Fund), contingent on the passage of another bill, Senate Bill 88 of 2016. If Senate Bill 88 does not pass, then revenues that are allocated to the Nondepository Special Fund under Senate Bill 471 and House Bill 1450 will, instead, continue to be deposited into the Debt Management Services Fund.

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; Department of Legislative Services

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