

BILL ANALYSIS

Senate Research Center
82R10943 CLG-F

C.S.S.B. 141
By: Eltife
Business & Commerce
2/23/2011
Committee Report (Substituted)

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

In 2005 and 2007, legislation was passed placing nonprofit and for-profit debt management services (including consumer credit counseling services and debt management companies) under the regulatory authority of the Office of Consumer Credit Commissioner (CCC). However, there is not a regulatory structure for similar services offered by debt settlement providers.

Due to federal bankruptcy reform legislation passed in 2005, as well as the current economic downturn, a more uniform approach to the regulation of all providers of debt management services is timely. There is a need for consistency in the regulation of all providers of debt management services to provide protection for consumers.

This bill is modeled after the Uniform Debt-Management Services Act, as developed by the National Conference of Commissioners on Uniform State Laws.

C.S.S.B. 141 amends current law relating to debt management services and the regulation of debt management services providers.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 8 (Section 394.2101, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 394.202, Finance Code, by adding Subdivisions (3-a), (9-a), and (11-a) and amending Subdivisions (6) and (10), as follows:

- (3-a) Defines "concession."
- (6) Redefines "debt management service."
- (9-a) Defines "principal amount of the debt."
- (10) Redefines "provider."
- (11-a) Defines "settlement fee."

SECTION 2. Amends 394.204(k), Finance Code, to authorize the consumer credit commissioner (commissioner), in addition to the power to refuse an initial application as specified in this section, to suspend or revoke a provider's registration after notice and hearing if the commissioner finds that any of certain conditions are met, including that the provider has received money from or on behalf of a consumer for disbursement to a creditor under a debt management plan that provides for regular periodic payments to creditors and the provider has failed to disburse money to the creditor, rather than creditors, on behalf of the consumer, rather than consumers, within a reasonable time, normally 30 days.

SECTION 3. Amends Section 394.206(b), Finance Code, to require that the surety bond or insurance policy filed by a provider meet certain conditions, including requiring that, if a bond, it

be in an amount equal to the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond, or in the case of an initial application, in an amount determined by the commissioner, but not less than \$25,000 or more than \$100,000, if the provider receives and holds money paid by or on behalf of a consumer for disbursement to the consumer's creditors, or be in the amount of \$50,000, if the provider does not receive and hold money paid by or on behalf of a consumer for disbursement to the consumer's creditors.

SECTION 4. Amends Sections 394.208(a), (d), and (f), Finance Code, as follows:

(a) Prohibits a provider from enrolling a consumer in a debt management plan unless the provider, through the services of a counselor certified by an independent accreditation organization, has taken certain actions, including that the proposed debt management plan does not provide for a reduction of principal as a concession, the provider has a reasonable expectation, provided that the consumer has provided accurate information to the provider, that each creditor of the consumer listed as a participating creditor in the plan will accept payment of the consumer's debts as provided in the initial plan, and has prepared for all creditors identified by the consumer or identified through additional investigation by the provider, a list, which must be provided to the consumer in a form the consumer may keep, of the creditors that the provider reasonably expects to participate in the plan. Makes conforming and nonsubstantive changes.

(d) Makes a conforming change.

(f) Requires a provider who receives and disburses money to creditors on behalf of consumers for debt management services to provide each consumer to whom those services were provided a written report accounting for the amount of money received for the consumer since the last report, the amount and date of each disbursement made on the consumer's behalf to each creditor listed in the agreement since the last report, any amount deducted from amounts received from the consumer, and any amount held in reserve. Makes nonsubstantive changes.

SECTION 5. Amends Section 394.209(b), Finance Code, to require that each debt management services agreement include certain information, including that if the proposed debt management plan does not provide for a reduction of principal as a concession, it list in the agreement or accompanying document, to the extent the information is available to the provider at the time the agreement is executed, each participating creditor of the consumer to which payments will be made and, based on information provided by the consumer, the amount owed to each creditor and the schedule of payments the consumer will be required to make to the creditor, including the amount and date on which each payment will be due.

SECTION 6. Amends Subchapter C, Chapter 394, Finance Code, by adding Section 394.2095, as follows:

Sec. 394.2095. CANCELLATION OF AGREEMENT BY EITHER PROVIDER OR CONSUMER. Requires the provider, if a provider or a consumer cancels a debt management service agreement, to immediately return to the consumer any money of the consumer held in trust by the provider for the consumer's benefit, and 65 percent of any portion of the account set-up fee received under Section 394.210(g)(1) that has not been credited against settlement fees.

SECTION 7. Amends Section 394.210, Finance Code, by amending Subsections (c) through (f) and adding Subsections (g) through (n), as follows:

(c) Prohibits a provider from imposing fees or other charges on a consumer or receiving payment for debt management services until the consumer has entered into a debt management service agreement with the provider that complies with Section 394.209.

(d) Prohibits a provider, if a consumer enters into a debt management service agreement with the provider, from imposing a fee or other charge for debt counseling, education

services, or similar services except as otherwise authorized by this section. Authorizes the commissioner to authorize a provider to charge a fee based on the nature and extent of the counseling, education services, or other similar services furnished by the provider.

(e) Provides that Subsections (f)-(j) apply subject to an adjustment made under Section 394.2101.

(f) Authorizes the provider, if a consumer is enrolled in a debt management plan that provides for a reduction of finance charges or fees for late payment, default, or delinquency as a concession from creditors, to charge a fee not to exceed \$100 for debt consultation or education services, including obtaining a credit report, setting up an account, and other similar services; and a monthly service fee, not to exceed the lesser of \$10 multiplied by the number of accounts remaining in the plan on the day of the month the fee is assessed or \$50.

(g) Authorizes the provider, if a consumer is enrolled in a debt management plan that provides for settlement of debts for amounts that are less than the principal amounts of the debts as a concession from creditors, to charge:

(1) a fee for debt consultation or education services, including obtaining a credit report, setting up an account, and other similar services, in an amount not to exceed the lesser of \$400 or four percent of the total amount of the outstanding debt included in the plan at the time the plan is established; and

(2) a monthly service fee, not to exceed the lesser of \$10 multiplied by the number of accounts remaining in the plan on the day of the month the fee is assessed, or \$50; and

(3) either, with respect to a debt management service agreement in which a flat fee is charged based on the total amount of debt that is included in a debt management plan, the total aggregate amount of fees charged to a consumer under this subchapter, including fees charged under Subdivisions (1) and (2), may not exceed 17 percent of the total principal amount of debt included in the debt management plan; or with respect to a debt management service agreement in which fees are computed as a percentage of the amount saved by a consumer as a result of a concession, in addition to fees charged under Subdivisions (1) and (2), a settlement fee may not exceed 30 percent of the excess of the outstanding amount of each debt over the amount actually paid to the creditor, as computed at the time of settlement.

(h) Authorizes that settlement fees authorized under Subsection (g) be charged only as debts are settled, and prohibits the total aggregate amount of fees charged to a consumer under this subchapter, including fees charged under Subsections (g)(1) and (2), from exceeding 20 percent of the principal amount of debt included in the debt management plan.

(i) Requires that the flat fee authorized under this subchapter be assessed in equal monthly payments for a period that is at least as long as the term of the debt management plan, as estimated when the debt management plan is established, unless the fee payment period is voluntarily accelerated by the consumer in an addendum to the agreement or other separate agreement, and offers of settlement by creditors have been obtained on at least half of the outstanding debt included in the debt management plan.

(j) Provides that the fee limitations in Subsection (g), if a consumer is enrolled in a debt management plan that provides for the settlement of debts for amounts that are less than the principal amount of the debts as a concession from creditors, if fees for debt management services will not be charged or collected until the time a settlement agreement is reached with a creditor, and if at least one payment has been made toward the settlement agreement by or on behalf of the consumer, do not apply, and the provider is authorized to charge reasonable settlement fees. Requires that the fee with respect to

each debt included in the plan bear the same proportional relationship to the total fee for settling all debts included in the debt management plan as the principal amount of the particular debt bears to the total principal amount of the debt included in the plan; or be a percentage of the amount saved as a result of the settlement, determined as the difference between the principal amount of a debt and the amount actually paid to satisfy the debt. Provides that the percentage charged cannot change from one debt to another.

(k) Authorizes a provider to impose fees or other charges or to receive fees or payment under only one of Subsection (f), (g), or (j).

(l) Authorizes a provider, if a consumer does not enter into a debt management service agreement with the provider, to receive payment for debt counseling or education services provided to the consumer in an amount not to exceed \$100 or a greater amount, on approval of the commissioner. Authorizes the commissioner to approve a fee in an amount greater than \$100 if the nature and extent of the educational and counseling services warrant the greater amount.

(m) Requires the provider, if, before the expiration of the 90th day after the date debt counseling or education services are completed or canceled, a consumer enters into a debt management service agreement with a provider, to refund to the consumer any payments received under Subsection (l).

(n) Authorizes the provider, subject to an adjustment made under Section 394.2101, if any payment made by a consumer to a provider under this subchapter is dishonored, to impose a reasonable charge on the consumer not to exceed the lesser of \$25 or an amount permitted by a law other than this chapter. Deletes existing text requiring that any fee charged by a provider be fair and reasonable given the value of the products and services provided to the consumer, including consideration of the amount subject to debt management and the number of anticipated payments. Deletes existing text prohibiting a fee or a portion of a fee that is specifically related to a debt management plan from being charged until the provider has complied with Sections 394.208(a) and (b) (relating to providing a debt management agreement in a language other than English) and 394.209 (Written Debt Management Services Agreement).

Deletes existing Subdivision (d) authorizing a provider to charge a monthly maintenance fee if the fee is fair and reasonable. Deletes existing Subdivision (e) requiring that a fee charged for a service other than a debt management service be fair and reasonable. Deletes existing Subdivision (f) authorizing the Finance Commission of Texas (finance commission) to establish maximum fair and reasonable fees under this section.

SECTION 8. Amends Subchapter C, Chapter 394, Finance Code, by adding Section 394.2101, as follows:

Sec. 394.2101. ADJUSTMENT OF AMOUNTS OF FEES OR OTHER CHARGES.

(a) Requires the commissioner to compute and publish the dollar amounts of fees or other charges in amounts different from the amounts of fees or other charges specified in Section 394.210 (Permitted Fees) to reflect inflation, as measured by the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor or, if that index is not available, another index adopted by finance commission rule. Requires the commissioner to adopt a base year and adjust the dollar amounts, effective on July 1 of each year, if the change in the index from the base year, as of December 31 of the preceding year, is at least 10 percent. Requires that the dollar amounts be rounded to the nearest \$100, except that the amounts of the fees and other charges specified in Section 394.210 must be rounded to the nearest dollar.

(b) Requires the commissioner to notify registered providers of any change in dollar amounts made under Subsection (a) and make that information available to the public.

SECTION 9. Amends Section 394.211(a), Finance Code, to require a provider to use a trust account for the management of all money paid by or on behalf of a consumer and received by the provider for disbursement to the consumer's creditor. Prohibits a provider from commingling the money in a trust account established for the benefit of consumers with any operating funds of the provider. Requires the provider to exercise due care to appropriately manage the funds in the trust account.

SECTION 10. Amends Section 394.213, Finance Code, to provide that a provider has a duty to a consumer who receives debt management services from the provider to ensure that client money held by the provider is managed properly at all times.

SECTION 11. Effective date: September 1, 2011.