



Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: S.B. 251 of the 129th G.A.

Date: December 6, 2011

Status: As Introduced

Sponsor: Sens. Beagle and Sawyer

Local Impact Statement Procedure Required: No

Contents: Requires the licensure and regulation of providers of debt settlement services

State Fiscal Highlights

- The bill requires the licensure of debt settlement service providers. Because the amount of initial license and renewal fees to be charged would be established by rule, it is uncertain precisely how much annual license fee revenue would be generated for the Debt Settlement Services Fund, which the bill creates to fund the Department of Commerce's regulation of those entities. Even so, based on the small number of entities expected to become licensed, the annual revenue is likely to be minimal.
- The Department is likely to incur new costs to review and examine license applicants, investigate complaints, and exercise enforcement authority over debt settlement service providers. However, the amount of any additional expenditures would be limited to available revenues in the Debt Settlement Services Fund.
- The bill applies the Consumer Sales Practices Act (CSPA) to actions by debt settlement service providers that are deemed to be unfair or deceptive. As a result, this could increase the number of complaints handled by the Office of the Attorney General's Consumer Protection Section, which is funded out of the GRF and the Consumer Protection Enforcement Fund (Fund 6310). However, the number and scope of complaints filed, investigations performed, and enforcement actions that would be taken as a result of the bill are unknown.

Local Fiscal Highlights

- The bill permits civil actions to be filed by both the Attorney General's Office and aggrieved individuals. As a result, the number of civil cases filed in county and municipal courts may increase. The actual number of cases filed would most likely be relatively small as, under current practice, the Attorney General's Office would seek to use every means available to resolve a complaint before filing in court. The filing of such civil suits would likely generate some additional filing fee and court cost revenue for counties and municipalities and place some additional burdens on the courts that will have to adjudicate these matters.

Detailed Fiscal Analysis

Background

The bill requires the licensure and regulation of debt settlement service providers. The bill is based in large part on the Uniform Debt Management Services Act (UDMSA), which was developed by the National Conference of Commissioners on Uniform State Laws (NCCUSL). The bill defines "debt settlement services" as services provided by an intermediary between an individual and one or more unsecured creditors of the individual for the purpose of obtaining concessions under which a creditor accepts less than the balance owed as payment in full of the debt. Debt settlement service providers do not make regular payments to a debtor's creditors. Rather, a debt settlement service provider typically encourages the debtor to stop making payments to creditors and instead make monthly payments to a savings or other dedicated account according to a plan developed by the debt settlement service provider. When the payments in the account reach a target percentage of the debt owed, the service provider submits an offer to the creditor on the debtor's behalf to settle with a lump sum of cash in the account. However, as the debtor is making payments to the account, creditors are not being paid. Thus, a creditor is likely to impose additional finance charges and penalties and may commence collection activities, which could include litigation.

The bill differs from the UDMSA model law in that it excludes credit counseling companies from its purview. In general, a credit counseling company establishes a "debt management plan" with a debtor, under which the credit counseling company receives payments from the debtor and then disburses those payments to creditors on behalf of the debtor, the goal being to enable a consumer to fully repay their debts under renegotiated terms. Under current law, credit counselors are covered as "debt adjusters" or, if the entity is for-profit, they may fall under the definition of a "credit service organization" if they provide certain services. These categories are covered under different sections of law. Debt adjusters must undergo an annual audit and submit the results and auditor's opinion to the Consumer Protection Section in the Office of the Attorney General. Debt adjusters are also limited in the fees that they may charge. Credit service organizations are licensed by the Department of Commerce.

The current law definition of "debt adjusting" includes those companies that effect the adjustment, compromise, or discharge of any account, note, or other indebtedness of a debtor. Thus, debt settlement service providers would appear to fall under the current law definition of debt adjusting. The bill amends current law to exclude debt settlement services from the definition of debt adjusting.

It is also important to note that in the fall of 2010 the Federal Trade Commission adopted amendments to the "Telemarketing Sales Rule" that concern the telemarketing of debt relief services. These changes define debt relief services, prohibit debt relief

providers from collecting fees until after services have been provided, require specific disclosures of material information about offered debt relief services, prohibit specific misrepresentations about material aspects of debt relief services, and extend the rule's coverage to include inbound calls made to debt relief companies in response to general media advertisements. In July of this year, the NCCUSL adopted revisions to the UDMSA to make the model law consistent with the federal rule.

Fiscal effects

License fee revenue

The bill requires debt settlement service providers to obtain a license from the Department of Commerce. The term of the license may be no more than two years. License fees paid by debt settlement service providers are to be deposited into the Debt Settlement Services Fund, which the bill creates. The fund is to be used to administer the debt settlement services regulation program. The precise amount of revenue generated by the fees is uncertain, as the bill requires the license fees to be reasonable and established in rule by the Director of Commerce. License fees are to be adjusted for inflation based on the Consumer Price Index (CPI). Specifically, the Director of Commerce is to adopt a base year and adjust the dollar amounts of the fees if the change in the index from the base year is at least 10%. The dollar amounts are to be rounded to the nearest \$10.

In recent years, a number of states have enacted legislation regulating debt settlement service providers in response to the proliferation of such companies. Much of the growth in this market niche can be attributed to a weak economy in which an increasing number of consumers are unable to repay their debts. The states that have enacted regulation include Colorado, Delaware, Illinois, Maryland, Minnesota, Nevada, North Dakota, Rhode Island, Tennessee, Texas, and Utah. Nevertheless, the number of licensed debt settlement service providers in the states that have adopted a law regulating these entities in recent years appears to be small. The state with the most licensees appears to be Tennessee, with around 29 licensed debt settlement service providers.

If the above information is any indication, the number of providers seeking licensure in Ohio is likely to be rather small. The annual fees associated with initial licensure and renewals vary amongst the states that have adopted a UDMSA-based law. Most are in the \$1,000 to \$2,000 range, though some are as low as \$200 to \$300. If the number of debt settlement service providers receiving a license in Ohio is, in fact, small and assuming Ohio were to adopt a similar fee structure as other UDMSA-based states, annual revenue to the Debt Settlement Services Fund is likely to be minimal.

Administration and enforcement

The bill places various requirements and prohibitions on debt settlement service providers. Among other provisions, providers must be bonded, maintain customer service systems, provide a financial analysis with respect to the income and debts of the

individual seeking the service, provide certain disclosures to consumers, abide by certain requirements with respect to debt settlement agreements, and keep an accounting of the debt settled and terms of the settlement.

Department of Commerce

The bill requires the Director of Commerce to administer and enforce these provisions, and gives the Director the authority to investigate providers at the Director's initiative, or as a result of a complaint, take action to obtain voluntary compliance, and seek or provide remedies for violations. This can include suspending or revoking a license, ordering a licensee to correct a violation by making restitution, and imposing civil penalties. Civil penalties assessed may not exceed \$1,000 per violation or failure to comply unless a person violates or fails to comply with a final order issued by the Director. In this case, there can be an additional civil penalty of up to \$1,000 per violation or failure to comply. These penalties would be deposited into the Debt Settlement Services Fund, with the amounts adjusted each year for inflation, just as the license fees are.

In addition to these steps, the Department of Commerce may litigate (via the Attorney General's Office) if it is necessary to enforce the bill. Under the authority, the Director is permitted to recover the reasonable expenses incurred to bring actions or proceedings necessary to enforce the bill, including attorney's fees. However, the alleged violator must be afforded the opportunity for a hearing before any enforcement action can be taken. Any action or proceeding brought by the Director of Commerce must be commenced within two years after the conduct that is the basis of the Director's complaint occurs.

As a result of these new responsibilities, the Department of Commerce is likely to incur some new costs for reviewing and approving license applications, investigating complaints, and carrying out enforcement actions. Specifically, the Department of Commerce indicated that the workload associated with licensing and examinations can be substantial. All of the anticipated licensees are expected to be out of state. Thus, examinations would be more time consuming and involve greater expense than examinations for in-state firms. Nevertheless, the amount of any additional expenditures would be limited to available revenues in the Debt Settlement Services Fund, which, as noted above, are likely to be minimal on an annual basis.

Consumer Sales Practices Act and private rights of action

In addition to the enforcement authority granted to the Director of Commerce, the bill provides a right of action for individuals to seek remedies for violations of the bill. If a violation is deemed to be an unfair or deceptive practice, which the bill also considers any violation committed by an unlicensed provider, the Consumer Sales

Practices Act (CSPA) would apply.¹ While the number and scope of related complaints filed, investigations performed, and enforcement actions that would be taken as a result of the bill are unknown, the CSPA permits the Attorney General or consumers of debt settlement services to file a civil action to pursue remedies. It is uncertain how many consumers will elect to pursue a civil remedy without the assistance of the Attorney General, but the number is assumed to be small as these consumers would, most likely, report a complaint to the Attorney General's Office initially and then allow the Consumer Protection Section to seek a resolution to the complaint.

As a result of the above enforcement provisions, the number of civil cases filed in county and municipal courts may increase. However, the actual number of cases filed would most likely be relatively small as, under current practice, the Attorney General's Office or the Department of Commerce would seek to use every means available to resolve a complaint before filing in court. The filing of such civil suits would likely generate some additional filing fee and court cost revenue for counties and municipalities and place some additional burdens on the courts that will have to adjudicate these matters. If the Attorney General's Office successfully pursues a civil remedy under preexisting Consumer Sales Practice Law, the court adjudicating the matter may order civil penalties up to \$25,000. Three-quarters of this civil penalty would be awarded to the Attorney General's Office. The remaining one-quarter of the civil penalty that violators could be ordered to pay would go to the treasury of the county where the case took place (as much as \$6,250 if the \$25,000 maximum possible fine is assessed).

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¹ For details concerning the rights of action afforded under the bill and the circumstances under which they may be brought, please consult the LSC bill analysis.