

HOUSE RESEARCH

Bill Summary

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Overview

Section

- 1** **Scope.** Technical change to add debt settlement services providers to a list of entities to which the commerce department's enforcement authority applies.
- 2** **General.** Same as section 1, but specific to financial institutions.
- 3** **Supervision over financial institutions.** Technical change consistent with section 2.
- 4** **Assessment authority.** Requires debt settlement services providers to pay the cost to the commerce department of regulating them, on the same basis as other types of businesses.
- 5** **Telephone solicitation.** Makes nonprofit debt settlement providers subject to the state's "do not call list," regardless of the exemption for other types of nonprofit organizations.
- 6** **Advertise.** Defines the term as soliciting business through any means or medium,
- 7** **Controlling or affiliated party.** Amends the existing definition to more completely cover relationships between individuals and entities, in which one of them controls the other or in which both are under the common control of another individual or entity.
- 8** **Debt management services provider.** Expands this existing definition to include a person to whom duties under a debt management services agreement or debt management services plan are delegated. Eliminates exemption from regulation for debt management services provided by financial institutions, credit unions, and collection agencies if they do not charge a fee, but exempts them instead if they perform the services for a creditor. Also makes a technical change in clause (11) and separates credit unions from that clause.
- 9** **Debt management services.** Revises the existing definition of this term to better describe the services as a comprehensive package of related activities.

- 10 Debtor.** Replaces archaic language (“debt prorating”) with the more modern term redefined in section 9.
- 11 Debt settlement services provider.** Amends this definition to conform to the new definition provided in section 17.
- 12 Right of action on bond.** Rewords existing law on when a debt settlement services provider is in default of its agreement with its customer, permitting the customer to sue on the bond or other security provided by the debt settlement services provider.
- 13 Denial of registration.** Adds a pattern of failing to provide the services promised as an additional reason permitting the commissioner of commerce to deny registration to an applicant for registration as a debt management services provider.
- 14 Written debt management services agreement.**
- Subd. 1. Written agreement required.** Requires that a debt management services agreement show whether the provider is registered with the commerce department, show the registration number, and be written in the customer’s native language if the debt management services provider advertised in that language.
- Subd. 2. Actions prior to written agreement.** Makes requirements that apply to providing debt management services also apply to signing a contract to provide them. Also requires a person who seeks to provide debt management services to disclose to the customer, prior to entering into the contract, whether the provider is registered with the commerce department and, if so, the provider’s registration number.
- Subd. 3. Required provisions.** Clarifies language on origination fees.
- Subd. 4. Prohibited terms.** Prohibits a choice of law clause. (A choice of law clause is a provision in a contract specifying which state’s laws apply to the contract.)
- Subd. 5. New debt management services agreements; modification of existing agreements.** Purely technical clarifications.
- 15 Notice of debtor’s right to cancel.** Makes a technical clarification.
- 16 Prohibitions.** Prohibits a debt management services provider from advising or otherwise attempting to influence a debtor to stop paying a creditor.
- 17 Definitions.** This section begins the part of the bill that creates new chapter of law to regulate debt settlement services providers. This section defines terms used in this new chapter of law.
- 18 Requirement of registration.** Requires debt settlement services providers to register with the commissioner of commerce.
- 19 Registration.** Specifies the process for registering as a debt settlement services provider, including the registration form, fees and bond requirements, provision of a list of registrants on the Commerce Department website, and registration renewal requirements.
- 20 Denial, suspension, revocation, or nonrenewal of registration.** Permits denial, suspension, revocation, or nonrenewal of a debt settlement services provider registration on

the same basis now used for debt management services providers under chapter 332A.

- 21 **Written debt settlement services agreement; disclosures; trust account.** Specifies what must to be (and must not be) in a debt settlement services contract and what has to happen prior to entering into the contract. Requires that the debtor's funds advanced to the provider be held in a separate trust account until earned by the provider or disbursed to a creditor or to the debtor.
- 22 **Right to cancel.** Specifies the rights of both sides to terminate the contract.
- 23 **Books, records, and information.** Requires a debt settlement services provider to keep records of its activities and provide them to the commissioner or the debtor as required in this section.
- 24 **Fees, payments, and consent of creditors.** Limits the amount and types of fees charged to the debtor. Requires the debt settlement services provider to try to get consent from creditors for the plan proposed by the provider for the debtor to (usually partially) pay off the debts over time.
- 25 **Prohibitions.** Lists 14 things a debt settlement services provider must not do.
- 26 **Advertisement of debt settlement services plan.** Prohibits debt settlement services providers from claiming that debts secured by collateral may be settled for less than the amount owing.
- 27 **Debt settlement services agreement rescission.** Permits a debtor to rescind a debt settlement services contract if the provider has materially violated this chapter of laws.
- 28 **Enforcement; remedies.** Specifies how this chapter of law may be enforced, including a private cause of action and enforcement by the attorney general.
- 29 **Investigations.** Permits the commissioner of commerce to investigate the activities of a debt settlement services provider, including by requiring a financial audit.