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## DIGEST

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Ponti

HB No. 567

**Abstract:** Allows debt management and debt settlement services in the state and provides for registration and regulation by the office of the attorney general.

Proposed law provides relative to debt relief services as follows:

- (1) Defines "affiliate", "control", "debt management plan", "debt relief provider" or "provider", "debt relief services", "debt settlement plan", "principal amount of debt" and "trust account".
- (2) Prohibits anyone from engaging in the business of providing debt relief services without first being registered by the attorney general. Requires the application to be accompanied by a fee of \$1,500, evidence of a surety bond with the principal amount the greater of \$50,000 or the average daily balance of client funds under management for the preceding six months, proof of authority to conduct business, and a statement declaring material matter on the application as true.
- (3) Requires the application to require at a minimum:
  - (a) A statement informing the applicant that a false or dishonest answer may be ground for denial or suspension or revocation.
  - (b) The applicant's name, business address, telephone number, e-mail address and Internet website address.
  - (c) All names under which applicant conducts business in the state.
  - (d) The address of each location in the state where debt relief services will be provided.
  - (e) A copy of each form of agreement that the applicant will use with clients in the state.
  - (f) The schedule of fees and charges that will be used.
- (4) Allows the attorney general to deny the issuance of a registration certificate for any of the following:
  - (a) The application contains information that is materially erroneous or incomplete.
  - (b) An officer, director or owner has been convicted for a crime or has a civil judgment involving dishonesty or a violation of federal or state securities law.

- (c) The application does not include the required fee or bond.
- (5) Requires the attorney general to approve or deny an application within 60 days of filing, although allows an extension of 45 days. Requires the attorney general to inform an applicant of denial and reasons for such in writing and within seven days. Decisions of the attorney general may be appealed in accordance with the APA.

- (6) Provides that registrations are valid for one year and requires annual renewal meeting the following criteria:
  - (a) Filed not less than 30 days nor more than 60 days before expiration.
  - (b) Accompanied by \$1,500 fee.
  - (c) Discloses any changes in information in prior registration.
  - (d) Provides any other information that the attorney general requests.
- (7) Requires the attorney general to notify of denial of renewal and reasons for such. Requires the attorney general to revoke, suspend or deny renewals on any ground on which he may refuse to grant a registration. Allows for appeals of denial within 30 days and in accordance with the APA through the division of administrative law. Allows the applicant to continue providing debt relief services while pending an appeal.
- (8) Prohibits the attorney general from denying or revoking registration without a hearing. Requires at least 20 days written notice of the time and place of the hearing. Requires the order to state the grounds upon which the denial or revocation was based.
- (9) Requires a provider to disclose the following information prior to enrolling an individual in debt relief services:
  - (a) A good faith estimate of the amount of time necessary to achieve the represented results and the cost of providing the services.
  - (b) A good faith estimate of the amount of money or percentage of each outstanding debt that the individual must accumulate before the provider is able to make a settlement offer to creditors, if the debt relief service may include a settlement offer to creditors.
  - (c) That failure to make timely payments to creditors, if any extent of the debt relief service relies on or results in the individual's failure to make such payments, will likely adversely affect creditworthiness and may result in collection actions or suit and may increase the amount of money owed due to the accrual of fees and interest.
  - (d) That the individual owns the funds held in an account, if any extent of the service requires the individual to place funds in an account, and that the individual may withdraw from services at any time without a penalty and that all funds in the account, minus those earned by the provider, will be returned to the individual.
  - (e) That funds held by the provider, if any extent of the service requests or requires the individual to make payments to the provider for the purpose of distributing funds to creditors, will be placed in a trust account for that purpose.
- (10) Requires the provider, prior to enrolling an individual in a debt relief service, to:
  - (a) Determine that the individual has a reasonable ability to make payments under the proposed plan.
  - (b) Provide a separate written document to the individual that clearly and

conspicuously states:

- (i) That debt relief services are not suitable for all individuals and that the individual may seek independent information about other ways to deal with indebtedness.
  - (ii) That debt relief services may adversely affect credit ratings or scores.
  - (iii) That nonpayment of debt may lead to increased finance or other charges or collection activity.
  - (iv) That if the provider is a nonprofit or tax-exempt organization, the provider cannot require donations or contributions.
  - (v) That if a debt is settled for less than full balance, the reduction may result in tax liability.
  - (vi) That, if applicable, some of the provider's funding may come from creditor contributions.
- (11) Requires those providing debt management services, prior to enrolling an individual, to:
- (a) Provide individualized counseling and educational information.
  - (b) Prepare an individualized financial analysis and specific debt relief plan.
  - (c) Establish a reasonable expectation whether each creditor will accept payment as provided in the plan.
  - (d) Prepare a written list provided to the individual of the creditors reasonably expected to participate in the plan.
- (12) Prohibits a provider from misrepresenting any material aspect of any debt relief service.
- (13) Requires a provider who enrolls an individual in a debt management plan to:
- (a) Maintain a separate trust account depositing all payments received from the individual for disbursement to creditors under the plan.
  - (b) Maintain separate records of account for each individual.
  - (c) Disburse funds to creditors within 30 days of receipt or earlier if necessary to comply with the due dates established by agreement with the creditor.
  - (d) Promptly correct any payments not made or misdirected.
  - (e) Reconcile trust accounts at least once a month.
- (14) Allows a provider providing debt management services to charge a set-up fee not to exceed \$75 and a monthly service fee not exceeding the greater of 15% of the payments to be disbursed or \$75 per month.
- (15) Prohibits a provider providing debt settlement services from receiving any fee for services until all the following are satisfied:
- (a) Provider has maintained separate records of account for each individual.
  - (b) Provider has renegotiated, settled, reduced or altered the terms of at least one debt

- under the plan.
- (c) Individual has made at least one payment to a creditor in furtherance of a settlement.
  - (d) Consideration or fee for settling each individual debt shall either:
    - (i) Bear the same proportional relationship to the total fee for settling the entire debt balance as the individual debt amount bears to the entire debt amount.
    - (ii) Be a percentage of the amount saved as a result of the settlement of each debt.
- (16) Allows a provider of debt settlement services to place funds in a third party account to be used for the payment of provider fees and payments to creditors if:
- (a) The funds are held in a specifically designated account at an insured financial institution.
  - (b) The individual, not the provider, owns and controls the funds in the account and is paid the accrued interest, if any.
  - (c) The provider does not administer the account and the entity administering the account is not owned or controlled by, or an affiliate of, the provider.
  - (d) The entity administering the account does not give or accept any compensation in exchange for referrals of business by the provider.
  - (e) The individual may withdraw from the settlement plan at any time without penalty and shall receive all funds in the third-party account, other than funds earned by the provider and as specified in the account agreement.
  - (f) The entity administering the account shall reconcile the account at least once a month.
- (17) Allows the individual enrolled in any debt relief service to terminate the service at any time without penalty by giving notice to the provider in writing.
- (18) Specifies that if an individual assents to an agreement with a provider not registered as required by this Chapter, the agreement is voidable by the individual. Requires the provider to, after termination and within seven days, ensure the individual receives all money received from or on behalf of the individual other than amounts properly disbursed to creditors and fees earned as provided.
- (19) Prohibits a debt relief provider, directly or indirectly, from:
- (a) Misappropriating funds held in trust or third-party accounts.
  - (b) Settling debt on behalf of an individual without his agreement to the settlement terms.
  - (c) Exercising or attempting to exercise power of attorney after termination of an agreement.
  - (d) Initiating a transfer from a trust or third-party account to a financial institution

unless it is a return of money to the individual or, before the termination, it is for payment to a creditor pursuant to a plan or for payment of a fee.

- (e) Offering a gift or other compensation to an individual for executing an agreement.
- (f) Offering or giving a gift of other compensation to a person for referring a prospective customer if the person making the referral has a financial interest in the outcome of the services provided to the individual.
- (g) Receiving a bonus, commission, or other benefit for referring an individual, except for a sales lead when the person making the referral has no financial interest in the outcome of the services provided.
- (h) Structuring a debt relief plan in a manner that would result in a negative amortization of an individual's debts, unless a creditor agrees to refund or waive finance charges and penalties upon payment of the principal debt.
- (i) Compensating employees on the basis of a formula incorporating the number of individuals induced to enter into agreements.
- (j) Settling a debt unless the individual receives written assurance from the creditor that upon final payment the debt will be paid in full.
- (k) Representing any of the following:
  - (i) That the provider will furnish money to pay bills or prevent attachments.
  - (ii) That the payment of a certain amount will permit satisfaction of a certain range of indebtedness.
  - (iii) That participation in a debt relief plan will or may prevent litigation, collection, garnishment, attachment, repossession, foreclosure, eviction or loss of employment.
- (l) Misrepresenting that it can furnish or perform legal advice or services.
- (m) Representing that it is a not-for-profit entity, unless it is such under the US Internal Revenue Code.
- (n) Taking a confession of judgment against an individual.
- (o) Advising an individual not to make a payment to creditors under a debt relief plan.
- (p) Purchasing debt or obligations of clients, either directly or through an affiliate.
- (q) Receiving from or on behalf of the individual a promissory note or a post-dated check.
- (r) Lending money or providing credit to the individual, except as a deferral of fees at no additional expense.
- (s) Obtaining a mortgage or other security interest.
- (t) Disclosing the identity of the individual or his creditors except as permitted by federal law, upon proper demand by the attorney general, and to a creditor to the extent necessary for cooperation in the debt relief plan.
- (u) Providing the individual with less than the full benefit of a compromise of debt.
- (v) Charging the individual for or receiving compensation for goods or services not directly related to debt relief or educational services. Allows for the offer of goods and services that may likely improve the individual's financial situation if given on a purely voluntary basis.
- (w) Furnishing legal advice or performing legal services unless licensed to practice law.
- (x) Receiving, other than allowable fees, compensation directly or indirectly for

assisting an individual in obtaining an extension of credit or other services from a lender, except for educational or counseling services required in connection with a government sponsored program.

- (y) Purchasing goods or services from an employee or affiliate, unless such person supplies goods or services generally and supplies them to the provider at a cost no greater than the cost generally charged to others.
- (20) Requires notification to the attorney general within 30 days of any of the following:
- (a) The provider files for bankruptcy.
  - (b) The provider or its affiliate is convicted of a felony.
  - (c) The provider discovers that client funds have been embezzled or stolen.
- (21) Provides the Chapter shall not apply to:
- (a) Situations involving debt relief services provided by a licensed attorney incidental to that practice.
  - (b) Banks and fiduciaries.
  - (c) Title insurers and abstract companies.
  - (d) Persons acting pursuant to a court order.
  - (e) Situations involving debt relief services provided by a CPA incidental to that practice.
  - (f) Bona fide trade or mercantile associations in the course of arranging adjustment of debt with business establishments.
  - (g) Employers for their employees.
  - (h) Any person who is a creditor of the individual adjusting the individual's debt without cost to the individual.
- (22) Allows for any individual or organization to administer a debt relief plan free of charge.
- (23) Allows the attorney general to promulgate rules and regulations pursuant to the APA, including but not limited to accreditation and certification.
- (24) Provides any violation as constituting an unfair trade practice under the Unfair Trade Practices and Consumer Protection Law and subjects violators to all fines and penalties contained therein. Allows the attorney general to enforce this Chapter using all rights, authority, remedies, and enforcement relief available and contained in the Unfair Trade Practices and Consumer Protection Law.
- (25) Repeals present law provisions in the criminal statutes prohibiting debt adjusting when conducted for profit.
- (26) Repeals present law provisions regulating financial planning and management services by the director of occupational standards.

Effective Jan. 1, 2014.

(Adds R.S. 51:1450.1-1450.15; Repeals R. S. 14:331 and R.S. 37:2581-2600)

Summary of Amendments Adopted by House

Committee Amendments Proposed by House Committee on Commerce to the original bill.

1. Defined "principal amount of debt".
2. Clarified hearing process for appeals and denial of renewals, suspensions and revocation. Provides for adjudicatory hearings through the division of administrative law.
3. Made various technical changes.