

Regular Session, 2013

HOUSE BILL NO. 567

BY REPRESENTATIVE PONTI

Prefiled pursuant to Article III, Section 2(A)(4)(b)(i) of the Constitution of Louisiana.

FINANCIAL PLANNING: Provides relative to debt relief services

1 AN ACT

2 To enact Chapter 13-C of Title 51 of the Louisiana Revised Statutes of 1950, to be
3 comprised of R.S. 51:1450.1 through 1450.15, and to repeal R. S. 14:331 and R.S.
4 37:2581 through 2600, relative to debt management and debt settlement services; to
5 provide for definitions; to provide for registration, bonds and fees; to provide for
6 debt relief services; to provide for termination of services; to provide for prohibited
7 activities; to provide for notification requirements; to provide exceptions; to provide
8 for rules and regulations; to provide for violations, enforcement and penalties; and
9 to provide for related matters.

10 Be it enacted by the Legislature of Louisiana:

11 Section 1. Chapter 13-C of Title 51 of the Louisiana Revised Statutes of 1950,
12 comprised of R.S. 51:1450.1 through 1450.15, is hereby enacted to read as follows:

13 CHAPTER 13-C. DEBT MANAGEMENT AND DEBT SETTLEMENT SERVICES

14 §1450.1. Definitions.

15 As used in this Chapter, the following words shall have the following
16 meanings, unless the context clearly indicates otherwise:

17 (1) "Affiliate" means any of the following:

18 (a) A person that directly controls, is controlled by or is under common
19 control with a provider.

1 (b) An officer or director of, or individual performing similar functions with
2 respect to a person that directly controls, is controlled by or under common control
3 with a provider.

4 (c) An officer or director of, or individual performing similar functions with
5 respect to the provider.

6 (2) "Control" means the right to control ten percent or more of the voting
7 power of another person.

8 (3) "Debt management plan" means a written agreement or contract between
9 a debt relief provider and an individual whereby the provider, in return for payment
10 by the individual, will provide debt relief services that contemplate that creditors will
11 reduce finance charges or fees for late payment, default, or delinquency.

12 (4) "Debt relief provider" or "provider" means a person who provides or
13 offers to provide debt relief services for a consideration.

14 (5) "Debt relief services" means any program or service represented, directly
15 or by implication, to renegotiate, settle, or in any way alter the terms of payment or
16 other terms of the debt between an individual and one or more unsecured creditors
17 or debt collectors, including but not limited to, a reduction in the balance, interest
18 rate, or fees owed by a person to an unsecured creditor or debt collector.

19 (6) "Debt settlement plan" means a written agreement or contract between
20 a debt relief provider and an individual whereby the provider, in return for payment
21 by the individual, will provide debt relief services that contemplate that creditors will
22 settle debts for less than the principal amount of debt.

23 (7) "Trust account" means an account held by a provider that is all of the
24 following:

25 (a) Established in an insured financial institution.

26 (b) Held separate from any other accounts of a provider.

27 (c) Designated as a trust account or other account designated to indicate
28 clearly that the funds in the account are not the money of the provider.

1 (d) Used to hold the funds of one or more individuals for disbursement to the
2 creditors of the individual or individuals.

3 §1450.2. Registration; bond required; fee

4 A. No person shall engage in the business of providing debt relief services
5 without having first obtained a registration as a debt relief provider pursuant to this
6 Chapter.

7 B. An application for registration shall be in the form prescribed by the
8 attorney general.

9 C. An application for registration as a provider shall be accompanied by all
10 of the following:

11 (1) A fee not to exceed one thousand five hundred dollars.

12 (2) Evidence of a surety bond in the principal sum of fifty thousand or the
13 average daily balance of client funds under management for the preceding six
14 months, whichever is greater, for the benefit of any individual who is damaged by
15 the provider's breach of a contract for the provision of debt relief service or the
16 provider's failure to directly or through a third party properly administer funds
17 collected by a provider from an individual or disbursed by a provider on an
18 individual's behalf. The attorney general may investigate any complaint and make
19 claim on a bond for the benefit of an individual or release the bond to an individual
20 to make a claim.

21 (a) The surety bond shall be issued by a bonding company or insurance
22 company authorized to do business in this state and shall be in a form satisfactory to
23 the attorney general.

24 (b) The bond shall run to and be deposited with the attorney general for the
25 use and benefit of the state and of individuals who reside in the state when they agree
26 to receive debt relief services from the provider, as their interests may appear,
27 payment of which is conditioned upon failure of the provider or its agent to comply
28 with the provisions of this Chapter.

1 (3) Proof that the applicant is authorized by the laws of this state to conduct
2 business in this state.

3 (4) A statement from the applicant declaring as true any material matter
4 pursuant to the application of registration.

5 §1450.3. Application

6 A. The application form shall include, at a minimum, all of the following:

7 (1) A statement informing the applicant that a false or dishonest answer to
8 a question may be grounds for denial or subsequent suspension or revocation of the
9 applicant's registration.

10 (2) The applicant's name, principal business address, telephone number, and
11 all other business addresses in the state, electronic mail addresses, and internet
12 website addresses.

13 (3) All names under which the applicant conducts business in the state.

14 (4) The address of each location in the state at which the applicant will
15 provide debt relief services or a statement that the applicant will have no such
16 location.

17 (5) A copy of each form of agreement that the applicant will use with
18 individuals who reside in the state.

19 (6) The schedule of fees and charges that the applicant will use with
20 individuals who reside in the state.

21 B. An applicant or provider shall notify the attorney general within sixty
22 days after a material change in the information provided.

23 §1450.4. Certificate of registration; denial

24 A. Except as provided in Subsection B of this Section, the attorney general
25 shall issue a certificate of registration as a provider to any person that complies with
26 the provisions of this Chapter.

27 B. The attorney general may deny the issuance of a registration certificate
28 for any of the following reasons:

1 (1) The application contains information that is materially erroneous or
2 incomplete.

3 (2) An officer, director, or owner of the applicant has been convicted of a
4 crime or suffered a civil judgment involving dishonesty or the violation of federal
5 or state securities laws.

6 (3) The application is not accompanied by the fee or the bond required by
7 this Chapter.

8 C. The attorney general shall approve or deny an initial registration as a
9 provider within sixty days after an application is filed. The attorney general may
10 extend the sixty-day period for not more than forty-five days. Within seven days
11 after denying an application, the attorney general, in writing, shall inform the
12 applicant of the reasons for the denial.

13 D. If the attorney general denies an application for registration as a provider
14 or does not act on an application within the time prescribed in this Section, the
15 applicant may appeal the decision of the attorney general pursuant to the
16 Administrative Procedure Act.

17 E. The certification of registration as a provider issued pursuant to this
18 Chapter shall be valid for a one year period.

19 §1450.5. Registration renewal

20 A. A provider shall obtain a renewal of its registration annually.

21 B. The application for renewal of registration as a provider shall be in a form
22 prescribed by the attorney general, and shall meet the following criteria:

23 (1) Be filed not less than thirty days nor more than sixty days before the
24 registration expires.

25 (2) Be accompanied by a fee not to exceed one thousand five hundred
26 dollars.

27 (3) Disclose any changes in the information contained in the provider's
28 application for registration or its immediately previous application for renewal, as
29 applicable.

1 (4) Provide any other information that the attorney general reasonably
2 requires to perform his duties under this Chapter.

3 C. If a provider files a timely and complete application for renewal of
4 registration, the registration remains effective until the attorney general notifies the
5 applicant of a denial and states the reasons for denial.

6 D. If the attorney general denies an application for renewal of registration
7 as a provider, the applicant, within thirty days after receiving notice of the denial,
8 may appeal the attorney general's decision in accordance with the Administrative
9 Procedure Act. While the appeal is pending, the applicant shall continue to provide
10 debt relief services to individuals with whom it has agreements until, with approval
11 of the attorney general, it transfers the agreements to another registered provider.

12 §1450.6. Suspension, revocation, or nonrenewal of registration

13 The attorney general shall revoke, suspend or deny the renewal of a
14 registration on any ground on which he may refuse to grant or renew a registration
15 or for a violation of any provision of this Chapter.

16 §1450.7. Hearings

17 A. No registration shall be denied or revoked except after a hearing thereon.
18 The attorney general shall give the applicant or registered provider at least twenty
19 days written notice of the time and place of the hearing. The notice shall be by
20 registered or certified mail addressed to the principal place of business of such
21 applicant or registered provider.

22 B. Any order of the attorney general denying or revoking such registration
23 shall state the grounds upon which it is based and shall not be effective until twenty
24 days after written notice thereof has been sent by registered or certified mail to the
25 applicant or provider at such principal place of business.

26 §1450.8. Debt relief services

27 A. Prior to enrolling an individual in debt relief services, the provider shall
28 disclose, in a clear and conspicuous manner, the following material information:

1 (1) A good faith estimate of the amount of time necessary to achieve the
2 represented results, and to the extent that the debt relief services may include a
3 settlement offer to any of the individual's creditors or debt collectors for less than the
4 principal amount of the debt, a good faith estimate of the time by which the provider
5 will make a bona fide settlement offer to the individual's creditors, and the cost to the
6 individual for providing debt settlement services.

7 (2) To the extent that the debt relief services may include a settlement offer
8 to any of the individual's creditors or debt collectors, a good faith estimate of the
9 amount of money or the percentage of each outstanding debt that the individual shall
10 accumulate before the provider will make a bona fide settlement offer to one or more
11 of such creditors.

12 (3) To the extent that any aspect of the debt relief services relies upon or
13 results in the individuals failure to make timely payments to creditors or debt
14 collectors, that failure to make such payments will likely adversely affect the
15 individual's creditworthiness, may result in the individual being subject to collection
16 actions or sued by creditors or debt collectors, and may increase the amount of
17 money the individual owes due to the accrual of fees and interests.

18 (4) To the extent that the provider of debt settlement services requests or
19 requires the individual to place funds in an account at an insured financial institution,
20 that the individual owns the funds held in the account, and that the individual may
21 withdraw from the debt settlement services at any time without penalty and, if the
22 individual withdraws, the individual shall receive all funds in the account, other than
23 the funds earned by the provider, as specified in the account agreement between the
24 individual and the financial institution.

25 (5) To the extent that the provider requests or requires the individual to make
26 payments to the provider for the purpose of distributing funds to the individual's
27 creditors, such funds shall be held by the provider in trust and deposited within five
28 business days into a trust account established by the provider for the purpose of

1 carrying out the objectives of the debt management plan as provided in Subsection
2 E of this Section.

3 B. Prior to enrolling an individual in a debt relief service, the provider shall:

4 (1) Determine that the individual has a reasonable ability to make payments
5 under the proposed debt relief plan based on the information provided by the
6 individual.

7 (2) Provide a separate written document to the individual in a form the
8 individual may keep that clearly and conspicuously contains the following
9 statements:

10 (a) That debt relief services are not suitable for all individuals and that
11 individuals may independently seek information about other ways to deal with
12 indebtedness, including bankruptcy.

13 (b) That any debt relief services may adversely affect the individual's credit
14 rating or credit scores.

15 (c) That nonpayment of debt may lead creditors to increase finance and other
16 charges or undertake collection activity, including litigation.

17 (d) That if the debt relief provider is a nonprofit or tax-exempt organization,
18 the provider cannot require donations or contributions.

19 (e) That if a debt is settled for less than full balance, the reduction may result
20 in tax liability.

21 (f) That, if applicable, some of the provider's funding may come from
22 creditor contributions.

23 C. In addition to the requirements in Subsection B of this Section, prior to
24 enrolling an individual in a debt management plan, the provider shall:

25 (1) Provide individualized counseling and educational information that, at
26 a minimum, address the topics of managing household finances, managing credit and
27 debt, and budgeting.

1 (2) Prepare an individualized financial analysis and an initial debt relief plan
2 for the individual's debts with specific recommendations regarding actions the
3 individual should take.

4 (3) Establish a reasonable expectation, provided that the individual has
5 provided accurate information to the provider, whether each creditor of the
6 individual listed in the debt relief plan will accept payment of the individual's debts
7 as provided in the initial plan.

8 (4) Prepare, with respect to all creditors identified by the individual or
9 identified through additional investigation by the debt relief provider, a written list
10 which shall be provided to the individual, in a form the individual may keep, of the
11 creditors that the provider reasonably expects to participate in the plan.

12 D. A provider shall not misrepresent, directly or by implication, any material
13 aspect of any debt relief services, including but not limited to the following:

14 (1) The amount of money or the percentage of the debt amount that an
15 individual may save by using such service.

16 (2) The effect of the service on the individual's creditworthiness.

17 (3) The effect of the service on collection efforts of the individual's creditors
18 or debt collectors.

19 (4) The percentage or number of individuals who attain the represented
20 results.

21 (5) Whether debt relief services are offered or provided by a nonprofit entity.

22 E. A debt relief provider who enrolls an individual in a debt management
23 plan shall:

24 (1) Maintain a separate trust account and deposit in the account all payments
25 received from the individual for disbursement to creditors under the plan. All
26 disbursements, whether to the individual or to the creditors of the individual, shall
27 be made from such account, except that disbursements may be made from a trust
28 account to an account established solely for the purpose of making disbursements to
29 individuals and creditors.

1 (2) Maintain separate records of account for each individual to whom the
2 provider is furnishing services.

3 (3) Disburse any funds paid by or on behalf of an individual to creditors of
4 the individual within thirty days after receipt of the funds, or earlier if necessary to
5 comply with the due dates established by the agreement between the individual and
6 the creditor, unless the reasonable payment of one or more of the individual's
7 obligations requires that the funds be held for a longer period so as to accumulate a
8 sum certain, or where the individual's payment is returned for insufficient funds or
9 other reason that makes the withholding of such payments in the net interest of the
10 individual.

11 (4) Promptly correct any payments that are not made pursuant to a debt
12 management plan or that are misdirected as a result of an error by the provider or
13 other person in control of a trust account and reimburse the individual for any costs
14 or fees imposed by a creditor as a result of the failure to pay or misdirection.

15 (5) Reconcile the trust account at least once a month. The reconciliation
16 shall compare the cash balance in the account with the sum of the balances in each
17 individual's account. If the provider or its designee has more than one trust account,
18 the trust accounts shall be individually reconciled. The trust accounts shall be
19 subject to disclosure to and examination by the attorney general upon his written
20 request.

21 F.(1) A debt relief provider providing debt management services may charge
22 an initial or set-up fee not to exceed seventy-five dollars and a monthly service fee
23 not exceeding the greater of fifteen percent of the payments to be disbursed that
24 month or seventy-five dollars per month.

25 (2) A debt relief provider providing debt management services shall not
26 charge a fee in excess of fifty dollars for financial education materials.

27 G.(1) A provider shall not receive payment of any fee or consideration for
28 any debt relief services under a debt settlement plan unless and until all of the
29 following conditions are satisfied:

1 (a) The provider has maintained separate records of account for each
2 individual to whom the provider is furnishing services.

3 (b) The provider has renegotiated, settled, reduced, or otherwise altered the
4 terms of at least one debt under the debt settlement plan.

5 (c) The individual has made at least one payment to a creditor in furtherance
6 of a settlement with a creditor.

7 (d) The fee or consideration for settling each individual debt enrolled in a
8 debt settlement plan shall be either of the following:

9 (i) Bear the same proportional relationship to the total fee for settling the
10 entire debt balance as the individual debt amount bears to the entire debt amount.
11 The individual debt amount and the entire debt amount are amounts owed at the time
12 the debt was enrolled in the debt relief service.

13 (ii) Be a percentage of the amount saved as a result of the settlement of each
14 debt. The percentage charged shall not change from one individual debt to another.
15 The amount saved is the difference between the amount owed at the time the debt
16 was enrolled in the debt relief service and the amount actually paid to satisfy the
17 debt.

18 (2) Nothing in this Subsection prohibits the provider of debt settlement
19 services from requesting or requiring the individual to place funds in a third party
20 account to be used for payment of the provider's fees and for payments to creditors
21 or debt collectors in connection with the renegotiation, settlement, reduction, or
22 debts included in the settlement plan, provided that all of the following conditions
23 are satisfied:

24 (a) The funds are held in a specifically designated account at an insured
25 financial institution.

26 (b) The individual, not the provider, owns and controls the funds held in the
27 account and is paid accrued interest on the account, if any.

28 (c) The provider does not administer the account and the entity administering
29 the account is not owned or controlled by, or an affiliate of, the provider.

1 (d) The entity administering the account does not give or accept any money
2 or other compensation in exchange for referrals of business by the provider.

3 (e) The individual may withdraw from the debt settlement plan at any time
4 without penalty, and shall receive all funds in the third party account, other than
5 funds earned by the provider in compliance with this Section, as specified in the
6 account agreement between the individual and the financial institution.

7 (f) The entity administering a third party account for debt settlement
8 purposes shall reconcile the account at least once a month. The reconciliation shall
9 compare the cash balance in the account with the sum of the balances in each
10 individual's account and the results shall be provided to the individual.

11 §1450.9. Termination of debt relief services

12 A. An individual enrolled in any debt relief service may terminate the service
13 at any time, without penalty or obligation, by giving the debt relief provider notice
14 of such in writing.

15 B. If a provider is not registered pursuant to the provisions of this Chapter
16 when an individual assents to an agreement, the agreement is voidable by the
17 individual.

18 C. The debt relief provider, no later than seven business days after the
19 termination, shall ensure the individual receives all money that the provider or third
20 party account administrator received from or on behalf of the individual, other than:

21 (1) An amount properly disbursed to a creditor.

22 (2) Fees earned pursuant to this Chapter.

23 §1450.10. Prohibited activities

24 A debt relief provider may not, directly or indirectly:

25 (1) Misappropriate or misapply funds held in trust or a third party account.

26 (2) Settle a debt on behalf of an individual without the individual's
27 agreement to the settlement terms.

28 (3) Exercise or attempt to exercise power of attorney after an individual has
29 terminated an agreement.

1 (4) Initiate a transfer from an individual's trust or third party account at a
2 financial institution unless the transfer is either of the following:

3 (a) A return of money to the individual.

4 (b) Before termination of an agreement, properly authorized by the
5 agreement and the provisions of this Chapter, and for either:

6 (i) Payment to one or more creditors pursuant to a plan.

7 (ii) Payment of a fee.

8 (5) Offer a gift or bonus premium, reward, or other compensation to an
9 individual for executing an agreement.

10 (6) Offer, pay, or give a gift or bonus, premium, reward, or other
11 compensation to a person for referring a prospective customer if the person making
12 the referral has a financial interest in the outcome of debt relief services provided to
13 the individual.

14 (7) Receive a bonus, commission, or other benefit for referring an individual
15 to a debt relief provider, except for a sales lead when the person making the referral
16 has no financial interest in the outcome of the referred product or service.

17 (8) Structure a debt relief plan in a manner that would result in a negative
18 amortization of any of an individual's debts, unless a creditor that is owed a
19 negatively amortizing debt agrees to refund or waive finance charges and penalties
20 upon payment of the principal amount of the debt.

21 (9) Compensate its employees on the basis of a formula that incorporates the
22 number of individuals the employee induces to enter into agreements.

23 (10) Settle a debt or lead an individual to believe that a payment to a creditor
24 is in settlement of a debt to the creditor unless the individual receives, at the time he
25 agrees to the terms of the settlement, written assurance from the creditor that upon
26 receipt of the final payment made pursuant to the terms of the settlement plan that
27 the payment will be considered payment in full settlement of the debt.

28 (11) Represent to the individual any of the following:

29 (a) That the provider will furnish money to pay bills or prevent attachments.

1 **(b) That, other than good-faith estimates of the amounts necessary to settle**
2 **debt, payment of a certain amount will permit satisfaction of a certain amount or**
3 **range of indebtedness.**

4 **(c) That participation in a debt relief plan will or may prevent litigation,**
5 **collection activity, garnishment, attachment, repossession, foreclosure, eviction, or**
6 **loss of employment.**

7 **(12) Misrepresent that it is authorized or competent to furnish legal advice**
8 **or perform legal services.**

9 **(13) Represent that it is a not-for-profit entity unless it is organized and**
10 **properly operating as a not for profit under the laws of the state in which it was**
11 **formed or that it is a tax exempt entity, unless it has received certification of tax**
12 **exempt status under Section 501(c)(3) of the United States Internal Revenue Code.**

13 **(14) Take a confession of judgment or power of attorney to confess**
14 **judgment against an individual.**

15 **(15) Advise, encourage, or suggest to the individual not to make a payment**
16 **to creditors under the debt relief plan.**

17 **(16) Purchase a debt or obligation of the individual, either directly or through**
18 **an affiliate.**

19 **(17) Receive from or on behalf of the individual any of the following:**

20 **(a) A promissory note or other negotiable instrument other than a check or**
21 **a demand draft.**

22 **(b) A post dated check or demand draft.**

23 **(18) Lend money or provide credit to the individual, except as a deferral of**
24 **fees at no additional expense to the individual.**

25 **(19) Obtain a mortgage or other security interest in property from any person**
26 **in connection with the services provided to the individual.**

27 **(20) Disclose the identity or identifying information of the individual or the**
28 **identity of the individual's creditors, except for the following:**

29 **(a) As permitted by federal law.**

1 **(b) Upon proper demand of the attorney general.**

2 **(c) To a creditor of the individual to the extent necessary to secure the**
3 **cooperation of the creditor in a debt relief plan.**

4 **(21) Except as otherwise provided in this Chapter, provide the individual**
5 **with less than the full benefit of a compromise of debt arranged by the provider.**

6 **(22) Charge the individual for or receive compensation for goods or services**
7 **not directly related to debt relief services or educational services concerning personal**
8 **finance. However, offering goods and services which may likely improve the**
9 **individual's financial situation given on a purely voluntary basis is not prohibited.**

10 **(23) Furnish legal advice or perform legal services, unless the person**
11 **furnishing the advice or performing those services for the individual is licensed to**
12 **practice law.**

13 **(24) Other than the fees provided for in this Chapter, a provider may not**
14 **receive a gift or bonus, premium, reward, or other compensation, directly or**
15 **indirectly, for advising, arranging, or assisting an individual in connection with**
16 **obtaining an extension of credit or other service from a lender or service provider,**
17 **except for educational or counseling services required in connection with a**
18 **government sponsored program.**

19 **(25) Unless a person supplies goods, services, or facilities generally and**
20 **supplies them to the provider at a cost no greater than the cost the person generally**
21 **charges to others, a provider may not purchase goods, services, or facilities from the**
22 **person if an employee, or a person that the provider should reasonably know is an**
23 **affiliate of the provider, owns more than ten percent of the person or is an employee**
24 **or affiliate of the person.**

25 **§1450.11. Notification required**

26 **Providers shall notify the attorney general within thirty days of the**
27 **occurrence of any of the following events:**

28 **(1) The provider files for bankruptcy.**

29 **(2) The provider or its affiliate is convicted of a felony.**

1 (3) The provider discovers that client funds have been embezzled or
2 otherwise stolen.

3 §1450.12. Exceptions

4 This Chapter shall not apply to:

5 (1) Situations involving debt relief services provided by an attorney licensed
6 or otherwise authorized to practice law in this state which are incidental to that
7 attorney's practice.

8 (2) Banks and fiduciaries, if duly authorized and admitted to transact
9 business in this state and performing credit and financial service in the regular course
10 of their principal business.

11 (3) Title insurers and abstract companies, while doing an escrow business.

12 (4) Any person acting pursuant to any order or judgment of a court.

13 (5) Situations involving debt relief incurred incidentally in connection with
14 lawful practice as a certified public accountant.

15 (6) Bona fide trade or mercantile associations in the course of arranging
16 adjustment of debts with business establishments.

17 (7) Employers for their employees.

18 (8) Any person who is a creditor of the individual, or an agent of one or more
19 creditors of the individual, and whose services in adjusting the individual's debt are
20 rendered without cost to the individual.

21 §1450.13. Debt relief services free of charge

22 Nothing in this Chapter shall be construed to prevent any individual or
23 organization from administering a debt relief plan free of charge.

24 §1450.14. Rules and regulations

25 The attorney general, in accordance with the Administrative Procedure Act,
26 may promulgate all rules and regulations necessary to carry out and implement the
27 provisions of this Chapter, including but not limited to accreditation and
28 certification.

1 §1450.15. Violations; penalties

2 A. Violation of any provision of this Chapter shall constitute an unfair trade
 3 practice under the Unfair Trade Practices and Consumer Protection Law and subject
 4 violators to all fines and penalties, including but not limited to injunctive relief, civil
 5 penalties, and criminal fines, contained in the Unfair Trade Practices and Consumer
 6 Protection Law.

7 B. The attorney general may enforce the provisions of this Chapter using all
 8 rights, authority, remedies, and enforcement relief available under and contained in
 9 the Unfair Trade Practices and Consumer Protection Law, including but not limited
 10 to restraining prohibited acts, assurances of voluntary compliance, investigatory and
 11 subpoena authority, and the use of other civil actions.

12 Section 2. R.S. 14:331 and R.S. 37:2581 through 2600 are hereby repealed in their
 13 entirety.

14 Section 3. This Act shall become effective on January 1, 2014.

DIGEST

The digest printed below was prepared by House Legislative Services. It constitutes no part of the legislative instrument. The keyword, one-liner, abstract, and digest do not constitute part of the law or proof or indicia of legislative intent. [R.S. 1:13(B) and 24:177(E)]

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", 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 \$1500, 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 6 mons., 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, email 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 7 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 \$1500 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. 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 7 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 individuals 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 advise 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 advise 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 January 1, 2014.

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