



HOUSE COMMITTEE ON APPROPRIATIONS

FISCAL NOTE

SENATE BILL NO. 622

PRINTERS NO. 2222

PRIME SPONSOR: Ward

COST / (SAVINGS)

FUND	FY 2013/14	FY 2014/15
Banking Fund	\$0	See "Fiscal Impact"

SUMMARY: Creates a freestanding act to provide for the licensure and regulation of debt settlement services providers by the Department of Banking and Securities (DOBS). The provisions necessary for initial licensure would take effect November 1, 2014. The remainder of the legislation would take effect on January 1, 2015.

ANALYSIS: This legislation provides for the licensure and regulation of debt settlement services providers. The legislation does not apply to any of the following (or their employees) during the regular course of the person's business or profession:

- A judicial officer, a person acting under a court order or an administrative agency or assignee for the benefit of creditors.
- A depository licensee or other financial institution licensed under state or federal law.
- A title insurer, escrow company or other person that provides bill paying services, if debt settlement services are incidental to the bill paying services.
- A debt management services licensee, if the provision of debt settlement services is incidental to the debt management service.
- An attorney who acts as an intermediary between a client and the client's creditors in the normal course of a legal practice, except if the attorney is compensated by a provider.

Licensure: Providers are prohibited from providing debt settlement services in PA, unless the provider is licensed under the act. DOBS will maintain and publicize a list of the names of all licensed providers.

An application for licensure must be in a form prescribed by DOBS, must include certain required information, and must be accompanied by:

- A licensing fee as determined by DOBS;
- A penal bond that meets the requirements of the act; and
- Proof that the provider is authorized by law to conduct business in PA.

A specific license fee is provided for non-profit corporations or associations that have annual gross revenues from debt settlement services fees and charges of less than \$3 million. The initial license fee will be \$500, and the annual renewal fee will be \$300.

DOBS is required to issue a license, if the applicant obtains and maintains a penal bond for \$25,000 that meets certain requirements. An aggrieved person may recover fees and costs by filing a claim with the surety company (with DOBS's written consent) or by filing a formal complaint with DOBS. A court or magisterial district judge is not prohibited from awarding damages, fees and costs not recovered from the bond, and DOBS can consent to or order other recovery on the bond for an aggrieved person.

A debt settlement services license will be a "covered license" under the DOBS Code, so that employees will be subject to criminal history checks.

An applicant or licensed provider is required to notify DOBS within 30 days of a change in insurance coverage, contact information, owner information or information related to ownership interest in other entities.

The information within an application for licensure and renewal shall be made available to the public, with the exception of owner information and information related to ownership interest in other entities.

DOBS must decide whether to issue a license within 60 days, which may be extended an additional 30 days, of receipt of the completed application. DOBS is authorized to investigate the applicant, including the owners, officers, directors, principals or agents in order to make its determination. An applicant has the right to appeal a license denial to the Banking and Securities Commission within 30 days.

A license is valid for a period of not more than 14 months, except in cases where a license is issued prior to the beginning of the licensing year. The license fee and license renewal fee are not subject to a rebate. A license may not be transferred, assigned or pledged, except that a licensee may transfer up to 49% of its ownership to another entity without affecting the license's validity.

DOBS may impose conditions on the issuance of a license, and take action against the licensee if the conditions are not met. DOBS is authorized to issue a conditional license to an applicant immediately upon the receipt of the application.

A person providing debt settlement services before the legislation's effective date is required to submit an application within 30 days of the effective date. The applicant may then continue to provide services while the application is processed.

An application for renewal must be submitted to DOBS with a fee of \$1,250, and DOBS will determine the information and documentation that is required for the renewal application.

DOBS may reinstate a license, if the issue that warranted the original action against the license has been corrected, the issue is not likely to occur again and the licensee satisfies the other requirements of the act.

A licensee may not conduct business under a name or address that differs from the name and address on the license. A licensee must notify DOBS within 10 days of a name or address change. A licensee is prohibited from conducting a business (other than debt settlement services), unless DOBS is notified in writing at least 30 days prior to conducting that business.

DOBS may deny, suspend, revoke or refuse to renew a license if the applicant or an owner, officer, director, principal, employee or agent did any of the following:

- Made a material misstatement in the license application or a submission required by DOBS.
- Failed to comply with or violated a provision of the act, regulation, order or statement of policy issued by DOBS.
- Engaged in unfair or unethical conduct in connection with the debt settlement services business in PA.
- Lacks the financial responsibility, character, reputation, integrity and general fitness sufficient to warrant the belief that debt settlement services will be conducted lawfully, honestly and in the public interest.
- Was convicted of (or plead guilty or no contest to) a crime of moral turpitude or a felony.
- Is currently enjoined by a court from engaging in the debt settlement services business in PA.
- Had a license denied, not renewed, suspended or revoked by DOBS or another state.
- Has become the subject of a U.S. Postal Service fraud order.
- Has an outstanding debt to the Commonwealth or a Commonwealth agency.
- Has failed to maintain the required penal bond.
- Becomes insolvent.

Provider Responsibilities: A provider must act in good faith in all matters under the act.

Before an individual consents to pay for goods or services offered by a provider, the following must be disclosed in a written agreement:

- The amount of time necessary to achieve the represented results.
- The extent to which debt settlement services may include settlement offers to creditors and debt collectors, including the time by which bona fide offers will be made.
- The cost to the individual for providing debt settlement services and the method by which any fee will be calculated.
- The total estimated program costs if the individual completes the program.
- That the use of debt settlement services will likely adversely impact the individual's credit worthiness, may result in collection actions or suits by creditors and debt collectors, and may increase the amount of money the individual owes due to the accrual of fees and interest.
- That the individual owns any funds requested or required to be placed in a bank account, and that the individual may withdraw from the debt settlement services at any time without penalty.
- That the individual may terminate the debt settlement services agreement upon 3 days written notice to the provider.

- That the amount of a debt that is forgiven or canceled by a creditor may be considered income of the individual for tax purposes.

A provider is prohibited from misrepresenting any of the following:

- The amount of money or the percentage of the debt amount that an individual may save.
- The amount of time necessary to achieve the represented result.
- The amount that an individual must accumulate before the provider will begin attempts to negotiate with the individual's creditors or debt collectors.
- The effect of the service on the individual's creditworthiness.
- The effect of the service on collection efforts.
- The percentage or number of individuals who obtain the represented results.
- Whether the services are offered by a nonprofit entity.
- The total estimated program costs if the individual completes the program.

A provider may not receive a fee or consideration for debt settlement services, unless at least one debt has been negotiated and the individual makes at least one payment under the debt settlement plan. The fee or consideration must be based on a proportion of the total fee for the entire debt amount, or a percentage of the amount saved as the result of the settlement. A provider is not prohibited from requesting that an individual set aside funds for the provider's fees and payments to creditors and debt collectors as part of the services, if certain conditions apply. An individual may void an agreement with a provider, if the provider is not licensed as required.

Administration and Enforcement: DOBS will have the authority to:

- Examine (without prior notification) the records of a licensee or connected person and to make other investigations as necessary; and remove records to an outside location.
- Conduct administrative hearings on a matter pertaining to the act and issue subpoenas.
- Request and receive information, including criminal history records on a licensee or other person related to the business.
- Promulgate regulations, issue statements of policy or orders.
- Prohibit violators of the act from working in a related-activity regulated by DOBS.
- Order a person or licensee to make restitution for actual damages or to refund fees resulting from a violation.
- Issue cease and desist orders.
- Impose other conditions or take action as DOBS deems appropriate to administer and enforce the act.
- Provide information for licensees and consumers on its website.

A person aggrieved by DOB's decision may appeal the decision to the Commission. DOBS may seek an injunction or other remedy to restrain or prevent a person from violating the act. A decision of the Commission (or an unappealed order) will be a final order of DOBS, and DOBS may publish final adjudications. A person aggrieved by the Commission's decision may appeal to seek judicial review of the action.

Each licensee will file a periodic report to DOBS, including whatever information DOBS requires about the debt settlement services business conducted during the prior year. A penalty of \$100 per day may be applied for late reports. Within 7 days, a licensee must report to DOBS a final order of guilt or liability in an enforcement action taken by any state or federal agency.

DOBS may impose a civil penalty of up to \$10,000 for each violation of the act, and a violation of the act is also a violation of the Unfair Trade Practices and Consumer Protection Law.

A fee or penalty collected by DOBS under the act will be deposited in the Banking Fund.

Miscellaneous: The legislation clarifies the effect on the federal Electronic Signatures in Global and National Commerce Act, and provides transitional language regarding transactions entered into before the effective date.

The Debt Management Services Act is repealed insofar as it applies to debt settlement services.

FISCAL IMPACT: According to the Department of Banking and Securities, this legislation would have start-up costs of about \$60,000 in the first year. The legislation allows the department to set the initial licensing fee on the estimated 40 to 50 debt settlement service providers, therefore the costs to the Banking Fund would be fully covered. The department also indicates that there will be recurring operating expenses each year that will be fully covered by the \$1,250 annual renewal fee.

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House Appropriations Committee (R)

DATE: June 27, 2014

Estimates are calculated using the best information available. Actual costs and revenue impact incurred may vary from estimates.