

SENATE APPROPRIATIONS COMMITTEE FISCAL NOTE

BILL NO. Senate Bill 622

PRINTER'S NO. 1641

AMOUNT

\$60,000

FUND

Banking Fund

DATE INTRODUCED

March 6, 2013

PRIME SPONSOR

Senator Ward

HISTORY OF BILL

Referred to BANKING AND INSURANCE, March 6, 2013

Reported as committed, June 4, 2013

First consideration, June 4, 2013

Re-referred to APPROPRIATIONS, June 20, 2013

Re-reported as amended, Dec. 9, 2013

DESCRIPTION AND PURPOSE OF BILL

Senate Bill 622 establishes a freestanding act known as the Debt Settlement Services Act. The legislation provides for the licensure and regulation of entities providing debt settlement services to individuals who reside in the Commonwealth. The legislation is in response to Act 117 of 2008 (Debt Management Services Act) and a Commonwealth Court ruling whereby the Court determined that the Department of Banking and Securities does not have the authority to regulate the debt settlement services industry in the Commonwealth.

Senate Bill 622 provides that the act does not apply to the following entities or their employees when engaged in the regular course of the entity's business or profession:

1. A judicial officer, a person acting under an order of a court or an administrative agency or an assignee for the benefit of creditors.
2. A bank, bank holding company or the subsidiary, agent or affiliate of either, or a credit union or other financial institution licensed under Federal or State law.
3. A title insurer, escrow company or other person that provides bill-paying services if the provision of debt settlement services is incidental to the bill-paying services.

Under the act, a provider may not provide debt settlement services to an individual who it reasonably should know resides in this Commonwealth at the time it agrees to provide the services, unless the provider is licensed under this act. An employee or agent of a provider need not be licensed if the provider is licensed.

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The Department of Banking and Securities ("department") shall maintain and publicize a list of the names of all licensed providers. An application for licensure as a provider must be accompanied by the following:

- A licensing fee of \$2,000 as established by the department.
- One of the following:
 - Evidence of minimum insurance in an amount of \$25,000.
 - A surety bond filed with the department for a term no less than the expiration of the license and in the amount of \$25,000.
- Proof that the provider is authorized by the laws of this Commonwealth to conduct business in this Commonwealth.
- Other information such as the applicant's name, address, business location, a copy of the applicant's standard debt settlement services agreement, etc.

The legislation provides that a domestic or foreign not-for-profit corporation or association registered under 15 Pa.C.S. Pt. II Subpt. C, which has annual gross revenues from debt settlement services fees and charges of less than \$3,000,000 annually, shall pay an initial license fee of \$500 and an annual renewal fee of \$350.

The department shall issue a license only if the applicant obtains and maintains a penal bond. If a person is aggrieved, the person may, with the written consent of the department, recover fees and costs from a bond by filing a claim with the surety company or maintaining an action on the bond. Alternatively, a person may recover fees and costs by filing a formal complaint against the licensee with the department, which shall adjudicate the matter. Nothing shall be construed to limit the ability of a court or magisterial district judge to award to an aggrieved person other damages.

The department shall decide whether to issue a license to an applicant within 60 days of receiving a completed application, subject to the allowance of a 30 day extension. Upon receipt of a completed application, the department may conduct an investigation of the applicant, including its owners, officers, directors, principals or agents, in order to decide whether to issue the license. A license denial may be appealed to the secretary within 30 days.

The legislation prohibits the transfer of a license except that, upon notice to the department, a licensee may transfer up to 50% of the securities of a licensee to another entity without affecting the validity of a license. The department may impose conditions on the issuance of a license. A person that is providing debt settlement services before the effective date of the act must submit an application for a license within 10 days, and the applicant may continue to provide debt settlement services while the department processes the application for licensure. A provider who does not submit an application for a license within 10 days must cease operations until it has met the conditions of licensure under the act.

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Applications for renewal of a license shall be accompanied by a fee of \$1,250. The department may deny, suspend, revoke or refuse to renew a license in certain instances, subject to reinstatement. The department shall deny a license to an applicant that offers payday loans at the same location for which the applicant seeks a license under this act.

A provider must act in good faith in all matters under this act and is subject to disclosure of material information such as the amount of time necessary to achieve the represented results, the extent to which the debt settlement services may include a settlement offer to any of the individual's creditors or debt collectors, the amount of money or percentage of each outstanding debt that the individual shall accumulate before the provider will make a bona fide settlement offer to each of them, whether failure to make timely payments to creditors will adversely affect the individual's creditworthiness, and that the individual maintains ownership of any funds placed into a bank account.

A provider may not receive payment of a fee or consideration for debt settlement services unless the provider has renegotiated, settled reduced or otherwise altered the terms of at least one debt under a debt settlement plan, the individual has made at least one payment under the plan, and the fee or consideration either bears 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 or is a percentage of the amount saved as a result of the settlement.

The department shall have the authority to administer and enforce the act through examinations and investigations, and the costs of such actions shall be paid by the licensee. The department may conduct administrative hearings and issue subpoenas on matters related to this act, may request criminal history record information, promulgate regulations, prohibit a person that violates this act from providing services, order a person or licensee to make restitution for damages, and issue cease and desist orders.

The department may provide information on its Internet website regarding information for licensees and consumers, information on filing consumer complaints, and a list of current licensees. Licensees are required to file annual reports with the department, subject to a penalty for failure to file. Fees or penalties collected by the department under this act shall be paid into the Banking Fund.

Act 117 of 2008, known as the Debt Management Services Act, is repealed insofar as it applies to debt settlement services.

The act shall take effect in 60 days.

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FISCAL IMPACT:

According to the Governor's Budget Office, the Department of Banking and Securities estimates that 30 to 40 corporations within the Commonwealth will seek licensing for debt settlement services. An initial licensing fee of \$2,000 would therefore generate approximately \$60,000 to \$80,000 in revenue to be deposited into the Banking Fund during the first year of implementation. Subsequent years will see renewal fees total approximately \$37,500 to \$50,000.

The Department of Banking and Securities believes that it can absorb the additional workload associated with licensing debt settlement service providers within its current appropriation levels.