

39TH SENATORIAL DISTRICT
KIM WARD

MAY 03 2011

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Senate of Pennsylvania
May 3, 2011

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TO: All Senators
FROM: Senator Kim Ward
SUBJECT: Co-Sponsorship of Legislation – Debt Settlement Services Act – Memo # 23
REVISED

I plan to re-introduce legislation that would correct a flaw in Act 117 of 2008 (the Debt Management Services Act) which resulted in a lawsuit against the Department of Banking regarding its ability to license and regulate the debt settlement industry in Pennsylvania.

While the original legislation was introduced to regulate only debt management providers, an amendment was added to the bill late in the legislative process to include debt settlement providers and directed the Department to develop regulations to license and regulate this industry. However, the legislation did not provide a substantive policy framework for the Department to base its regulations. Commonwealth Court has ruled in favor of the industry noting that the Department does not have the ability to regulate the debt settlement industry in Pennsylvania.

I introduced legislation on this subject last Session, Senate Bill 1284, to correct this defect in existing law. SB 1284's co-sponsors were: D. White, Brubaker, Erickson, Waugh and Washington.

Since the introduction of Senate Bill 1284 there has been much action at the federal level regarding the regulation of the debt settlement industry. After many months of review, the Federal Trade Commission adopted amendments to the Federal Telemarketing Sales Rule to prohibit debt settlement companies from collecting advance fees when negotiating agreements with creditors. The Rule will also require debt relief companies to make specific disclosures to consumers; prohibit them from making misrepresentations; and extend the Telemarketing Sales Rule to cover calls consumers make to these firms in response to debt relief advertising.

The legislation would adopt the provisions of the final Rule, which took effect in October, 2010, but address a glaring oversight of the Rule. It would cover providers not regulated by the Telemarketing Sales Rule including those not engaged in telemarketing, not engaged in interstate commerce, and nonprofits. In addition, it would require debt settlement providers that negotiate debt settlement agreements on behalf of Pennsylvanians to obtain a license in Pennsylvania. Further, the legislation will also fix a flaw in Act 117 of 2008 by providing the Department of Banking the statutory framework to investigate, license, and regulate those companies providing debt settlement service in Pennsylvania.

Debt settlement providers are located in the Commonwealth and have provided services to Pennsylvania residents prior to the passage of Act 117 of 2008 and continue to do so. As a result of the Court's rulings to date, my legislation is a proactive step to responsibly regulate the industry and its operations in Pennsylvania.

If you would like to co-sponsor this legislation, please contact Tiffany Price in my office at 717-787-6063 or by email at tprice@pasen.gov.

KLW/vjw