

Bill Summary

COMMITTEE: Banking and Insurance

DATE: 5/30/13

PRIME SPONSOR: Ward

BILL NO: SB622

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A. Synopsis:

Known as the Debt Settlement Services Act, Senate Bill 622 provides for the licensure of persons providing debt settlement services.

A. Summary:

"Debt Settlement Services" is defined as services as an intermediary between an individual and one or more secured creditors of the individual for the purpose of obtaining concessions where they involve a reduction in principal of the individual's unsecured debt. Senate Bill 622 also applies to affiliates of a debt settlement provider that may be offering debt settlement services in Pennsylvania.

Senate Bill 622 is a response to Act 117 of 2008, the Debt Management Services Act, which was passed to license debt management providers conducting operations in Pennsylvania.

Act 117 contained language requiring debt settlement providers to obtain a license from the Department to operate in Pennsylvania. However, the legislation did not include a statutory framework by which the Department would license and regulate the industry. As a result, the Commonwealth Court has since ruled that the Department does not have the ability to regulate the debt settlement industry in Pennsylvania and directed the parties to work together on a legislative solution that would result in a discontinuance of the legal action.

Because of the Court's initial ruling, debt settlement providers continue to operate in the Pennsylvania but are not required to be licensed and are not regulated by the Department, which was the intent of the General Assembly when it passed Act 117 of 2008.

Senate Bill 622 does not apply to a provider to the extent they receive no compensation for debt settlement services, or certain persons who are engaged in the regular course of someone's business, such as the practice of law.

Required information for applying for a license is detailed in the bill, and there is an obligation to update applicant information within 60 days after a change. Application information will be made available to the public, and the Department must provide a list of names of all public providers, applications, fees, and documentation.

The procedure for licensure is outlined, and a provider must re-apply annually. If someone is licensed out-of-state, the Department can accept that state's application and license instead of requiring a new application. Also, the Department may deny licensure under certain circumstances.

Senate Bill 622 also adopts a Rule developed by the Federal Trade Commission (FTC), which prohibits debt settlement companies from collecting advance fees when negotiating agreements with creditors. Senate Bill 622 applies these protections to providers not covered by the FTC Rule.

Senate Bill 622 would:

- Require debt settlement providers to be licensed by the Department of Banking
- Require debt settlement providers to obtain a bond for damages resulting from violation of the law
- Require debt settlement providers to provide customers with:
 - Clear disclosures of the product and terms, including an itemized list of charges
 - Provide each customer with a financial analysis explaining their requirements under the agreement
- Require debt settlement providers to obtain signed agreements for the service
- Require debt settlement providers to provide customers with the right to terminate agreements at any time.
- Prohibit a debt settlement provider from levying any charges on a customer until the consumer has signed an agreement; settled the terms of at least one debt; and the individual has made at least one payment pursuant to the settlement agreement.
- Cap provider fees at either:
 - A percentage of the amount saved as a result of the settlement; or
 - The amount is equal to the proportion of the individual debt settled to the total amount of outstanding debt

Provider responsibilities are described, including the requirement of good faith, customer service, prerequisites for providing debt settlement services, communication, forms and contents of agreement, bank accounts, required disclosure language, fees that may be charged for services provided, terminating agreements within certain time periods to avoid costs, period reports and retention of records.

The powers of the department, including administrative functions, administrative remedies for license violations, suspension, revocation, or nonrenewal of registration, private enforcement, and violations are addressed in the bill.

This Act will take effect in 60 days

- A transitional license may be provided to those providers currently operating in Pennsylvania and may continue to operate without a license if the provider has submitted an application within 10-days prior to the effective date of the Act but that the Department has yet to act on a license request.