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SFA**BILL ANALYSIS**

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Senate Bill 1056 (as introduced 4-22-98)
Sponsor: Senator Michael J. Bouchard
Committee: Financial Services

Date Completed: 5-6-98

CONTENT

The bill would amend the Debt Management Act to do the following:

- Increase the maximum term of a contract between a licensee and a client from 24 to 60 months.
- Provide for the waiver of additional surety bonds if an applicant for licensure had more than 10 offices.
- Specify individuals who would have to be investigated when an application was filed and fees were paid.
- Provide for electronic record-keeping, and provide that trust accounts could be reconciled electronically or by other methods.
- Require licensees annually to verify payments to selected creditor accounts and review certain items.
- Provide that a client's fee would have to be returned if 51% of the creditors did not approve a debt management plan.
- Increase from \$25 to \$50 the amount of an initial fee and a cancellation fee.
- Delete the authority of an exempted person to charge fees for debt management services.
- Include limited liability companies under the Act.

License Application

Under the Act, a person must obtain a license from the Department of Consumer and Industry Services to engage in the debt management business in this State. ("Debt management" means the planning and management of the financial affairs of a debtor and the receipt of funds from the debtor for distribution to creditors in payment or partial payment of the debtor's obligations.)

An applicant for a license must file an application, pay a \$50 license fee and a \$50 investigation fee, and furnish a \$5,000 surety bond for each office established by the applicant. The bill would retain these requirements, but provides that if an applicant established more than 10 offices engaged in the business of debt management in this State and for which a surety bond had been furnished, the surety bond prescribed by the Act would be waived for any additional office subsequently established.

The bill also would retain the requirement that an applicant file an appointment of the Director of the Department as the applicant's agent for service of process in this State. The bill would delete a provision that service upon the Director is sufficient service upon any licensee if the person seeking

service upon the licensee certifies to the Director that a diligent attempt was made to effect personal service upon the licensee and that this effort was unavailing. Under the bill, service of process upon the Director would be considered service upon an applicant or licensee.

The bill would prohibit the Director from accepting an application or issuing a license that included a business name that was the same as or similar to an existing business name on file with the Department.

Under the Act, if an applicant is a corporation, the application must include the name and address of each of its officers and directors. The bill specifies that if an licensee were a corporation, the Director could not require information concerning a member of the board of directors if that member did not receive a salary, stock dividend, or other financial benefit from that corporation other than reimbursement of the actual expenses incurred in carrying out the duties of a director of the corporation.

Investigation

The Act requires the Department to investigate an applicant's financial responsibility, experience, character, and general fitness, once an application is filed, the fees are paid, and the bond is approved. The bill specifies that an investigation would have to include at least the following, as applicable:

- The officers and directors of the corporation, if the applicant were a corporation.
- All of the partners of the partnership, if the applicant were a partnership.
- All of the officers of the association, if the applicant were an association.
- The individual, if the applicant were an individual.

Trust Accounts

The Act provides that payments received by a licensee from or on behalf of a debtor for the benefit of a creditor must be held in trust in a separate bank account maintained for the benefit of the debtor. The licensee may not commingle a payment with its own property or funds, but may deposit a specified amount of its own funds in the separate trust account upon approval of the Director. The bill would delete the prohibition against commingling, and provides that a licensee could deposit its own money in the separate trust account if at all times the balance in the trust account were greater than the sum of the escrow balances of each debtor's account.

The bill would retain a requirement a trust account be reconciled at least once a month, but would delete a requirement that this be done within 45 days after receipt of the monthly bank statement, prepared on a form approved by the Director, and kept as a permanent record of the licensee. The bill specifies that the reconciliation could be done electronically or by any other appropriate method, and would have to be done within 45 business days after receipt of the bank statement. An electronic or other appropriate notation of the reconciliation would have to be kept as a permanent record of the licensee and would be considered as in compliance with this section of the Act.

Licensee Responsibilities

The Act lists certain responsibilities of a licensee or an exempted person (a tax-exempt nonprofit corporation meeting certain criteria, a person performing a debt management service without compensation, or someone performing a debt management service and receiving compensation primarily from governmental and other organizations). A licensee or exempted person must make and keep for six years the accounts, correspondence, memoranda, papers, books, and other records, which are subject to reasonable periodic, special, or other examinations by the examiners

or other representatives of the Department. The bill provides, instead, that a licensee or exempted person would have to create and maintain records, in a manner approved by the Department, which would have to allow for electronic, photocopy, or computerized methods, of the accounts, correspondence, memoranda, papers, books, and other records of the debt management business. The licensee or exempted person would have to make all of these records available for examination by examiners of the Department at reasonable intervals or upon a special demand of the Department.

The bill would retain requirements that a licensee or exempted person give the debtor a copy of the contract between the licensee and the debtor; give the debtor a written statement within five business days of a request for the statement (although the licensee or exempted person currently must give a written statement *or* a verbal accounting); and give the debtor a written statement within 120 days after the contract is entered into.

The bill also would require a licensee or exempted person, at least annually, to verify payments to selected creditor accounts and to do all of the following: review each debtor's account file; review checks paid by the licensee; review procedures used by the licensee for processing checks and handling cash; review the complaint file maintained by the licensee; and review selected counselor records and work papers.

Fees

Currently, a licensee may not charge or receive a fee until at least 51% in number and dollar amount of the creditors of the debtor have consented or have accepted a payment. The bill states, instead, that a licensee could charge and receive a fee upon establishing a debt management plan for a client. If 51% in number and dollar amount of all of the debtor's creditors did not consent to the debt management plan, the fee would have to be returned to the client before the account was closed.

The Act provides that a licensee or an exempted person (a tax-exempt nonprofit corporation or a person performing a debt management service and receiving compensation from governmental and other agencies) may charge a reasonable fee for debt management services. The fees and charges of the licensee with respect to a debtor's account may not exceed 15% of the amount of the debt to be liquidated during the term of the contract. The licensee or exempted person may require the debtor to make an initial payment of up to \$25, which is part of the total fees and charges stated in the contract. In the event of cancellation or default on the performance of the contract by the debtor, the licensee or exempted person may collect \$25 in addition to fees previously received.

The bill would revise these provisions by deleting references to an exempted person, increasing the initial fee to \$50, and increasing the fee collected upon cancellation or default to \$50.

Under the Act, if a debtor fails to make payments for 60 days, or misses four consecutive payments, the contract is considered canceled. In the event of extraordinary circumstances, the debtor may file with the licensee a letter of continuation of the contract for a specific period, which keeps the contract in effect. The bill would retain these provisions, but would delete reference to extraordinary circumstances.

Other Provisions

Under the Act, a contract between a licensee and a debtor must contain certain information, including the beginning and ending dates of the contract, which may not be longer than 24 months. Under the bill, the term of a contract could not be longer than 60 months.

The bill would repeal Section 27 of the Act, which repealed Public Act 135 of 1961.

FISCAL IMPACT

The bill would have no fiscal impact on State or local government.

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