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Senate Bill 664 (as introduced 11-6-13)
Sponsor: Senator Mike Kowall
Committee: Banking and Financial Institutions

Date Completed: 3-6-14

CONTENT

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

- **Modify the requirements for a budget analysis.**
- **Require a licensee to develop a plan outlining how a debtor would meet the payment obligations of his or her debt management plan if the debtor's monthly expense and debt payments exceeded his or her net income.**
- **Allow a licensee to charge a nonrefundable fee for establishing a debt management plan for a debtor.**
- **Revise the requirements for obtaining consent from the debtor's creditors.**
- **Revise the standards for trust account reconciliation and annual reviews.**
- **Increase from \$25 to \$50 the initial fee a licensee may charge for establishing a debt management plan, allow a fee for the purchase of credit reports and educational materials, and otherwise revise the fees that a licensee may charge.**
- **Change the subject matter on the examination for a debt management license.**
- **Increase the time for surrendering a license.**
- **Remove a requirement that advertising be filed with the Department of Insurance and Financial Services (DIFS).**

(The Act regulates debt management businesses, which enter into a contract with a debtor to manage the payment of his or her financial obligations. A person may not engage in the debt management business without obtaining a license from DIFS.)

Budget Analysis

Before entering into a contract with a debtor, a licensee must compile a written budget analysis and determine if the debtor can meet the requirements of the debt management plan based on the budget analysis.

Under the bill, if the licensee determined that a plan was suitable for a debtor whose current monthly expenses and debt payments exceeded his or her net income, the licensee would have to develop a written plan that outlined how the debtor would meet the obligations under the plan.

The bill would require a budget analysis to include the debtor's name and address, number of dependents, monthly income, monthly home mortgage or rental payment amount and an estimate of the annual amount of real estate taxes on the property, the type and amount of all of the debtor's obligations included in the debt management plan and of those obligations not included in the plan, and a list of creditors to which payments would be

made under the plan. All other information that the Act requires (such as source of income and living expenses) would not be required under the bill.

Consent of Creditors

The Act allows a licensee to charge a \$25 fee for establishing a debt management plan for a debtor. After establishing the plan, the licensee must obtain the consent of at least 51% of the debtor's creditors (in number and dollar amount) to the plan within 45 days. If the licensee fails to do this, the fee must be refunded and the debtor's account closed.

Under the bill, the fee would be increased to a maximum of \$50, and it would be nonrefundable. The licensee would have to attempt to obtain the consent of at least 51% of the debtor's creditors, but would be allowed 90 days to accomplish this. If the required consents were not obtained, the licensee would have to inform the debtor and he or she would have the option to close the account. If the account were closed, any unspent funds would have to be returned to the debtor or disbursed as he or she directed.

A licensee may seek the consent of a creditor by sending notice by telephone, fax, electronic mail, or first class mail. As an alternative to those methods, the bill would allow a licensee to seek the consent of a creditor by sending a payment to the creditor under the terms of the debt management plan.

Contract between Licensee & Debtor

The bill would allow a debtor to add or remove one or more debt obligations from the contract at any time by submitting a written request to the licensee.

If a debtor's contract with a licensee expired and one or more of the debt obligations included in the contract were not liquidated, the licensee could enter into one or more additional contracts with the debtor if the licensee determined that the debt management plan was suitable for the debtor.

Reconciliation & Annual Reviews

The Act requires payments received by a licensee from or on behalf of a debtor to be held in trust in a separate account at a financial institution whose deposits are insured by an agency of the Federal government. The bill would include a requirement that licensees maintain the records of all debtor funds held in trust and all funds disbursed on behalf of debtors. Licensees also would have to provide the Department with a full accounting of those funds and disbursements upon request.

The Act requires a licensee to reconcile a trust account at least once a month. Under the bill, a licensee would have to reconcile a trust account at least every 45 days. A trust account is required at all times to have an actual account balance that is equal to or greater than the sum of the escrow balances of each debtor's account. Failure to maintain that amount is cause for summary suspension of a license. Under the bill, a licensee's "repeated and advertent" failure to maintain that amount would be cause for summary suspension.

If a trust account fails to contain sufficient funds to cover the debtor's escrow balances, a licensee is required to contact the DIFS Director and submit a written description of remedial actions that the licensee has taken. Under the bill, this notice requirement would not apply until there were insufficient funds on more than one occasion.

At least annually, a licensee is required to a) review each debtor's account file, b) review checks paid by the licensee, c) review procedures used by the licensee for processing checks and handling cash, d) review complaint files, e) verify payments to selected creditors

accounts, and f) review selected counselor records and work papers. The bill would retain the requirements to review check processing procedures and verify that consumer complaints are properly handled, and add requirements to verify that payments to selected creditor accounts were properly disbursed and that selected client files contained the proper documentation. The bill also provides that a licensee that had proper controls in place to ensure that those actions were taken would meet the annual review requirements.

Fees & Cancellation of a Contract

The Act allows a licensee to charge reasonable fees under a debt management contract, but the fees may not exceed 15% of the amount of debt to be liquidated during the contract. Under the bill, a debtor could charge the following fees: a) a monthly fee equal to 15% of the amount paid by or on behalf of the debtor in that month to a creditor, or \$30, whichever was greater; b) an initial fee of \$50 for creating the debtor's account; and c) a fee of not more than \$100 for purchasing credit reports and educational materials and products, unless the Director determined, based on the nature and extent of the materials and products, that a larger fee was reasonable. As currently allowed, in the event of default or cancellation, the licensee also could charge a \$25 fee, which would not be subject to the 15% limitation on fees.

Under the Act, if a debtor fails to make a payment to a licensee with 60 days after it is due to the licensee, the contract is considered cancelled by debtor, unless he or she files a letter of continuation of a contract meeting certain requirements. The bill would eliminate the requirement for a letter of continuation and provides that if a debtor failed to make a payment, the licensee could, in its discretion, cancel the contract if: a) it determined that the plan was no longer suitable for the debtor, b) the debtor failed to affirmatively communicate to the licensee a desire to continue the plan, or c) the debtor's creditors refused to continue accepting payments under the plan.

Prohibited Acts & Exceptions

A licensee is prohibited from taking certain actions, including purchasing an obligation of a debtor from a creditor, lending money or credit except as approved by the Department, taking a confession of judgment or power of attorney to confess judgment against the debtor. A licensee also is prohibited from offering, paying, or giving any cash, gift, premium, reward or other compensation to a person for referring a prospective customer to the licensee. The Act exempts from this prohibition payments by the licensee for the lawful sale, transfer, or assignment of a contract to the licensee from another licensee. The bill also would exempt payments by the licensee to credit counseling associations (such as the National Foundation for Credit Counseling or the Association of Independent Consumer Credit Counseling Agencies) to participate in certain national locator lines. In addition, the bill would make certain exceptions to other prohibited actions.

Currently, a person is prohibited from publishing or circulating a pamphlet, circular, form letter, advertisement, or other sales literature addressed to or intended for distribution to prospective debtors unless a copy has been filed with DIFS at least 10 business days before the first publication, and the Department has approved its use. The bill would remove this requirement, but would prohibit a licensee from advertising, printing, displaying, publishing, distributing, or broadcasting any false, misleading, or deceptive statement or representation with regard to providing debt management services. The bill also would prohibit a person from permitting another to violate this restriction.

License Exam & Display

The requirements for licensure include passing an examination. The exam must be taken by an applicant who is an individual or by counselors employed by an applicant that is not

an individual. Questions for the licensing examination are based on subjects, including bookkeeping, credit adjusting, business ethics, agency, contracts, debtor and creditor relationships, and trust funds. The bill instead would require the exam to include questions on relevant provisions of the Act and relevant rules promulgated under the Act.

Once a license is revoked, or the licensee no longer engages in the debt management business, the license must be surrendered within five days. The bill would extend that time to 15 days from the date the license was revoked, or the licensee ceased operations.

While the license is in force, the licensee is required to display the license conspicuously in the outer office, or branch office of the licensee. Under the bill, this requirement would apply to those offices that offer in-person services to consumers.

Definition

The bill would define "debtor's obligation" as "any current or past-due monetary obligation of the debtor, including, but not limited to, amounts owed for payment of credit cards, utilities, mortgages, student loans, home equity loans, personal loans, judgments, garnishments, property taxes, rent, or vehicle loans or leases or any other obligation whether secured or unsecured or whether or not the obligation has a principal and interest component".

MCL 451.412 et al.

Legislative Analyst: Jeff Mann

FISCAL IMPACT

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

Fiscal Analyst: Josh Sefton

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This analysis was prepared by nonpartisan Senate staff for use by the Senate in its deliberations and does not constitute an official statement of legislative intent.