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Senate Bill 664 (as enacted)  
Sponsor: Senator Mike Kowall  
Senate Committee: Banking and Financial Institutions  
House Committee: Financial Services

**PUBLIC ACT 362 of 2014**

Date Completed: 2-19-15

**RATIONALE**

The Debt Management Act regulates debt management businesses, which enter into contracts with debtors to manage the payment of their financial obligations. The Act prescribes requirements for debt management contracts, permissible fees, and standards for the licensure of debt management businesses, and prohibits certain activities and practices. Since its passage in 1975, the Act was amended once. Some believed that the Act did not reflect changes in the industry or advancements in technology that occurred since the law was enacted. Also, because of economic conditions over the last few years, creditors evidently have become more stringent in their interaction with debt management services and their clients. To address these issues, it was suggested that the Debt Management Act be amended.

**CONTENT**

**The bill amends the Debt Management Act to do the following:**

- **Require a licensee to develop a plan outlining how a debtor will meet the payment obligations of his or her debt management plan if the debtor's monthly expense and debt payments exceed his or her net income.**
- **Modify the requirements for information that must be included in a budget analysis.**
- **Allow a licensee to charge a nonrefundable fee for establishing a debt management plan for a debtor.**
- **Increase the initial fee a licensee may charge for establishing a debt management plan, and allow a fee for the purchase of credit reports and educational materials.**
- **Require a licensee to obtain consent to participate in a debt management plan from at least 51% of the debtor's creditors within 90 days after establishing the plan, and revise the requirements for obtaining consent.**
- **Allow a debtor to add or remove one or more debt obligations from the contract by submitting a written request to the licensee.**
- **Revise the standards for annual reviews of a licensee's procedures.**
- **Allow a licensee to cancel a contract under certain conditions.**
- **Specify requirements for notices, hearings, and orders issued as a consequence of suspected fraud, or a conviction of a felony involving fraud, dishonesty, or breach of trust.**
- **Eliminate the requirement that an applicant for a license and counselors employed by a licensee pass an examination, but require counselors and individual licensees to be certified counselors.**
- **Require a licensee to state on a website available to the public that the licensee is licensed in this State.**
- **Establish a penalty for late payment of a license renewal fee.**
- **Remove a requirement that advertising be filed with the Department of Insurance and Financial Services (DIFS), but prohibit a licensee from advertising, printing, or displaying a false, misleading, or deceptive statement.**

The bill will take effect on March 16, 2015.

### 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 determines that a plan is suitable for a debtor whose current monthly expenses and debt payments exceed his or her net income, the licensee must develop a written plan that outlines how the debtor will meet payment obligations under the plan before entering into a contract with the debtor.

The bill requires a budget analysis to include the debtor's name and address, number of dependents, net monthly income, monthly home mortgage or rental payment amount and an estimate of the annual amount of real estate taxes on the property (if the amount is available from the debtor or a public source), the type and amount of all of the debtor's obligations included in the debt management plan (including a description of and amount owed for any outstanding garnishments and judgments) and known obligations that will not be included in the debt management plan, amount of household and living expenses, and a list of creditors to which payments will be made. The budget analysis need not include source of income, marital status, or gross income per pay period information, as currently required.

The bill defines "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".

### Consent of Creditors

The Act allows a licensee to charge an initial \$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 licensee may charge a \$50 fee. The licensee must attempt to obtain the consent of at least 51% of the debtor's creditors (in number or dollar amount), but will have 90 days to accomplish this. If the licensee does not receive the required consent, the licensee must inform the debtor and the debtor will have the option to close the account. If the account is closed, any unspent funds must be returned to the debtor or disbursed as he or she directs.

Currently, the consent of a creditor must be recorded on a separate form. The bill eliminates that requirement.

The Act permits a licensee to 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 allows a licensee to seek the consent of a creditor by sending a payment to the creditor under the terms of the debt management plan. Also, under the bill, a licensee is not required to send notice of a debt management plan to all of the debtor's creditors.

### Contract between Licensee & Debtor

The bill allows 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, after preparing an updated budget analysis, the licensee determines that the debtor can reasonably fulfill the requirements of the debt management plan, the licensee may amend the contract as requested by the debtor.

If a debtor's contract with a licensee expires and one or more of the debt obligations included in the contract are not liquidated, the licensee may extend or enter into an additional contract with the debtor if the licensee determines that the debt management plan is suitable for the debtor.

## Reconciliation & Annual Reviews

The Act requires payments received by a licensee from or on behalf of a debtor for the benefit of a creditor 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 also requires each licensee to ensure that it maintains records of all debtor funds held in trust and all funds disbursed on behalf of debtors. Licensees also must provide DIFS 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. The bill specifies that, on request, the licensee must make the reconciliation of the total account, including the balance for each debtor whose funds are included in the account, available to DIFS. The Act requires a trust account, 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 failure to maintain that amount will be cause for summary suspension, unless the failure is the result of an inadvertent clerical or human error.

The Act requires a licensee, at least annually, 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 creditor accounts, and f) review selected counselor records and work papers. The bill retains the requirements to review check processing procedures and verify that consumer complaints are properly handled, and adds requirements to verify that payments to selected creditor accounts are properly disbursed and that selected client files contain the proper documentation. The bill provides that a licensee that has proper controls in place to ensure that those actions are taken will meet the annual review requirements.

The bill also requires a licensee annually, on or before a date established by the Director, to file a report with the Director, on a form provided by the Director, stating the licensee's volume and type of business activities for the immediately preceding calendar year.

## 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 licensee may offer a debtor the option of purchasing credit reports and educational materials and products, and may charge a fee to the debtor if the debtor elects to purchase any of those items from the licensee. Currently, in the event of the debtor's default or cancellation, the licensee may charge a \$25 fee, which is not subject to the 15% limitation on fees. The bill retains this provision and excludes the fee for educational materials and other products from the 15% limitation, as well.

A contract is in effect when it is signed by the licensee and the debtor and the debtor has made a payment to the licensee. The bill refers to payment of any amount. The Act gives the debtor the right to cancel the contract until midnight of the third business day after the first day the contract is in effect by delivering written notice to the licensee. In this case, under the bill, the licensee is prohibited from collecting a cancellation fee.

Currently, if a debtor fails to make a payment to a licensee within 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. Under the bill, instead, if a debtor fails to make a payment to a licensee within 60 days after it is due, the licensee may, in its discretion, cancel the contract if: a) it determines that the plan is no longer suitable for the debtor, b) the debtor fails to affirmatively communicate to the licensee a desire to continue the plan, or c) the debtor's creditors refuse to continue accepting payments under the plan.

## Fraud

The bill specifies that if, in the opinion of the Director, an individual has engaged in fraud, the Director may serve on that individual a written notice of intention to prohibit him or her from being licensed under the Act, licensed or registered under any financial licensing act, or employed by, an agent of, or a control person of a licensee. The notice must contain a statement of facts supporting the prohibition, and must set a hearing within 60 days after the date of the notice. If the individual does not appear at the hearing, he or she will be considered to have consented to the issuance of an order in accordance with the facts.

"Fraud" includes "actionable fraud, actual or constructive fraud, criminal fraud, or extrinsic or intrinsic fraud, or fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud". "Financial licensing act" means the Deferred Presentment Service Transactions Act, the Mortgage Loan Originator Licensing Act, the Consumer Financial Services Act, and any of the Acts listed in Section 2 of the Consumer Financial Services Act. (The Acts listed in Section 2 include the following: the Regulatory Loan Act, the Secondary Mortgage Loan Act, the Motor Vehicle Sales Finance Act, Public Act 379 of 1984 (which regulates credit card transactions, agreements, and disclosures), the Sale of Checks Act, the Money Transmission Services Act, and the Mortgage Brokers, Lenders, and Servicers Licensing Act.)

If the Director finds after a hearing that any of the grounds specified in the notice have been established, the Director may issue an order of suspension or prohibition from being licensed under the Debt Management Act or employed by, an agent of, or a control person of a licensee. An order will be effective when served on an individual. The Director also must serve a copy of an order on the licensee of which the individual is an employee or agent. An order will remain in effect until it is stayed, modified, terminated, or set aside by the Director or a reviewing court. After five years from the date of an order, the individual subject to the order may apply to the Director to terminate the order.

If the Director considers that an individual served a notice poses an imminent threat of financial loss to customers, the Director may serve on that individual an order of suspension from being employed by, an agent of, or a control person of a licensee. A suspension will be effective on the date the order is issued and, unless stayed by a court, will remain in effect until the Director completes the required review and the Director has dismissed the charges specified in the order. Unless otherwise agreed to by the Director and the individual served with an order of suspension, the Director must hold a hearing to review a suspension at least five days, but not more than 20 days, after the date of the notice.

If an individual is convicted of a felony involving fraud, dishonesty, or breach of trust, the Director may issue an order suspending or prohibiting him or her from being licensed under the Act or employed by, an agent of, or a control person of a licensee. After five years from the date of the order, the individual subject to the order may apply to the Director to terminate it.

The Director must mail a copy of any notice or order issued to the employer or principal of the individual who is subject to the notice or order. Within 30 days after the Director has notified the parties that a matter has been submitted to him or her, the Director must render a decision that includes findings of fact supporting the decision and serve on each party to the proceeding a copy of the decision and an order consistent with it. Except for a consent order, a party to the proceedings or a person affected by an order issued under the bill's provisions may obtain a judicial review of the order. A consent order may be reviewed as provided under the Administrative Procedures Act. Except for an order under judicial review, the Director may terminate or set aside any order. The Director may terminate or set aside an order under judicial review with the permission of the court. Unless ordered by the court, the commencement of proceedings for judicial review will not stay the Director's order. The Director may apply to the Circuit Court of Ingham County for the enforcement of any outstanding order issued under the bill. Any individual who violates a final order issued under the bill's provisions will be guilty of a misdemeanor punishable by a maximum fine of \$5,000 or imprisonment for up to one year, or both.

## Prohibited Acts & Exceptions

The Act prohibits a licensee from taking certain actions, including purchasing an obligation of a debtor from a creditor, lending money or credit except as approved by the Department, and 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 exempts 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 a locator service. In addition, a payment received by a licensee from a creditor, financial institution, or other third party as part of a fair share program, grant program, or a similar program will not be subject to a prohibition against receiving any cash, fee, gift, or other compensation from a person other than a debtor in connection with the business of debt management.

(The bill defines "locator service" as "a telephone service that automatically connects callers to a network of member service providers, based on geographic location or another parameter". "Fair share program" means "a program in which voluntary contributions are made by some creditors to a licensee based on a percentage of the amount disbursed by the licensee on behalf of a debtor".)

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 removes this prohibition, but prohibits 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 prohibits a licensee from permitting another person to violate this restriction.

## Application & Examination

Currently, an applicant must pass an examination administered by the Director of DIFS or his or her designee before being granted a license to conduct the business of debt management. A counselor (or employee or agent of a licensee) also must pass an exam within the first 180 days of his or her employment. The examination may be written or oral, and must be practical in nature and sufficiently thorough as to ascertain the applicant's fitness. The Act also lists subject matter that may be tested in an examination. The bill eliminates the examination requirement. Under the bill, an applicant who is an individual must provide evidence to the Director that he or she is certified as a certified counselor before the Director grants a license to the applicant. If the applicant is a person that is not an individual, each counselor who is employed by that person must become a certified counselor within the first 180 days of his or her employment.

The bill defines "certified counselor" as "an individual who is certified by a training program or certifying organization, approved by the Director, that authenticates the competence of individuals who provide education and assistance to other individuals in connection with debt counseling and financial counseling functions".

## License Renewal

The Act requires a licensee to file an application with DIFS for renewal of its license, along with a renewal fee of \$50, before December 1 of each year. Under the bill, if a debt management license renewal fee is not received on or before December 31, the licensee will be subject to a penalty of \$25 for each day the fee is delinquent, or \$1,000, whichever is less. If a licensee does not pay a fee or penalty that it is required to pay under the Act, or does not pay the fee or penalty within the time required under the Act, the Director may maintain an action against the delinquent licensee for the recovery of the fees or penalties together with interest and costs.

## Display of License

While a license is in force, the licensee is required to display it conspicuously in the outer office, or branch office of the licensee. Under the bill, this requirement applies to those offices that offer in-person services to consumers. The bill also requires a licensee to state on a publicly available website that the licensee is licensed in this State.

MCL 451.412 et al.

## **BACKGROUND**

The Debt Management Act defines "debt management" as the "planning and management of the financial affairs of a debtor and the receipt of money from the debtor for distribution to a creditor in payment or partial payment of the debtor's obligation".<sup>1</sup> Firms that offer debt management (also referred to as credit counseling) services typically provide low-cost or free educational programs on financial education and managing debt. Sometimes this is in the form of one-on-one counseling.

Some clients may continue counseling or may enter into a debt management contract. A debt management contract allows a debtor to enter into payment arrangements with his or her creditors. Usually, debt management companies can negotiate lower interest rates or the removal of late fees and penalties for their clients, and are able to stop collection efforts.<sup>2</sup> The nature of the debt that a service will assist with varies. Some services prefer to work only with unsecured debt or credit card debt. Other services will work with many or all different types of debt.

## **ARGUMENTS**

*(Please note: The arguments contained in this analysis originate from sources outside the Senate Fiscal Agency. The Senate Fiscal Agency neither supports nor opposes legislation.)*

### **Supporting Argument**

The changes are necessary to help debt management firms better serve their clients. Compared with past practices, creditors are stricter about the concessions they make to debtors, and will often cancel those concessions if the debt management plan fails. The bill will prevent debt management plans from being cancelled if there is a short-term financial hardship; for example, a debtor may be able to make only partial payments over a 60-day period. The bill also will allow consumers to include any current or past-due obligation in their debt management program. By allowing a debtor to begin a contract with any deposit, the bill will prevent delays and permit creditor concessions to be obtained quickly. By modifying the requirement that 51% of the creditors consent to the debt management plan, the bill will create more flexibility and bring Michigan in line with other states. Clients may retain the benefit of concessions that are lost if a debt management plan is cancelled.

The bill also will reduce the burdens on debt management firms by eliminating the mandate to submit advertising materials to the Department for approval and establishing specific requirements for what advertising may and may not do. In addition, the bill will allow a firm to charge an initial fee of \$50, rather than \$25, which will bring Michigan in line with at least 39 other states.

Legislative Analyst: Jeff Mann

## **FISCAL IMPACT**

The bill will have an indeterminate impact at the State level, and a nominal impact at the local level.

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<sup>1</sup> MCL 451.412(d). As amended by Senate Bill 664, the definition refers to "1 or more of the debtor's creditors", rather than "a creditor". MCL 451.412(e).

<sup>2</sup> Rick Bialozbreski-GreenPath Debt Solutions, Oral Testimony, Senate Banking and Financial Institutions Committee, 3-6-2014.

The bill eliminates the examination requirement for licensure to conduct the business of debt management. Currently, the exam carries a \$25 examination fee. According to the Department, the bill's elimination of the fee will reduce Department funds by approximately \$3,000 to \$7,000 per year (based on a current four-year average).

The impact of the late debt management license renewal fee penalty of \$25 per day (up to \$1,000 total) is unclear. As there currently is no late penalty, it is not known how much revenue will be generated under this provision.

The bill creates administrative hearings procedures regarding fraud, license suspension, and employment suspension. This will result in additional administrative burdens for the Department and have an indeterminate impact on productivity in other administrative areas due to limited resources. The Circuit Court of Ingham County may experience increased workload due to the bill's provisions allowing the Director to apply to the Court for enforcement of outstanding orders, but it is unclear to what extent the Director will need to enforce orders.

Fiscal Analyst: Glenn Steffens