

Department of Legislative Services
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FISCAL AND POLICY NOTE
Third Reader

Senate Bill 471

(Senator Pugh)

Finance

Economic Matters

Commercial Law - Debt Settlement Services - Fund and Sunset Repeal

This bill repeals the termination date of the Maryland Debt Settlement Services Act. The bill requires specified revenues received under the Act to be credited to the Nondepository Special Fund, contingent on the passage of Senate Bill 88 of 2016 (which establishes that new consolidated special fund). The bill requires that revenues from fines and penalties be paid into the general fund.

The bill takes effect June 1, 2016.

Fiscal Summary

State Effect: Special fund revenues likely increase by approximately \$30,000 in FY 2016, with biennial renewal in FY 2018 and 2020. Special fund expenditures associated with maintaining registration requirements for debt settlement services providers may increase in FY 2016 and are maintained in future years.

(in dollars)	FY 2016	FY 2017	FY 2018	FY 2019	FY 2020
SF Revenue	\$30,000	\$0	\$30,000	\$0	\$30,000
SF Expenditure	-	\$11,900	\$12,000	\$12,100	\$12,300
Net Effect	\$30,000	(\$11,900)	\$18,000	(\$12,100)	\$17,700

Note:() = decrease; GF = general funds; FF = federal funds; SF = special funds; - = indeterminate effect

Local Effect: The bill's continued imposition of penalty provisions does not have a material impact on local government finances or operations.

Small Business Effect: Potential meaningful.

Analysis

Bill Summary: The bill requires that all revenue received for the registration of persons under the Maryland Debt Settlement Services Act and any other fee, examination assessment, or revenue received by the Commissioner of Financial Regulation under the law be credited to the Nondepository Special Fund established under Title 11 of the Financial Institutions Article by Senate Bill 88 of 2016.

The bill also repeals the June 30, 2016 termination date of the Act established by Chapters 280 and 281 of 2011 and amended by Chapters 276 and 277 of 2014. If Senate Bill 88 of 2016 does not take effect, then specified provisions that require the crediting of specified revenues to the Nondepository Special Fund and specify the use of those funds are null and void.

Current Law: The Maryland Debt Settlement Services Act terminates June 30, 2016, four years and nine months after its effective date.

Under the Act, a person may not offer, provide, or attempt to provide debt settlement services unless the person is either registered with the commissioner or exempt from registration. To register with the commissioner, a person must (1) pay an initial \$1,000 registration fee and \$1,000 for each subsequent registration renewal and (2) submit an application form including specified information. A registration expires on December 31 of each odd-numbered year unless renewed for an additional two-year term on or before December 1 of the year of expiration. Chapters 276 and 277 of 2014 extended the expiration or a renewal of a registration of a debt settlement services provider with an expiration date of December 1, 2015, automatically to June 1, 2016, without payment of an additional fee or submission of an application.

Violation of the Maryland Debt Settlement Services Act is an unfair or deceptive trade practice under the Maryland Consumer Protection Act (MCPA), subject to MCPA's civil and criminal penalty provisions.

Background: Prior to the Maryland Debt Settlement Services Act, regulation of debt settlement companies was not required by State law. Once the Act terminates (currently, on June 30, 2016), debt settlement services providers will not be regulated under State law unless further action is taken.

Commissioner of Financial Regulation Study and the Maryland Debt Settlement Services Act

Chapters 338 and 339 of 2010 required the commissioner, in consultation with the Consumer Protection Division of the Office of the Attorney General, to conduct a study of

the debt settlement services industry and report findings to the Senate Finance and House Economic Matters committees. The study, finalized in December 2010, found that the increase in the number of consumers who were unable to pay unsecured debt had created a significant growth in the demand for debt relief services. The report made the following recommendations, among others: (1) establish interim registration of companies engaging in the business of debt settlement, with each registration valid for a period of two years at a \$500 per-year fee, during which time the commissioner would determine whether a licensing scheme should be adopted; and (2) distinguish from debt management and debt settlement services companies in any proposed legislation.

In light of the commissioner's report and recommendations, the Maryland Debt Settlement Services Act was established by Chapters 280 and 281 of 2011 to:

- register providers of debt settlement services;
- specify requirements for debt settlement services agreements;
- prohibit providers from charging customers fees for consultation or for obtaining a consumer's credit report or from requiring a voluntary contribution from a consumer for any provider services;
- prohibit providers from charging debt settlement services fees until after a debt settlement services agreement has been executed between the provider and the consumer; the provider has renegotiated, settled, reduced, or otherwise altered the terms of at least one individual debt specified in the agreement; and the consumer has made at least one payment in accordance with the debt settlement services agreement;
- allow providers to request or require consumers to deposit funds in an account to be used for debt settlement services fees and payments to creditors;
- establish other duties for providers; and
- require revenue received from registration of providers to be placed in the Debt Management Services Fund for use in covering expenses incurred in the registration of providers.

Report on Implementation of the Maryland Debt Settlement Services Act

Chapters 280 and 281 of 2011, as amended by Chapters 276 and 277 of 2014, established that, on or before December 1, 2015, the Office of the Commissioner, in consultation with the Consumer Protection Division, had to report to the Senate Finance Committee and the House Economic Matters Committee on recommendations regarding changes to the Maryland Debt Settlement Services Act, including:

- whether to transition from a registration requirement to a licensure requirement for debt settlement services providers; and

- whether a cap on debt settlement services fees would be beneficial to consumers and fair to the debt settlement services industry.

According to the report issued by the commissioner and division in early 2016, as of 2015, 30 debt settlement services providers are registered with the commissioner. About 20% of the registered providers are located within the State, with the remaining 80% as foreign corporations authorized to do business in the State. From 2012 through 2015, registrants serviced an average of 2,750 Maryland consumers annually. From fiscal 2013 through 2015, the division received nine complaints from Maryland consumers relating to the practice of debt settlement services. All of the complaints alleged misrepresentation of the debt settlement services agreement and charging excessive fees; however, 89% of the complaints were filed against providers that were not registered in the State or entities that are exempt from registration.

Both the commissioner and the division recommended that a licensing requirement is not warranted, but they disagreed as to whether a limit on debt settlement services fees should be established.

- The commissioner recommended the fees should not be limited for various reasons, including a low level of complaints over the last several years, and because State and federal laws allow a consumer to reject a debt settlement service plan offer or cancel a debt settlement services plan agreement at any time without payment of a penalty or other financial obligation to the debt settlement services provider.
- The division recommended the fees be limited, based on a percentage of the amount the debt settlement services provider actually saved the consumer on the debts that were settled. The division advised that limiting fees to a percentage of the amount saved protects consumers while providing an incentive to the debt settlement services provider to settle all the consumers' debts.

The commissioner and division each made further recommendations. The commissioner recommended **against** continuing the registration requirement but advised that, if registration were to continue, a registrant should not have to continue to file an annual report. The division also recommended that the exemption for attorneys be studied to determine whether consumers who enter into debt settlement services agreements with attorneys face outcomes similar to those who contract with nonattorney debt settlement services providers.

State Fiscal Effect: Because the bill maintains the requirement for registration and all existing registrations expire on June 1, 2016 (due to the extension established in Chapters 276 and 277 of 2014), this analysis assumes that all debt settlement services providers must renew their registrations in June and pay the \$1,000 biennial renewal fee.

Thereafter, it is assumed that they would renew every other December (in odd-numbered years). Thus, assuming 30 such providers renew, special fund revenues increase by \$30,000 in fiscal 2016, 2018, and 2020.

Maintaining the registration requirement as well as the annual reporting requirement likewise increases special fund expenditures minimally each year. The Department of Labor, Licensing, and Regulation advises that it uses contractual assistance, resulting in approximately \$12,000 of costs annually.

The bill allows for continued imposition of existing penalty provisions, which does not have a material impact on State finances or operations.

The Consumer Protection Division of the Office of the Attorney General did not provide a response in time for inclusion in this fiscal and policy note. However, the Department of Legislative Services advises that, given the relatively small number of complaints received over the past several fiscal years, the Office of the Attorney General can handle any additional complaints with existing resources.

Small Business Effect: To the extent that any debt settlement services providers are small businesses, they continue to incur costs associated with renewal fees (\$1,000 biennially) and annual report requirements (submitted to the commissioner on or before March 15 each year) due to permanently maintaining the registration requirement under the bill.

Additional Comments: The bill contains a contingency related to Senate Bill 88 of 2016, which establishes the Nondepository Special Fund. The Nondepository Special Fund consists of a consolidation of several existing special funds, including the Debt Management Services Fund, into which registration fees for debt settlement services providers are currently deposited. If Senate Bill 88 does not pass, then revenues that are allocated to the Nondepository Special Fund under the bill will, instead, continue to be deposited into the Debt Management Services Fund.

Additional Information

Prior Introductions: None.

Cross File: HB 1450 (Delegate Vaughn) - Economic Matters.

Information Source(s): Office of the Attorney General (Consumer Protection Division); Department of Labor, Licensing, and Regulation; Department of Legislative Services

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