

By: McCall

H.B. No. 2396

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of consumer debt management services.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 394.204(c), Finance Code, is amended to read as follows:

(c) An application for an initial registration must be in a form prescribed by the commissioner and accompanied by:

(1) the appropriate fees set by the finance commission in an amount necessary to recover the costs of administering this subchapter;

(2) the surety bond or insurance required by Section 394.206;

(3) the applicant's name, the applicant's principal business address and telephone number, all other business addresses of the applicant in this state, and the applicant's electronic mail address and Internet website address;

(4) all names under which the applicant conducts business;

(5) the address of each location in this state at which the applicant will provide debt management services, or if the applicant will have no such location, a statement to that effect;

(6) the name and home address of each officer and director of the applicant and each person that holds at least a 10 percent ownership interest in the applicant;

1           (7) if the applicant is a nonprofit or tax exempt  
2 organization, a detailed description of the ownership interest of  
3 each officer, director, agent, or employee of the applicant, and  
4 any member of the immediate family of an officer, director, agent,  
5 or employee of the applicant, in a for-profit affiliate or  
6 subsidiary of the applicant or in any other for-profit business  
7 entity that provides services to the applicant or to a consumer in  
8 relation to the applicant's debt management business; and

9           (8) [~~4~~] any other information that the commissioner  
10 requires.

11           SECTION 2. Section 394.205(b), Finance Code, is amended to  
12 read as follows:

13           (b) Each provider shall file a report with the commissioner  
14 at each renewal of the provider's registration. The report must at  
15 a minimum disclose in detail and under appropriate headings:

16           (1) the assets and liabilities of the provider at the  
17 beginning and end of the period, if the provider is a nonprofit or  
18 tax exempt organization;

19           (2) the total number of debt management plans the  
20 provider has initiated on behalf of consumers in this state during  
21 that year; and

22           (3) records of total and average fees charged to  
23 consumers, including all voluntary contributions received from  
24 consumers.

25           SECTION 3. Sections 394.208(a) and (d), Finance Code, are  
26 amended to read as follows:

27           (a) A provider may not enroll a consumer in a debt

1 management plan unless, ~~+~~

2 ~~[(1) the provider is a nonprofit organization exempt~~  
3 ~~from taxation under Section 501(c)(3), Internal Revenue Code of~~  
4 ~~1986, and~~

5 ~~[(2)]~~ through the services of a counselor certified by  
6 an independent accreditation organization, the provider has:

7 (1) ~~[(A)]~~ provided the consumer individualized  
8 counseling and educational information that at a minimum addresses  
9 the topics of managing household finances, managing credit and  
10 debt, and budgeting;

11 (2) ~~[(B)]~~ prepared an individualized financial  
12 analysis and an initial debt management plan for the consumer's  
13 debts with specific recommendations regarding actions the consumer  
14 should take;

15 (3) ~~[(C)]~~ determined that the consumer has a  
16 reasonable ability to make payments under the proposed debt  
17 management plan based on the information provided by the consumer;

18 (4) ~~[(D)]~~ a reasonable expectation, provided that the  
19 consumer has provided accurate information to the provider, that  
20 each creditor of the consumer listed as a participating creditor in  
21 the plan will accept payment of the consumer's debts as provided in  
22 the initial plan;

23 (5) ~~[(E)]~~ prepared, for all creditors identified by  
24 the consumer or identified through additional investigation by the  
25 provider, a list, which must be provided to the consumer in a form  
26 the consumer may keep, of the creditors that the provider  
27 reasonably expects to participate in the plan; and

1           (6) [~~(F)~~] provided a written document to the consumer  
2 in a form the consumer may keep that clearly and conspicuously  
3 contains the following statements:

4           (A) [~~(i)~~] that debt management services are not  
5 suitable for all consumers and that consumers may request  
6 information about other ways, including bankruptcy, to deal with  
7 indebtedness;

8           (B) [~~(ii)~~] that if the provider is a nonprofit or  
9 tax-exempt organization the provider cannot require donations or  
10 contributions; and

11           (C) if applicable, [~~(iii)~~] that some of the  
12 provider's funding comes from contributions from creditors who  
13 participate in debt management plans, except that a provider may  
14 substitute for "some" the actual percentage of creditor  
15 contributions it received during the most recent reporting period.

16           (d) A provider may provide the information required by  
17 Subsections (a)(2), (5), and (6) [~~(a)(2)(B), (E), and (F)~~] through  
18 its Internet website if the provider:

19           (1) has complied with the federal Electronic  
20 Signatures in Global and National Commerce Act (15 U.S.C. Section  
21 7001 et seq.);

22           (2) informs the consumer that, on electronic,  
23 telephonic, or written request the provider will make available to  
24 the consumer a paper copy or copies; and

25           (3) discloses on its Internet website:

26           (A) the provider's name and each name under which  
27 it does business;

1                   (B) the provider's principal business address  
2 and telephone number; and

3                   (C) the names of the provider's principal  
4 officers.

5           SECTION 4. Section 394.210, Finance Code, is amended by  
6 adding Subsection (f) to read as follows:

7           (f) The commissioner may establish maximum fair and  
8 reasonable fees under this section.

9           SECTION 5. This Act takes effect September 1, 2007.