

1-1 By: Eltife S.B. No. 884
1-2 (In the Senate - Filed February 26, 2007; March 7, 2007,
1-3 read first time and referred to Committee on Business and Commerce;
1-4 March 26, 2007, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0; March 26, 2007,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 884 By: Averitt

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of consumer debt management services.
1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-12 SECTION 1. Subsection (c), Section 394.204, Finance Code,
1-13 is amended to read as follows:
1-14 (c) An application for an initial registration must be in a
1-15 form prescribed by the commissioner and accompanied by:
1-16 (1) the appropriate fees set by the finance commission
1-17 in an amount necessary to recover the costs of administering this
1-18 subchapter;
1-19 (2) the surety bond or insurance required by Section
1-20 394.206;
1-21 (3) the applicant's name, the applicant's principal
1-22 business address and telephone number, all other business addresses
1-23 of the applicant in this state, and the applicant's electronic mail
1-24 address and Internet website address;
1-25 (4) all names under which the applicant conducts
1-26 business;
1-27 (5) the address of each location in this state at which
1-28 the applicant will provide debt management services, or if the
1-29 applicant will have no such location, a statement to that effect;
1-30 (6) the name and home address of each officer and
1-31 director of the applicant and each person that holds at least a 10
1-32 percent ownership interest in the applicant;
1-33 (7) if the applicant is a nonprofit or tax exempt
1-34 organization, a detailed description of the ownership interest of
1-35 each officer, director, agent, or employee of the applicant, and
1-36 any member of the immediate family of an officer, director, agent,
1-37 or employee of the applicant, in a for-profit affiliate or
1-38 subsidiary of the applicant or in any other for-profit business
1-39 entity that provides services to the applicant or to a consumer in
1-40 relation to the applicant's debt management business; and
1-41 (8) ~~(4)~~ any other information that the commissioner
1-42 requires.
1-43 SECTION 2. Subsection (b), Section 394.205, Finance Code,
1-44 is amended to read as follows:
1-45 (b) Each provider shall file a report with the commissioner
1-46 at each renewal of the provider's registration. The report must at
1-47 a minimum disclose in detail and under appropriate headings:
1-48 (1) the assets and liabilities of the provider at the
1-49 beginning and end of the period, if the provider is a nonprofit or
1-50 tax exempt organization;
1-51 (2) the total number of debt management plans the
1-52 provider has initiated on behalf of consumers in this state during
1-53 that year; and
1-54 (3) records of total and average fees charged to
1-55 consumers, including all voluntary contributions received from
1-56 consumers.
1-57 SECTION 3. Subsections (a) and (d), Section 394.208,
1-58 Finance Code, are amended to read as follows:
1-59 (a) A provider may not enroll a consumer in a debt
1-60 management plan unless, ~~+~~
1-61 ~~[(1) the provider is a nonprofit organization exempt~~
1-62 ~~from taxation under Section 501(c)(3), Internal Revenue Code of~~
1-63 ~~1986, and~~

2-1 ~~(2)~~ through the services of a counselor certified by
2-2 an independent accreditation organization, the provider has:

2-3 (1) ~~(A)~~ provided the consumer individualized
2-4 counseling and educational information that at a minimum addresses
2-5 the topics of managing household finances, managing credit and
2-6 debt, and budgeting;

2-7 (2) ~~(B)~~ prepared an individualized financial
2-8 analysis and an initial debt management plan for the consumer's
2-9 debts with specific recommendations regarding actions the consumer
2-10 should take;

2-11 (3) ~~(C)~~ determined that the consumer has a
2-12 reasonable ability to make payments under the proposed debt
2-13 management plan based on the information provided by the consumer;

2-14 (4) ~~(D)~~ a reasonable expectation, provided that the
2-15 consumer has provided accurate information to the provider, that
2-16 each creditor of the consumer listed as a participating creditor in
2-17 the plan will accept payment of the consumer's debts as provided in
2-18 the initial plan;

2-19 (5) ~~(E)~~ prepared, for all creditors identified by
2-20 the consumer or identified through additional investigation by the
2-21 provider, a list, which must be provided to the consumer in a form
2-22 the consumer may keep, of the creditors that the provider
2-23 reasonably expects to participate in the plan; and

2-24 (6) ~~(F)~~ provided a written document to the consumer
2-25 in a form the consumer may keep that clearly and conspicuously
2-26 contains the following statements:

2-27 (A) ~~(i)~~ that debt management services are not
2-28 suitable for all consumers and that consumers may request
2-29 information about other ways, including bankruptcy, to deal with
2-30 indebtedness;

2-31 (B) ~~(ii)~~ that if the provider is a nonprofit or
2-32 tax-exempt organization the provider cannot require donations or
2-33 contributions; and

2-34 (C) if applicable, ~~(iii)~~ that some of the
2-35 provider's funding comes from contributions from creditors who
2-36 participate in debt management plans, except that a provider may
2-37 substitute for "some" the actual percentage of creditor
2-38 contributions it received during the most recent reporting period.

2-39 (d) A provider may provide the information required by
2-40 Subsections (a)(2), (5), and (6) ~~[(a)(2)(B), (E), and (F)]~~ through
2-41 its Internet website if the provider:

2-42 (1) has complied with the federal Electronic
2-43 Signatures in Global and National Commerce Act (15 U.S.C. Section
2-44 7001 et seq.);

2-45 (2) informs the consumer that, on electronic,
2-46 telephonic, or written request the provider will make available to
2-47 the consumer a paper copy or copies; and

2-48 (3) discloses on its Internet website:
2-49 (A) the provider's name and each name under which
2-50 it does business;

2-51 (B) the provider's principal business address
2-52 and telephone number; and

2-53 (C) the names of the provider's principal
2-54 officers.

2-55 SECTION 4. Section 394.210, Finance Code, is amended by
2-56 adding Subsection (f) to read as follows:

2-57 (f) The finance commission may establish maximum fair and
2-58 reasonable fees under this section.

2-59 SECTION 5. This Act takes effect September 1, 2007.

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