

BILL ANALYSIS

C.S.S.B. 2233

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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2005 and 2007, legislation was passed placing nonprofit and for-profit debt management services under the regulatory authority of the Office of Consumer Credit Commissioner (OCCC).

C.S.S.B. 2233 amends current law relating to the regulation of debt management services providers and creates a consumer debt settlement task force to study the business of debt settlement.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTIONS 1 and 3 of this bill.

ANALYSIS

C.S.S.B. 2233 amends the Finance Code to exempt from the provisions governing consumer debt management services a provider who receives no compensation for debt management services from or on behalf of the individuals to whom it provides the services or from their creditors and to remove a provision that made those governing statutes generally applicable to a provider regardless of whether the provider charged a fee or received consideration for a service.

The bill removes a provision exempting an attorney licensed to practice in Texas from those governing statutes unless the attorney holds the attorney's self out to the public as a provider or is employed, affiliated with, or otherwise working on behalf of a provider.

The bill redefines "debt management service" as service as an intermediary between an individual and one or more of the individual's creditors for the purpose of obtaining concessions, but not including the following:

legal services provided in an attorney-client relationship by an attorney licensed or otherwise authorized to practice law in Texas; accounting services provided in an accountant-client relationship by a certified public accountant licensed to provide accounting services in Texas; or financial planning services provided in a financial planner-client relationship by a member of a financial planning profession whose members the Finance Commission of Texas by rule determines are licensed by the state, subject to a disciplinary mechanism, subject to a code of professional responsibility, and subject to a continuing education requirement.

C.S.S.B. 2233 authorizes the finance commission to adopt rules to require persons providing debt settlement services to register and to provide information to the consumer credit commissioner regarding consumer disclosures.

C.S.S.B. 2233 creates the consumer debt settlement task force to conduct a study regarding the business of consumer debt settlement. The bill requires the study to examine: the disclosures provided to consumers who enroll in debt settlement programs, including disclosures regarding consumers' rights and responsibilities under those programs, the amount of the debt or obligation of the consumer to be settled under those programs and the fees or other charges imposed by persons providing debt settlement services, and the refund policies of those programs; the effectiveness of debt settlement programs in assisting consumers; the cost and availability of debt settlement programs; any information regarding complaints and enforcement actions against

debt settlement programs; and other appropriate issues. The bill establishes that the task force consists of the attorney general or the attorney general's designee, the consumer credit commissioner or the commissioner's designee, a member of the house of representatives appointed by the speaker of the house of representatives, a member of the senate appointed by the lieutenant governor, three persons who provide debt settlement services appointed by the attorney general, and three consumer advocates appointed by the attorney general. The bill requires the task force, not later than December 1, 2010, to submit to the legislature a report on the results of the study. This section expires September 1, 2011.

EFFECTIVE DATE

Except for SECTION 4, the bill takes effect January 1, 2010. SECTION 4 of the bill takes effect September 1, 2009.

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.S.B. 2233 differs from the original by removing the Uniform Debt Management Services Act including definitions and provisions relating to the applicability of the act, the requirement to be registered, the renewal of registration and other registration requirements, registration in another state, the requirement for a provider to file a surety bond or to provide a substitute to the administrator, the requirement of a provider to act in good faith, customer service requirements, prerequisites for providing debt management services, a provider communicating electronically or by other means, the form and contents of an agreement between a provider and a consumer, the cancellation of an agreement, English as a required language on the disclosures and documents required under the act's provisions, establishment of a trust account for the deposit of money paid to a provider, the setting of fees and other charges, prohibitions against a provider soliciting for voluntary contributions, voidable agreements, the termination of agreements, periodic reports and the retention of records, prohibited acts and practices, the serving of notice of a civil action against a provider for a violation of the act's provisions, required disclosures in advertising, a provider's liability for the conduct of other persons, the powers of an administrator, administrative remedies, the suspension, revocation, or nonrenewal of registration, private enforcement of an individual, violating the Deceptive Trade Practices Act, the statute of limitations, the uniformity of applying and construing the bill's provisions, and the relation of the act to the Federal Electronic Signatures in Global and National Commerce Act.

C.S.S.B. 2233 adds provisions requiring a study by a consumer debt settlement task force regarding the business of consumer debt settlement to Subchapter C, Chapter 394, Finance Code, whereas the original repeals that subchapter relating to consumer debt management services.

C.S.S.B. 2233 redefines "debt management service" in the existing statute in the same manner the original defines "debt management services." The substitute exempts from the provisions governing consumer debt management services a provider who receives no compensation for debt management services from or on behalf of the individuals to whom it provides the services or from their creditors by amending those existing statutes, whereas the original exempts such providers from the application of the Uniform Debt Management Services Act.

The substitute differs from the original by removing a statutory provision providing that the provisions relating to consumer debt management services do not apply to an attorney licensed to practice in Texas, unless the attorney holds the attorney's self out to the public as a provider or is employed, affiliated with, or otherwise working on behalf of a provider.

C.S.S.B. 2233 grants rulemaking authority to the Finance Commission of Texas to adopt rules to require persons providing debt settlement services to register and to provide information to the consumer credit commissioner regarding consumer disclosures, whereas the original grants rulemaking authority to the finance commission as well but in different areas of the Uniform Debt Management Services Act.

C.S.S.B. 2233 adds an effective date of September 1, 2009 to Section 4 of the substitute.