

By: Eltife, et al.

S.B. No. 2233

Substitute the following for S.B. No. 2233:

By: Anchia

C.S.S.B. No. 2233

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of debt management service providers and
a study regarding the business of consumer debt settlement.

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

SECTION 1. Section 394.202(6), Finance Code, is amended to
read as follows:

(6) "Debt management service" means service as an
intermediary between an individual and one or more creditors of the
individual for the purpose of obtaining concessions. The term does
not include:

(A) legal services provided in an
attorney-client relationship by an attorney licensed or otherwise
authorized to practice law in this state [~~the receiving of money
from a consumer for the purpose of distributing that money to or
among one or more of the creditors of the consumer in full or
partial payment of the consumer's obligations~~];

(B) accounting services provided in an
accountant-client relationship by a certified public accountant
licensed to provide accounting services in this state [~~arranging or
assisting a consumer to arrange for the distribution of one or more
payments to or among one or more creditors of the consumer in full
or partial payment of the consumer's obligations~~]; or

(C) financial planning services provided in a
financial planner-client relationship by a member of a financial

1 planning profession whose members the finance commission by rule
2 determines are:

- 3 (i) licensed by this state;
4 (ii) subject to a disciplinary mechanism;
5 (iii) subject to a code of professional
6 responsibility; and

7 (iv) subject to a continuing education
8 requirement [~~exercising control, directly or indirectly, or~~
9 ~~arranging for the exercise of control over funds of a consumer for~~
10 ~~the purpose of distributing payments to or among one or more~~
11 ~~creditors of the consumer in full or partial payment of the~~
12 ~~consumer's obligations]~~.

13 SECTION 2. Sections 394.203(a) and (c), Finance Code, are
14 amended to read as follows:

15 (a) This subchapter does not apply to a provider who
16 receives no compensation for debt management services from or on
17 behalf of the individuals to whom it provides the services or from
18 their creditors [~~Except as otherwise provided by this subchapter,~~
19 ~~this subchapter applies to a provider regardless of whether the~~
20 ~~provider charges a fee or receives consideration for a service]~~.

21 (c) This subchapter does not apply to:

22 (1) [~~an attorney licensed to practice in this state,~~
23 ~~unless the attorney holds the attorney's self out to the public as a~~
24 ~~provider or is employed, affiliated with, or otherwise working on~~
25 ~~behalf of a provider,~~

26 [~~2~~] a title insurance or abstract company employee
27 or agent, or other person legally authorized to engage in escrow

1 business in the state, only while engaged in the escrow business;

2 (2) [~~(3)~~] a judicial officer or person acting under a
3 court order;

4 (3) [~~(4)~~] a person who has legal authority under
5 federal or state law to act as a representative payee for a
6 consumer, only to the extent the person is paying bills or other
7 debts on behalf of that consumer;

8 (4) [~~(5)~~] a person who pays bills or other debts owed
9 by a consumer and on behalf of a consumer, if the money used to make
10 the payments belongs exclusively to the consumer and the person
11 does not initiate any contact with individual creditors of the
12 consumer to compromise a debt, arrange a new payment schedule, or
13 otherwise change the terms of the debt; or

14 (5) [~~(6)~~] a financial institution, as defined by
15 Section 201.101.

16 SECTION 3. Section 394.214, Finance Code, is amended by
17 adding Subsection (a-1) to read as follows:

18 (a-1) The finance commission may adopt rules to require
19 persons providing debt settlement services to register and to
20 provide information to the commissioner regarding consumer
21 disclosures.

22 SECTION 4. Subchapter C, Chapter 394, Finance Code, is
23 amended by adding Section 394.216 to read as follows:

24 Sec. 394.216. STUDY REGARDING CONSUMER DEBT SETTLEMENT
25 INDUSTRY. (a) The consumer debt settlement task force is created
26 to conduct a study regarding the business of consumer debt
27 settlement. The study must examine:

1 (1) the disclosures provided to consumers who enroll
2 in debt settlement programs, including disclosures regarding:

3 (A) consumers' rights and responsibilities under
4 those programs, including the benefits of using a savings program
5 or other financial planning opportunities;

6 (B) the amount of the debt or obligation of the
7 consumer to be settled under those programs and the fees or other
8 charges imposed by persons providing debt settlement services; and

9 (C) the refund policies of those programs;

10 (2) the effectiveness of debt settlement programs in
11 assisting consumers;

12 (3) the cost and availability of debt settlement
13 programs;

14 (4) any information regarding complaints and
15 enforcement actions against debt settlement programs; and

16 (5) other appropriate issues.

17 (b) The task force consists of:

18 (1) the attorney general or the attorney general's
19 designee;

20 (2) the consumer credit commissioner or the
21 commissioner's designee;

22 (3) a member of the house of representatives appointed
23 by the speaker of the house of representatives;

24 (4) a member of the senate appointed by the lieutenant
25 governor;

26 (5) three persons who provide debt settlement
27 services, appointed by the attorney general; and

1 (6) three consumer advocates, appointed by the
2 attorney general.

3 (c) Not later than December 1, 2010, the task force shall
4 submit to the legislature a report on the results of the study
5 required under this section.

6 (d) This section expires September 1, 2011.

7 SECTION 5. (a) Except as provided by Subsection (b) of this
8 section, this Act takes effect January 1, 2010.

9 (b) Section 4 of this Act takes effect September 1, 2009.