

BILL ANALYSIS

C.S.H.B. 1222
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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

According to interested parties, the Texas Legislature has enacted legislation placing nonprofit and for-profit debt management services, including consumer credit counseling services and debt management companies, under the regulatory authority of the Office of Consumer Credit Commissioner but has yet to address the creation of a regulatory structure for similar services offered by debt settlement providers. Interested parties contend that the recent economic downturn has compounded the necessity for a more uniform regulatory structure for debt management services providers and, in the interest of effective consumer protection, for the establishment of clear standards of accountability for all debt management services providers.

C.S.H.B. 1222 seeks to address the need for such uniformity in regulation by incorporating debt settlement services into the regulatory provisions applicable to debt management services and making debt settlement services providers subject to regulation by the consumer credit commissioner.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 8 of this bill.

ANALYSIS

C.S.H.B. 1222 amends the Finance Code to clarify that the condition under which the consumer credit commissioner is authorized to suspend or revoke a debt management services provider's registration on the basis of the provider's failure to disburse money to a creditor on the consumer's behalf within a reasonable time applies to a provider who has received money from or on behalf of a consumer for disbursement to a creditor under a debt management plan that provides for regular periodic payments to creditors in full repayment of the principal amount of the debts.

C.S.H.B. 1222 makes the requirement to file a bond, at the time a provider files an initial or renewal registration application, in an amount equal to the average daily balance of the provider's trust account serving Texas consumers over the six-month period preceding the issuance of the bond, or in the case of an initial application, in an amount determined by the commissioner, but not less than \$25,000 or more than \$100,000, applicable only if the provider receives and holds money paid by or on behalf of a consumer for disbursement to the consumer's creditors. The bill otherwise requires the filing of a bond in the amount of \$50,000 with an initial or renewal registration.

C.S.H.B. 1222 makes the requirements that a provider have a reasonable expectation that each of a consumer's creditors listed as a participating creditor in a debt management plan will accept payment of the consumer's debts as provided in the initial plan and have prepared a list of the consumer's creditors that the provider reasonably expects to participate in the plan, as a condition for enrolling a consumer in a debt management plan, applicable only if the proposed debt

management plan does not provide for a reduction of principal as a concession. The bill makes the requirement for each debt services agreement to list in the agreement or in an accompanying document each participating creditor of the consumer to which payments will be made, the amount owed to each creditor, and the schedule of payments applicable only if the proposed plan does not provide for a reduction of principal as a concession.

C.S.H.B. 1222 requires a provider, if the provider or a consumer cancels a debt management service agreement, to return immediately to the consumer any of the consumer's money held in trust by the provider for the consumer's benefit and 65 percent of any portion of the account set-up fee that has not been credited against settlement fees.

C.S.H.B. 1222 removes a provision requiring any fee charged by a provider to be fair and reasonable given the value of the products and services provided to the consumer, including consideration of the amount subject to debt management and the number of anticipated payments. The bill removes a provision prohibiting a fee or a portion of a fee that is specifically related to a debt management plan from being charged until the provider has complied with certain statutory provisions. The bill removes provisions authorizing a provider to charge a monthly maintenance fee if the fee is fair and reasonable, requiring a fee charged for a service other than a debt management service to be fair and reasonable, and authorizing the Finance Commission of Texas to establish maximum fair and reasonable fees charged by a debt management services provider.

C.S.H.B. 1222 prohibits a provider from imposing fees or other charges on a consumer and from receiving payment for debt management services until the consumer has entered into a debt management service agreement with the provider in compliance with the law. The bill prohibits a provider, if a consumer enters into a debt management service agreement with the provider, from imposing a fee or other charge for debt counseling, education services, or similar services except as otherwise authorized by the bill's provisions. The bill authorizes the commissioner to authorize a provider to charge a fee based on the nature and extent of the counseling, education services, or other similar services furnished by the provider.

C.S.H.B. 1222 authorizes a provider, if a consumer is enrolled in a debt management plan that provides for a reduction of finance charges or fees for late payment, default, or delinquency as a concession from creditors, to charge a fee not to exceed \$100 for debt consultation or education services, including obtaining a credit report, setting up an account, and other similar services and a monthly service fee not to exceed the lesser of \$10 multiplied by the number of accounts remaining in the plan on the day of the month the fee is assessed or \$50.

C.S.H.B. 1222 authorizes a provider, if a consumer is enrolled in a debt management plan that provides for settlement of debts for amounts that are less than the principal amounts of the debts as a concession from creditors, to charge a fee for debt consultation or education services in an amount not to exceed the lesser of \$400 or four percent of the total amount of the outstanding debt included in the plan at the time the plan is established; a monthly service fee not to exceed the lesser of \$10 multiplied by the number of accounts remaining in the plan on the day of the month the fee is assessed or \$50; and either a flat fee capping the total aggregate of fees charged at 17 percent of the total principal amount of debt included in the debt management plan or a settlement fee capped at 30 percent of the excess of the outstanding amount of each debt over the amount actually paid to the creditor, as computed at the time of settlement and in addition to the fees for debt consultation or education services and the monthly service fee. The bill authorizes settlement fees to be charged only as debts are settled and caps the total aggregate amount of fees charged to a consumer for debt management services, including fees for debt consultation or education services and the monthly service fee, from exceeding 20 percent of the principal amount of debt included in the debt management plan.

C.S.H.B. 1222 requires a flat fee to be assessed in equal monthly payments for a period that is at least as long as the term of the debt management plan, as estimated when the debt management

plan is established, unless the fee payment period is voluntarily accelerated by the consumer in an addendum to the agreement or other separate agreement and offers of settlement by creditors have been obtained on at least half of the outstanding debt included in the debt management plan.

C.S.H.B. 1222 establishes that the limitations on fees do not apply and authorizes the provider to charge reasonable settlement fees if a consumer is enrolled in a debt management plan that provides for the settlement of debts for amounts that are less than the principal amount of the debts as a concession from creditors, if fees for debt management services will not be charged or collected until the time a settlement agreement is reached with a creditor, and if at least one payment has been made toward the settlement agreement by or on behalf of the consumer. The bill requires the fee with respect to each debt included in such a plan to bear the same proportional relationship to the total fee for settling all debts included in the debt management plan as the principal amount of the particular debt bears to the total principal amount of the debt included in the plan or to be a percentage of the amount saved as a result of the settlement, determined as the difference between the principal amount of a debt and the amount actually paid to satisfy the debt. The bill specifies that the percentage charged cannot change from one debt to another.

C.S.H.B. 1222 limits a provider to imposing fees or other charges or to receiving fees or payment under only one of the following provisions: the provision for the fixed fee capped at \$100 plus the monthly service fee; the provision that caps fees based on the provision of consultation or education services, a monthly service fee, or the amount of debt included in a management plan; or the provision under which the limitations on fees do not apply and the provider is authorized to charge reasonable settlement fees. The bill makes provisions relating to the authorized methods for assessing fees subject to provisions relating to an adjustment of a fee to reflect inflation.

C.S.H.B. 1222 authorizes a provider, if a consumer does not enter into a debt management service agreement with the provider, to receive payment for debt counseling or education services provided to the consumer in an amount not to exceed \$100 or a greater amount, on approval of the commissioner. The bill authorizes the commissioner to approve a fee in an amount greater than \$100 if the nature and extent of the educational and counseling services warrant the greater amount.

C.S.H.B. 1222 requires a provider, if a consumer enters into a debt management service agreement with the provider before the expiration of the 90th day after the date debt counseling or education services are completed or canceled, to refund to the consumer any payments received for debt payment or education services that were provided without the consumer entering into a debt management service agreement. The bill authorizes a provider, subject to an adjustment of an amount of a fee to reflect inflation, to impose a reasonable charge on the consumer not to exceed the lesser of \$25 or an amount permitted by another law other than those governing consumer debt management services if any payment made by a consumer to a provider is dishonored.

C.S.H.B. 1222 requires the commissioner to compute and publish the dollar amounts of permitted fees or other charges by debt management services providers in amounts different from the amounts of fees or other charges specified in the bill's provisions to reflect inflation, as measured by the Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor or, if that index is not available, another index adopted by finance commission rule. The bill requires the commissioner to adopt a base year and adjust the dollar amounts, effective on July 1 of each year, if the change in the index from the base year, as of December 31 of the preceding year, is at least 10 percent. The bill requires the dollar amounts to be rounded to the nearest \$100, except that the amounts of those permitted fees and other charges by a debt management services provider are required to be rounded to the nearest dollar. The bill requires the commissioner to notify registered

providers of any change in dollar amounts made to reflect inflation and to make that information available to the public.

C.S.H.B. 1222 defines "concession," "principal amount of the debt," and "settlement fee" and redefines "debt management service" and "provider."

EFFECTIVE DATE

September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 1222 differs from the original by incorporating its provisions relating to debt management services providers and regulating debt management services providers as amendments to existing statutory provisions, whereas the original repeals the provisions amended by the substitute and adds new statutory provisions, to be cited as the Uniform Debt Management Services Act, relating to substantially the same services and providers.

C.S.H.B. 1222 differs from the original by adding a definition of "concession" to an existing statute providing definitions for purposes of the law governing debt management services, whereas the original includes substantially the same definition as "concessions" in the provisions for the new act. The substitute differs from the original by amending the existing definition of "debt management services," whereas the original adds a new definition for the term that also excludes certain services.

C.S.H.B. 1222 differs from the original by defining "principal amount of debt" as the amount of a debt owed by a consumer at the time the consumer enters into a debt management service agreement, whereas the original defines that term as the amount of a debt at the time of an agreement. The substitute differs from the original by defining "settlement fee" as a charge that is imposed on or paid by a consumer in connection with a debt management service agreement after a creditor agrees to accept in full satisfaction of a debt an amount that is less than the principal amount of the debt, whereas the original defines that term as a charge imposed on or paid by an individual in connection with a creditor's assent to accept in full satisfaction of a debt an amount less than the principal amount of the debt.

C.S.H.B. 1222 omits provisions included in the original defining "administrator," "affiliate," "agreement," "bank," "business address," "certified counselor," "certified debt specialist," "day," "entity," "good faith," "person," "plan," "provider," "record," "sign," "state," and "trust account." The substitute omits provisions included in the original defining "consumer," "federal act," and "insolvent."

C.S.H.B. 1222 differs from the original, in provisions relating to the requirement for registration as a prerequisite to providing debt management services, by expanding a ground for suspension or revocation of a debt management services provider's registration, whereas the original sets out new provisions relating to the required registration of a debt management services provider, the application for registration, the issuance or denial of a certificate of registration, the renewal of registration, registration in another state, and the suspension, revocation, or nonrenewal of registration.

C.S.H.B. 1222 differs from the original by setting an alternative amount for the bond that a debt management services provider must file with an initial or renewal application, if the provider does not receive and hold money paid by or on behalf of a consumer for disbursement to the consumer's creditors, whereas the original sets out new provisions relating to the surety bond that is required to be filed by a provider and authorizing a substitute for that required bond.

C.S.H.B. 1222 contains a provision not included in the original making certain requirements that a provider must satisfy to enroll a consumer in a debt management plan applicable only if the

proposed debt management plan does not provide for a reduction of principal as a concession and limiting a requirement for a provider to provide each consumer to whom it provides debt management services a written accounting report to a provider who receives and disburses money to creditors on behalf of consumers for such services.

C.S.H.B. 1222 differs from the original by making certain requirements for the contents of a written debt management services contract applicable only if the proposed debt management plan does not provide for a reduction of principal as a concession, whereas the original sets out new provisions relating to the form and contents of an agreement for the performance of debt management services.

C.S.H.B. 1222 differs from the original by setting out provisions relating to the cancellation of a debt management service agreement by either the provider or the consumer, whereas the original sets out new provisions relating to the method for cancelling an agreement for the performance of debt management, waiver of the right to cancel, and the conditions under which such an agreement is voidable and terminated.

C.S.H.B. 1222 differs from the original by imposing caps, conditions, and other limitations on the fees that a provider is permitted to impose on a consumer, whereas the original sets out new provisions relating to the fees and other charges for debt management services. The substitute contains provisions not included in the original authorizing the consumer credit commissioner to compute and publish the dollar amounts of fees or other charges in amounts different from the amounts set in statute to reflect inflation. The substitute contains provisions not included in the original that make conforming changes applicable only to the substitute.

C.S.H.B. 1222 omits provisions included in the original giving a short title to the original's provisions; establishing the applicability of its provisions; and setting out a requirement for a provider to act in good faith. The substitute omits provisions included in the original relating to customer service specifications; the prerequisites for providing debt management services; a requirement for communicating through electronic or other means; language requirements for certain disclosures and documents; a provider's trust account; voluntary contributions solicited by a provider; periodic reporting and records retention; prohibited acts and practices; service of notice of a civil action for a violation; advertising of debt management services; liability for the conduct of a provider's delegates; the powers of the consumer credit commissioner as administrator; administrative remedies; the private enforcement of the original's provisions by an individual or provider; a violation of the deceptive trade practices act; the statute of limitations on an action or proceeding brought under the original's provisions; uniformity in applying and construing the original's provisions; and the relation of the original to the federal Electronic Signatures in Global and National Commerce Act.

C.S.H.B. 1222 omits a provision included in the original repealing Subchapter C, Chapter 394, Finance Code.

C.S.H.B. 1222 differs from the original by making its provisions effective September 1, 2011, whereas the original is effective January 1, 2012.