

By: Eltife, Davis

S.B. No. 141

A BILL TO BE ENTITLED

AN ACT

relating to debt management services and the regulation of debt management services providers.

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

SECTION 1. Section 394.202, Finance Code, is amended by adding Subdivisions (3-a), (9-a), and (11-a) and amending Subdivisions (6) and (10) to read as follows:

(3-a) "Concession" means assent to repayment of a debt on terms more favorable to a consumer than the terms of the agreement under which the consumer became indebted to the creditor.

(6) "Debt management service" means a service in which a provider obtains or seeks to obtain a concession from one or more creditors on behalf of a consumer~~[-~~

~~[(A) 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) 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) exercising control, directly or indirectly, or arranging for the exercise of control over funds of a consumer for the purpose of distributing payments to or among one or more~~

~~creditors of the consumer in full or partial payment of the consumer's obligations].~~

(9-a) "Principal amount of the debt" means the amount of a debt owed by a consumer at the time the consumer enters into a debt management service agreement.

(10) "Provider" means a person that acts as an intermediary between a consumer and one or more creditors and that provides or offers to provide [to a consumer in this state] a debt management service to a consumer in this state.

(11-a) "Settlement fee" means 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.

SECTION 2. Subsection (k), Section 394.204, Finance Code, is amended to read as follows:

(k) In addition to the power to refuse an initial application as specified in this section, the commissioner may suspend or revoke a provider's registration after notice and hearing if the commissioner finds that any of the following conditions are met:

(1) a fact or condition exists that if it had existed when the provider applied for registration would have been grounds for denying registration;

(2) a fact or condition exists that the commissioner was not aware of when the provider applied for registration and would have been grounds for denying registration;

1 (3) the provider violates this subchapter or rule or
2 order of the commissioner under this subchapter;

3 (4) the provider is insolvent;

4 (5) the provider refuses to permit the commissioner to
5 make an examination authorized by this subchapter;

6 (6) the provider fails to respond within a reasonable
7 time and in an appropriate manner to communications from the
8 commissioner;

9 (7) the provider has received money from or on behalf
10 of a consumer for disbursement to a creditor under a debt management
11 plan that provides for regular periodic payments to creditors and
12 the provider has failed to disburse money to the creditor
13 ~~[creditors]~~ on behalf of the consumer ~~[consumers]~~ within a
14 reasonable time, normally 30 days;

15 (8) the commissioner determines that the provider's
16 trust account is not materially in balance with and reconciled to
17 the consumer's account; or

18 (9) the provider fails to warrant the belief that the
19 business will be operated lawfully and fairly and within the
20 provisions and purposes of this subchapter.

21 SECTION 3. Subsection (b), Section 394.206, Finance Code,
22 is amended to read as follows:

23 (b) The bond or insurance must:

24 (1) run concurrently with the period of registration;

25 (2) be available to pay damages and penalties to
26 consumers directly harmed by a violation of this subchapter;

27 (3) be in favor of this state for the use of this state

1 and the use of a person who has a cause of action under this
2 subchapter against the provider;

3 (4) if a bond:

4 (A) be in an amount equal to the average daily
5 balance of the provider's trust account serving Texas consumers
6 over the six-month period preceding the issuance of the bond, or in
7 the case of an initial application, in an amount determined by the
8 commissioner, but not less than \$25,000 or more than \$100,000, if
9 the provider receives and holds money paid by or on behalf of a
10 consumer for disbursement to the consumer's creditors; or

11 (B) be in the amount of \$50,000, if the provider
12 does not receive and hold money paid by or on behalf of a consumer
13 for disbursement to the consumer's creditors;

14 (5) if an insurance policy:

15 (A) provide coverage for professional liability,
16 employee dishonesty, depositor's forgery, and computer fraud in an
17 amount not less than \$100,000;

18 (B) be issued by a company rated at least "A-" or
19 its equivalent by a nationally recognized rating organization; and

20 (C) provide for 30 days advance written notice of
21 termination of the policy to be provided to the commissioner;

22 (6) be issued by a bonding, surety, or insurance
23 company that is authorized to do business in the state; and

24 (7) be conditioned on the provider and its agents
25 complying with all state and federal laws, including regulations,
26 governing the business of debt management services.

27 SECTION 4. Subsections (a), (d), and (f), Section 394.208,

Finance Code, are amended to read as follows:

(a) A provider may not enroll a consumer in a debt management plan unless, through the services of a counselor certified by an independent accreditation organization, the provider ~~has~~:

(1) has provided the consumer individualized counseling and educational information that at a minimum addresses the topics of managing household finances, managing credit and debt, and budgeting;

(2) has prepared an individualized financial analysis and an initial debt management plan for the consumer's debts with specific recommendations regarding actions the consumer should take;

(3) has determined that the consumer has a reasonable ability to make payments under the proposed debt management plan based on the information provided by the consumer;

(4) if the proposed debt management plan does not provide for a reduction of principal as a concession:

(A) has a reasonable expectation, provided that the consumer has provided accurate information to the provider, that each creditor of the consumer listed as a participating creditor in the plan will accept payment of the consumer's debts as provided in the initial plan; and

(B) has ~~[(5)]~~ prepared, for all creditors identified by the consumer or identified through additional investigation by the provider, a list, which must be provided to the consumer in a form the consumer may keep, of the creditors that the

1 provider reasonably expects to participate in the plan; and

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

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

9 (B) that if the provider is a nonprofit or
10 tax-exempt organization the provider cannot require donations or
11 contributions; and

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

17 (d) A provider may provide the information required by
18 Subsections (a)(2), (4)(B), and (5) [~~, and (6)~~] through its Internet
19 website if the provider:

20 (1) has complied with the federal Electronic
21 Signatures in Global and National Commerce Act (15 U.S.C. Section
22 7001 et seq.);

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

26 (3) discloses on its Internet website:

27 (A) the provider's name and each name under which

1 it does business;

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

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

6 (f) A provider who receives and disburses money to creditors
7 on behalf of consumers for debt management services shall provide
8 each consumer to ~~[for]~~ whom those services were provided ~~[it~~
9 ~~provides debt management services]~~ a written report accounting for:

10 (1) the amount of money received from the consumer
11 since the last report;

12 (2) the amount and date of each disbursement made on
13 the consumer's behalf to each creditor listed in the agreement
14 since the last report;

15 (3) any amount deducted from amounts received from the
16 consumer; and

17 (4) any amount held in reserve.

18 SECTION 5. Subsection (b), Section 394.209, Finance Code,
19 is amended to read as follows:

20 (b) Each debt management services agreement must:

21 (1) be dated and signed by the consumer;

22 (2) include the name and address of the consumer and
23 the name, address, and telephone number of the provider;

24 (3) describe the services to be provided;

25 (4) state all fees, individually itemized, to be paid
26 by the consumer;

27 (5) if the proposed debt management plan does not

1 provide for a reduction of principal as a concession, list in the
2 agreement or accompanying document, to the extent the information
3 is available to the provider at the time the agreement is executed,
4 each participating creditor of the consumer to which payments will
5 be made and, based on information provided by the consumer, the
6 amount owed to each creditor and the schedule of payments the
7 consumer will be required to make to the creditor, including the
8 amount and date on which each payment will be due;

9 (6) state the existence of a surety bond or insurance
10 for consumer claims;

11 (7) state that establishment of a debt management plan
12 may impact the consumer's credit rating and credit score either
13 favorably or unfavorably, depending on creditor policies and the
14 consumer's payment history before and during participation in the
15 debt management plan; and

16 (8) state that either party may cancel the agreement
17 without penalty at any time on 10 days' notice and that a consumer
18 who cancels an agreement is entitled to a refund of all money that
19 the consumer has paid to the provider that has not been disbursed.

20 SECTION 6. Subchapter C, Chapter 394, Finance Code, is
21 amended by adding Section 394.2095 to read as follows:

22 Sec. 394.2095. CANCELLATION OF AGREEMENT BY EITHER PROVIDER
23 OR CONSUMER. If a provider or a consumer cancels a debt management
24 service agreement, the provider shall immediately return to the
25 consumer:

26 (1) any money of the consumer held in trust by the
27 provider for the consumer's benefit; and

1 (2) 65 percent of any portion of the account set-up fee
2 received under Section 394.210(g)(1) that has not been credited
3 against settlement fees.

4 SECTION 7. Section 394.210, Finance Code, is amended by
5 amending Subsections (c) through (f) and adding Subsections (g)
6 through (n) to read as follows:

7 (c) A provider may not impose fees or other charges on a
8 consumer or receive payment for debt management services until the
9 consumer has entered into a debt management service agreement with
10 the provider that complies with Section 394.209.

11 (d) If a consumer enters into a debt management service
12 agreement with a provider, the provider may not impose a fee or
13 other charge for debt counseling, education services, or similar
14 services except as otherwise authorized by this section. The
15 commissioner may authorize a provider to charge a fee based on the
16 nature and extent of the counseling, education services, or other
17 similar services furnished by the provider.

18 (e) Subsections (f)-(j) apply subject to an adjustment made
19 under Section 394.2101.

20 (f) If a consumer is enrolled in a debt management plan that
21 provides for a reduction of finance charges or fees for late
22 payment, default, or delinquency as a concession from creditors,
23 the provider may charge:

24 (1) a fee not to exceed \$100 for debt consultation or
25 education services, including obtaining a credit report, setting up
26 an account, and other similar services; and

27 (2) a monthly service fee, not to exceed the lesser of:

1 (A) \$10 multiplied by the number of accounts
2 remaining in the plan on the day of the month the fee is assessed; or

3 (B) \$50.

4 (g) If a consumer is enrolled in a debt management plan that
5 provides for settlement of debts for amounts that are less than the
6 principal amounts of the debts as a concession from creditors, the
7 provider may charge:

8 (1) a fee for debt consultation or education services,
9 including obtaining a credit report, setting up an account, and
10 other similar services, in an amount not to exceed the lesser of
11 \$400 or four percent of the total amount of the outstanding debt
12 included in the plan at the time the plan is established; and

13 (2) a monthly service fee, not to exceed the lesser of:

14 (A) \$10 multiplied by the number of accounts
15 remaining in the plan on the day of the month the fee is assessed; or

16 (B) \$50; and

17 (3) one of the following:

18 (A) with respect to a debt management service
19 agreement in which a flat fee is charged based on the total amount
20 of debt that is included in a debt management plan, the total
21 aggregate amount of fees charged to a consumer under this
22 subchapter, including fees charged under Subdivisions (1) and (2),
23 may not exceed 17 percent of the total principal amount of debt
24 included in the debt management plan; or

25 (B) with respect to a debt management service
26 agreement in which fees are computed as a percentage of the amount
27 saved by a consumer as a result of a concession, in addition to fees

1 charged under Subdivisions (1) and (2), a settlement fee may not
2 exceed 30 percent of the excess of the outstanding amount of each
3 debt over the amount actually paid to the creditor, as computed at
4 the time of settlement.

5 (h) Settlement fees authorized under Subsection (g) may be
6 charged only as debts are settled, and the total aggregate amount of
7 fees charged to a consumer under this subchapter, including fees
8 charged under Subsections (g)(1) and (2), may not exceed 20 percent
9 of the principal amount of debt included in the debt management
10 plan.

11 (i) The flat fee authorized under this subchapter shall be
12 assessed in equal monthly payments for a period that is at least as
13 long as the term of the debt management plan, as estimated when the
14 debt management plan is established, unless:

15 (1) the fee payment period is voluntarily accelerated
16 by the consumer in an addendum to the agreement or other separate
17 agreement; and

18 (2) offers of settlement by creditors have been
19 obtained on at least half of the outstanding debt included in the
20 debt management plan.

21 (j) If a consumer is enrolled in a debt management plan that
22 provides for the settlement of debts for amounts that are less than
23 the principal amount of the debts as a concession from creditors, if
24 fees for debt management services will not be charged or collected
25 until the time a settlement agreement is reached with a creditor,
26 and if at least one payment has been made toward the settlement
27 agreement by or on behalf of the consumer, the fee limitations in

1 Subsection (g) do not apply and the provider may charge reasonable
2 settlement fees. The fee with respect to each debt included in the
3 plan must:

4 (1) bear the same proportional relationship to the
5 total fee for settling all debts included in the debt management
6 plan as the principal amount of the particular debt bears to the
7 total principal amount of the debt included in the plan; or

8 (2) be a percentage of the amount saved as a result of
9 the settlement, determined as the difference between the principal
10 amount of a debt and the amount actually paid to satisfy the debt.
11 The percentage charged cannot change from one debt to another.

12 (k) A provider may impose fees or other charges or receive
13 fees or payment under only one of Subsection (f), (g), or (j).

14 (l) If a consumer does not enter into a debt management
15 service agreement with a provider, the provider may receive payment
16 for debt counseling or education services provided to the consumer
17 in an amount not to exceed \$100 or a greater amount, on approval of
18 the commissioner. The commissioner may approve a fee in an amount
19 greater than \$100 if the nature and extent of the educational and
20 counseling services warrant the greater amount.

21 (m) If, before the expiration of the 90th day after the date
22 debt counseling or education services are completed or canceled, a
23 consumer enters into a debt management service agreement with a
24 provider, the provider shall refund to the consumer any payments
25 received under Subsection (l).

26 (n) Subject to an adjustment made under Section 394.2101, if
27 any payment made by a consumer to a provider under this subchapter

is dishonored, the provider may impose a reasonable charge on the consumer not to exceed the lesser of \$25 or an amount permitted by a law other than this chapter ~~[Any fee charged by a provider must 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. A fee or a portion of a fee that is specifically related to a debt management plan may not be charged until the provider has complied with Sections 394.208(a) and (b) and 394.209.~~

~~[(d) A provider may charge a monthly maintenance fee if the fee is fair and reasonable.~~

~~[(e) A fee charged for a service other than a debt management service must be fair and reasonable.~~

~~[(f) The finance commission may establish maximum fair and reasonable fees under this section].~~

SECTION 8. Subchapter C, Chapter 394, Finance Code, is amended by adding Section 394.2101 to read as follows:

Sec. 394.2101. ADJUSTMENT OF AMOUNTS OF FEES OR OTHER CHARGES. (a) The commissioner shall compute and publish the dollar amounts of fees or other charges in amounts different from the amounts of fees or other charges specified in Section 394.210 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 commissioner shall adopt a base year and adjust the dollar amounts, effective on July 1 of each year, if the change in the index from the

1 base year, as of December 31 of the preceding year, is at least 10
2 percent. The dollar amounts must be rounded to the nearest \$100,
3 except that the amounts of the fees and other charges specified in
4 Section 394.210 must be rounded to the nearest dollar.

5 (b) The commissioner shall notify registered providers of
6 any change in dollar amounts made under Subsection (a) and make that
7 information available to the public.

8 SECTION 9. Subsection (a), Section 394.211, Finance Code,
9 is amended to read as follows:

10 (a) A provider must use a trust account for the management
11 of all money paid by or on behalf of a consumer and received by the
12 provider for disbursement to the consumer's creditor. A provider
13 may not commingle the money in a trust account established for the
14 benefit of consumers with any operating funds of the provider. A
15 provider shall exercise due care to appropriately manage the funds
16 in the trust account.

17 SECTION 10. Section 394.213, Finance Code, is amended to
18 read as follows:

19 Sec. 394.213. DUTIES OF PROPER MANAGEMENT. A provider has a
20 duty to a consumer who receives debt management services from the
21 provider to ensure that client money held by the provider is managed
22 properly at all times.

23 SECTION 11. This Act takes effect September 1, 2011.