

By: Eltife, et al.  
(Anchia)

S.B. No. 141

Substitute the following for S.B. No. 141:

By: Anchia

C.S.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. Section 394.204(k), 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;

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

(4) the provider is insolvent;

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

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

(7) the provider 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 and the provider has failed to disburse money to the creditor [~~creditors~~] on behalf of the consumer [~~consumers~~] within a reasonable time, normally 30 days;

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

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

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

(b) The bond or insurance must:

(1) run concurrently with the period of registration;

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

1           (3) be in favor of this state for the use of this state  
2 and the use of a person who has a cause of action under this  
3 subchapter against the provider;

4           (4) if a bond:

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

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

15           (5) if an insurance policy:

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

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

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

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

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

SECTION 4. Sections 394.208(a), (d), and (f), 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

1 consumer in a form the consumer may keep, of the creditors that the  
2 provider reasonably expects to participate in the plan; and

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

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

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

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

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

21 (1) has complied with the federal Electronic  
22 Signatures in Global and National Commerce Act (15 U.S.C. Section  
23 7001 et seq.);

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

27 (3) discloses on its Internet website:

(A) the provider's name and each name under which it does business;

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

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

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

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

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

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

(4) any amount held in reserve.

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

(b) Each debt management services agreement must:

(1) be dated and signed by the consumer;

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

(3) describe the services to be provided;

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

1           (5) if the proposed debt management plan does not  
2 provide for a reduction of principal as a concession, list in the  
3 agreement or accompanying document, to the extent the information  
4 is available to the provider at the time the agreement is executed,  
5 each participating creditor of the consumer to which payments will  
6 be made and, based on information provided by the consumer, the  
7 amount owed to each creditor and the schedule of payments the  
8 consumer will be required to make to the creditor, including the  
9 amount and date on which each payment will be due;

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

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

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

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

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

27           (1) any money of the consumer held in trust by the



1 provider for the consumer's benefit; and

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

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

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

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

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

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

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

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

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

4                   (B) \$50.

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

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

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

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

17                   (B) \$50; and

18           (3) one of the following:

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

26                   (B) with respect to a debt management service  
27 agreement in which fees are computed as a percentage of the amount

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

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

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

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

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

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

1 agreement by or on behalf of the consumer, the fee limitations in  
2 Subsection (g) do not apply and the provider may charge reasonable  
3 settlement fees. The fee with respect to each debt included in the  
4 plan must:

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

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

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

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

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

27 (n) Subject to an adjustment made under Section 394.2101, if

1 any payment made by a consumer to a provider under this subchapter  
2 is dishonored, the provider may impose a reasonable charge on the  
3 consumer not to exceed the lesser of \$25 or an amount permitted by a  
4 law other than this chapter ~~[Any fee charged by a provider must be~~  
5 ~~fair and reasonable given the value of the products and services~~  
6 ~~provided to the consumer, including consideration of the amount~~  
7 ~~subject to debt management and the number of anticipated~~  
8 ~~payments. A fee or a portion of a fee that is specifically related~~  
9 ~~to a debt management plan may not be charged until the provider has~~  
10 ~~complied with Sections 394.208(a) and (b) and 394.209.~~

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

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

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

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

19 Sec. 394.2101. ADJUSTMENT OF AMOUNTS OF FEES OR OTHER  
20 CHARGES. (a) The commissioner shall compute and publish the  
21 dollar amounts of fees or other charges in amounts different from  
22 the amounts of fees or other charges specified in Section 394.210 to  
23 reflect inflation, as measured by the Consumer Price Index for All  
24 Urban Consumers published by the Bureau of Labor Statistics of the  
25 United States Department of Labor or, if that index is not  
26 available, another index adopted by finance commission rule. The  
27 commissioner shall adopt a base year and adjust the dollar amounts,

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

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

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

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

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

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

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