Ohio Legislative Service Commission

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Fiscal Note & Local Impact Statement

Bill: Sub. H.B. 173 of the 130th G.A.

Date: November 19, 2013

Status: As Reported by House Financial Institutions, Housing, and Urban Development

Sponsor: Reps. Terhar and Mallory

Local Impact Statement Procedure Required: No

Contents: Regulates providers of debt settlement services under the Department of Commerce

State Fiscal Highlights

- The bill would require the Division of Financial Institutions within the Department of Commerce to enforce and investigate the Debt Settlement Services Law created in the bill, but does not require the providers to be registered or licensed.
- The bill allows the Division of Financial Institutions to charge providers a fee to cover any examination of compliance with the new requirements, as well as penalize violators with civil fines of up to $1,000 per day of violation. Any revenue received would be used to cover the Division's regulatory and enforcement duties under the bill.
- The bill does not specify the state fund which would receive these fees and be used to pay for the Division of Financial Institution's oversight of debt settlement service providers, but it would presumably be the Consumer Finance Fund (Fund 5530). This fund is used for the regulatory costs associated with other types of businesses in the consumer finance industry.

Local Fiscal Highlights

- The bill permits civil actions to be filed against debt settlement service providers by both the Attorney General's Office and individuals when an unfair or deceptive act is alleged. As a result, the number of civil cases filed in county and municipal courts may increase. However, these cases would also generate some filing fee and court cost revenue for counties and municipalities. Presumably, many of these complaints would be resolved before they reached the courts.

Detailed Fiscal Analysis

Background

The bill defines "debt settlement services" as services provided by an intermediary between an individual and one or more unsecured creditors of the individual for the purpose of obtaining concessions under which a creditor accepts less than the balance owed as payment in full of the debt. Debt settlement service providers do not make regular payments to a debtor's creditors. Rather, a debt settlement service provider offers an arrangement under which the debtor stops making payments to creditors and instead makes monthly payments to a savings or other dedicated account according to a plan developed by the debt settlement service provider. When the payments in the account reach a target percentage of the debt owed, the service provider submits an offer to the creditor on the debtor's behalf to settle with a lump sum of cash in the account. However, as the debtor is making payments to the account, creditors are not being paid. Under these circumstances, a creditor is likely to impose additional finance charges and penalties and may commence collection activities, which could include litigation.

The current law definition of "debt adjusting" includes those companies that effect the adjustment, compromise, or discharge of any account, note, or other indebtedness of a debtor. Thus, debt settlement service providers would appear to fall under the current law definition of debt adjusting. Debt adjusters must undergo an annual audit and submit the results and auditor's opinion to the Consumer Protection Section in the Office of the Attorney General. Debt adjusters are also limited in the fees that they may charge. Eleven debt adjuster companies submitted audits to the Attorney General's Office in 2012. The bill amends current law to exclude debt settlement services from the definition of debt adjusting and places the oversight of these businesses under the Division of Financial Institutions within the Department of Commerce. The fiscal effects of these statutory changes are described in further detail below.

Department of Commerce oversight

Although the bill requires the Division of Financial Institutions (DFI) to oversee debt settlement service providers, the bill does not require that these businesses be licensed or registered by the Division. However, the bill does require debt settlement service providers to be bonded, maintain customer service systems, provide a financial analysis with respect to the income and debts of customers, provide certain disclosures to consumers, and keep an accounting of the debts settled and terms of any arranged settlements. The bill allows the Superintendent of the Division to charge providers a fee to cover the costs the Division incurs for examining providers to ensure that they are complying with these requirements. In terms of enforcement, the bill allows the Division to penalize violators with civil fines of up to $1,000 per day of violation. Although the bill does not specify where examination fees or penalty income is to be deposited, presumably these receipts would be deposited into the Consumer Finance Fund (Fund 5530), as is the case with other consumer financial service providers regulated by the Division.

As a result of these new responsibilities, the Division is likely to incur some new costs for reviewing compliance with the Debt Settlement Services Law and carrying out enforcement actions. Specifically, DFI indicated that the workload associated with examinations and investigations can be substantial. Presumably, the number of debt settlement service companies currently operating in Ohio is lower than the 11 existing debt adjuster businesses that report to the Attorney General's Office. The bill may result in an increase in the number of debt settlement service companies in Ohio, although this increase would presumably be small. Overall, the number of debt settlement service providers subject to DFI oversight under the bill would likely be limited to between 10 and 30 businesses. However, since most providers are headquartered out of state, examinations would be more time consuming and involve greater expense than if the providers were in-state firms.

Attorney General

In addition to the enforcement authority granted to the Superintendent of Financial Institutions, the bill provides a right of action for individuals to seek remedies for violations of the bill. If a violation is deemed to be an unfair or deceptive practice, which the bill also considers any violation committed by an unlicensed provider, the Consumer Sales Practices Act (CSPA) would apply. While the number and scope of related complaints filed, investigations performed, and enforcement actions that would be taken as a result of the bill are unknown, the CSPA permits the Attorney General or consumers of debt settlement services to file a civil action to pursue remedies. It is uncertain how many consumers will elect to pursue a civil remedy without the assistance of the Attorney General, but the number is assumed to be small as these consumers would, most likely, report a complaint to the Attorney General's Office initially and then allow the Consumer Protection Section to seek a resolution to the complaint.

As a result of the enforcement provisions in the bill, the number of civil cases filed in county and municipal courts could increase. However, the actual number of cases filed would most likely be relatively small as, under current practice, the Attorney General's Office or the Department of Commerce would presumably attempt to resolve many complaints against debt settlement service providers before filing in court. Any civil suits that would be filed will generate some additional filing fee and court cost revenue for counties and municipalities, offsetting the expense for adjudicating these matters. If the Attorney General's Office successfully pursues a civil remedy under preexisting Consumer Sales Practices Act, the court adjudicating the matter may order civil penalties up to $25,000. Three-quarters of this civil penalty would be awarded to the Attorney General's Office. The remaining one-quarter of the civil penalty that violators could be ordered to pay would go to the treasury of the county where the case took place (as much as $6,250 if the $25,000 maximum possible fine is assessed).

Debt settlement service provider regulation in other states

In recent years, a number of states have enacted legislation regulating debt settlement service providers in response to the proliferation of such companies. Much of the growth in this market niche can be attributed to a weak economy in which an increasing number of consumers are unable to repay their debts. The states that have enacted regulation include Colorado, Delaware, Illinois, Maryland, Minnesota, Nevada, North Dakota, Rhode Island, Tennessee, Texas, and Utah. Nevertheless, the number of licensed debt settlement service providers in the states that have adopted a law regulating these entities in recent years appears to be small. Through calendar year 2012, the state with the most licensees appeared to be Tennessee, with around 30 licensed debt settlement service providers.

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