
Business & Financial Services Committee

HB 1340

Brief Description: Addressing debt management services.

Sponsors: Representative Kirby; by request of Uniform Laws Commission.

Brief Summary of Bill

- Adopts the Uniform Debt Management Services Act.
- Limits the total fee for debt management services to 15 percent of the total debt.

Hearing Date: 2/6/13

Staff: Alexa Silver (786-7190).

Background:

Regulation of Debt Adjusting.

Washington's Debt Adjusting Act (DAA) regulates the provision of debt adjusting services, which means: managing, counseling, settling, adjusting, pro-rating, or liquidating a debtor's indebtedness; or receiving funds for distribution among creditors in payment of a debtor's obligations. A "debt adjuster" is a person who engages in debt adjusting for compensation. It includes debt poolers, debt managers, debt consolidators, debt pro-raters, and credit counselors.

The contract between the debt adjuster and the debtor must contain various disclosures and require the debt adjuster to notify the debtor if a creditor refuses to accept payment. The total fee for debt adjusting services, including fees charged by a third-party account administrator and a financial institution, is capped at 15 percent of the debtor's total debt. Before retaining the fee, the debt adjuster must notify all creditors that the debtor has engaged the debt adjuster's services. A debtor's payments to a debt adjuster must be held in a separate trust account. Violation of the DAA constitutes a misdemeanor, as well as an unfair or deceptive act or practice under the Consumer Protection Act. The Office of the Attorney General may investigate debt adjusting businesses.

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

Federal Telemarketing Sales Rule.

The federal Telemarketing Sales Rule defines abusive telemarketing sales practices to include receiving a fee for debt relief services unless:

- the seller or telemarketer has altered the terms of at least one debt pursuant to the agreement with the debtor;
- the debtor has made at least one payment pursuant to the agreement; and
- if the debts are renegotiated, settled, reduced, or otherwise altered, the fee either: (1) bears the same proportional relationship to the total fee as the individual debt amount bears to the entire debt amount; or (2) is a percentage of the amount saved as a result of the renegotiation, settlement, reduction, or alteration.

Uniform Debt Management Services Act.

The National Conference of Commissioners on Uniform State Laws promulgated the Uniform Debt Management Services Act (UDMSA) in 2005 and issued a revised version in 2011.

Generally the UDMSA regulates debt management services, including credit counseling and debt settlement, and requires providers of debt management services to be registered with a state agency. Fees for credit counseling may not exceed a \$50 set-up fee and a \$50 monthly fee. Fees for debt settlement may not exceed 30 percent of the savings obtained by the provider.

Colorado, Delaware, Nevada, North Dakota, Rhode Island, Tennessee, Utah, and the Virgin Islands have adopted the UDMSA with modifications to the fee permitted for debt settlement.

Summary of Bill:

The DAA is repealed and replaced with the UDMSA. The UDMSA regulates debt management services, which are services provided by an intermediary between a consumer and creditors for the purpose of obtaining concessions. Provided certain conditions are met, debt management services do not include legal, accounting, or financial planning services. The UDMSA applies only when the consumer resides in the state and the provider receives compensation for his or her services.

Registration.

To provide debt management services, a provider must be registered with the Department of Financial Institutions (Administrator). The application for registration must include a fee, consent to examination of trust accounts, and evidence of \$250,000 of insurance. In addition, the application must contain detailed information about the provider, including audited financial statements, evidence of accreditation, a description of educational programs and how the provider evaluates consumers' financial condition, a copy of the agreement with consumers, and a schedule of fees. Providers registered in another state may submit that registration in lieu of an application so long as it contains substantially the same information. Most of the information in the application is subject to public disclosure.

The Administrator may deny an application on specified grounds (*e.g.*, if an officer, director, or owner of the provider has been convicted of a crime involving dishonesty). Providers renew their registration annually. At renewal, providers disclose to the Administrator the total amount of money received and accumulated in the previous 12 months from debt management plans.

A provider must maintain a \$50,000 surety bond or file an irrevocable letter of creditor or government bonds with the Administrator. The Administrator or a consumer may recover under the surety bond.

Advertisement, Prerequisites for Providing Services, and Communication.

The provider must disclose in its advertisements that using a debt management plan may adversely affect a consumer's credit score and that nonpayment of debt may lead to collection activity or higher finance charges.

A provider may not furnish its services to a consumer unless it:

- provides education about managing personal finances;
- prepares a financial analysis regarding the consumer's financial condition;
- prepares a plan for periodic payments that the consumer will be able to meet;
- believes the consumer's creditors will accept payment as provided in the plan;
- gives the consumer a list of goods and services and the charge for each;
- gives the consumer a list of creditors expected to participate and grant concessions, participate but not grant concessions, and not participate; and
- provides a disclaimer regarding alternatives to establishing a plan, the potential adverse effects of establishing a plan and not paying debts, and the fact that a provider may receive compensation from creditors.

Providers must maintain a toll-free communication system that is staffed at a level to reasonably permit consumers to speak to customer service representatives during ordinary business hours.

Form and Termination of Agreement.

An agreement to provide debt management services must be signed by the provider and the consumer and disclose information regarding services, fees, and the payment schedule. For debt settlement plans, the agreement must also describe the plan's duration and the length of time and amount of savings to accrue before the consumer will receive a settlement offer.

A settlement of a debt for more than 50 percent of the principal amount requires the consumer's assent. In addition, the agreement must provide that the provider will notify the consumer within five days of learning that a creditor has rejected the plan.

The agreement may not limit the legal forums available to the consumer, except as permitted by arbitration laws, and may not restrict the consumer's remedies or limit the provider's liability. Disclosures and documents must be in English, unless the provider communicates with a consumer in another language, in which case the provider must furnish a translation.

A consumer may terminate the agreement by giving notice, while the provider may terminate the agreement if the consumer fails to make payment for 60 days or for other good cause. If an agreement is terminated, the provider must pay the consumer the money received within seven business days, less any amount distributed to creditors or earned in fees. A consumer may void an agreement if the provider charges improper fees or fails to register.

Trust Account.

All money paid to a provider for distribution to creditors is held in trust and must be deposited in a trust account within two business days. The provider may not commingle the money in a

consumer's trust account with money of other persons. The trust account must be reconciled monthly, and the Administrator must be given access to the financial records. If the provider suspects embezzlement, it must notify the Administrator.

A provider may require the consumer to place money in an account to pay creditors and fees if the conditions of the federal Telemarketing Sales Rule are met.

Fees and Voluntary Contributions.

A provider may not charge a fee until a consumer has entered into an agreement. To receive compensation, the provider must obtain a concession, and the consumer must have made at least one payment.

The fee must be reasonable, and the total fee for debt management services, including but not limited to any fee charged by a bank or a third-party account administrator, may not exceed 15 percent of the total debt disclosed in the agreement. If the provider's compensation is received in installments, each installment must be made simultaneously with the individual's installment payments to the creditor, and an installment of the compensation may not be a greater percentage of the total compensation than the payment is of the entire settlement amount.

The provider may charge an initial fee of up to \$25, which must be included in the 15 percent cap. If the consumer assents to an agreement, a provider may not charge a fee for educational services; however, if a consumer does not enter into an agreement, the provider may charge up to \$100 (or more with the Administrator's approval) for education and counseling. A charge for nonsufficient funds may not exceed \$25.

A provider may accept but not solicit voluntary contributions. Until 30 days after the completion or termination of a plan, the provider may not accept any amount from the individual that would result in the provider receiving in excess of 15 percent of the total debt disclosed in the agreement.

Records and Reports.

The provider must maintain a consumer's records for five years and provide periodic reports to the consumer. The report includes the account balance, the amount paid into the account since the last report, disbursements to creditors, and the amounts deducted as fees. If a creditor has agreed to settle a debt, the report must also indicate the amount and terms of the settlement, the amount of debt when the individual agreed to the plan, the amount of debt when the creditor agreed to the settlement, and the calculation of the settlement fee.

Prohibited Acts.

The UDMSA prohibits providers from directly or indirectly engaging in certain acts, such as offering gifts to a consumer in exchange for executing an agreement, offering compensation to lead generators in exchange for making referrals, and compensating employees based on the number of consumers who enter into agreements. Certain representations are also prohibited (e.g., representations that participation in a plan will help prevent litigation, loss of employment, or foreclosure). Providers are required to act in good faith in all matters under the UDMSA.

With respect to the consumers to whom it provides services, a provider also may not lend money to the consumer, purchase the consumer's debts, obtain a security interest from the consumer,

provide the consumer less than the full benefit of a concession, charge the consumer for anything not directly related to debt management or education, or disclose the consumer's identity (except to the Administrator or a creditor or to the extent necessary to administer the plan).

Insider transactions for the purchase of goods, services, and facilities are prohibited unless the seller supplies goods, services, or facilities generally and supplies them to the provider at a cost no greater than it charges others.

Administrator's Authority and Private Enforcement.

The Administrator has authority to investigate and examine providers' books and records and may charge for the investigation. The Administrator also has the authority to require statements under oath and to seek a court order for seizure of money, books, records, and accounts.

Reasonable fees for administering the UDMSA must be established in rule, and dollar amounts in the UDMSA are updated by rule to reflect inflation.

Enforcement actions available to the Administrator include cease and desist orders, orders for restitution, civil penalties up to \$10,000 (or \$20,000 for violation of a final order), civil actions, and intervention in private enforcement actions. In addition, the Administrator may suspend, revoke, or deny renewal of registration. Attorneys' fees and costs are available to the Administrator for enforcing the UDMSA. The statute of limitations is four years.

A consumer may bring a civil action against a provider for compensatory damages, punitive damages, and reasonable attorneys' fees and costs, and a consumer may recover treble damages if the provider charges impermissible fees. The provider is not liable for good faith errors. The statute of limitations is two years. The provider must notify the administrator within 30 days if it is sued by a consumer who resides in the state.

Appropriation: None.

Fiscal Note: Available.

Effective Date: The bill takes effect on October 1, 2013.