

HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 2641

03/08/2016 Authored by Smith; Davnie; Johnson, S., and Vogel
The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform
03/21/2016 Adoption of Report: Amended and re-referred to the Committee on Civil Law and Data Practices
03/23/2016 Adoption of Report: Placed on the General Register
Read Second Time
04/25/2016 Referred to the Chief Clerk for Comparison with S. F. No. 2869
04/26/2016 Postponed Indefinitely

1.1 A bill for an act
1.2 relating to commerce; including tax debt as debt that is covered under debt
1.3 settlement services regulation; amending Minnesota Statutes 2014, sections
1.4 332A.02, subdivision 8; 332A.10, subdivision 4; 332B.02, subdivisions 9, 10.
1.5 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6 Section 1. Minnesota Statutes 2014, section 332A.02, subdivision 8, is amended to read:

1.7 Subd. 8. **Debt management services provider.** "Debt management services
1.8 provider" means any person offering or providing debt management services to a debtor
1.9 domiciled in this state, regardless of whether or not a fee is charged for the services and
1.10 regardless of whether the person maintains a physical presence in the state. This term
1.11 includes any person to whom debt management services are delegated, and does not
1.12 include services performed by the following when engaged in the regular course of their
1.13 respective businesses and professions:

1.14 (1) exempt attorneys at law, escrow agents, accountants, broker-dealers in securities;

1.15 (2) state or national banks, credit unions, trust companies, savings associations,
1.16 title insurers, insurance companies, and all other lending institutions duly authorized to
1.17 transact business in Minnesota;

1.18 (3) persons who, as employees on a regular salary or wage of an employer not
1.19 engaged in the business of debt management, perform credit services for their employer;

1.20 (4) public officers acting in their official capacities and persons acting as a debt
1.21 management services provider pursuant to court order;

1.22 (5) any person while performing services incidental to the dissolution, winding up,
1.23 or liquidation of a partnership, corporation, or other business enterprise;

(6) the federal government, the state, its their political subdivisions, public agencies, and ~~their~~ employees;

(7) collection agencies, provided that the services are provided to a creditor;

(8) "qualified organizations" designated as representative payees for purposes of the Social Security and Supplemental Security Income Representative Payee System and the federal Omnibus Budget Reconciliation Act of 1990, Public Law 101-508;

(9) accelerated mortgage payment providers. "Accelerated mortgage payment providers" are persons who, after satisfying the requirements of sections 332.30 to 332.303, receive funds to make mortgage payments to a lender or lenders, on behalf of mortgagors, in order to exceed regularly scheduled minimum payment obligations under the terms of the indebtedness. The term does not include: (i) persons or entities described in clauses (1) to (8); (ii) mortgage lenders or servicers, industrial loan and thrift companies, or regulated lenders under chapter 56; or (iii) persons authorized to make loans under section 47.20, subdivision 1. For purposes of this clause and sections 332.30 to 332.303, "lender" means the original lender or that lender's assignee, whichever is the current mortgage holder;

(10) trustees, guardians, and conservators; and

(11) debt settlement services providers.

Sec. 2. Minnesota Statutes 2014, section 332A.10, subdivision 4, is amended to read:

Subd. 4. **Prohibited terms.** The following terms shall not be included in the debt management services agreement:

(1) a hold harmless clause;

(2) a confession of judgment, or a power of attorney to confess judgment against the debtor or appear as the debtor in any judicial proceeding;

(3) a waiver of the right to a jury trial, if applicable, in any action brought by or against a debtor;

(4) an assignment of or an order for payment of wages or other compensation for services;

(5) a provision in which the debtor agrees not to assert any claim or defense arising out of the debt management services agreement;

(6) a waiver of any provision of this chapter or a release of any obligation required to be performed on the part of the debt management services provider; ~~or~~

(7) a mandatory arbitration clause; or

(8) a clause selecting a law other than the laws of Minnesota or a venue other than the state of Minnesota under which the debt management services agreement or any other dispute involving the provision of debt management services is governed or enforced.

Sec. 3. Minnesota Statutes 2014, section 332B.02, subdivision 9, is amended to read:

Subd. 9. **Creditor.** "Creditor" means ~~any party~~:

(1) a party named by the debtor as a creditor in the debt settlement services plan or debt settlement services agreement;

(2) a party that acquires or holds the debt; ~~or~~

(3) a party to whom interactions with the debt settlement services is assigned in relation to the debt listed in the debt settlement services plan or debt settlement services agreement; or

(4) the federal government, state government, or their political subdivisions, to which delinquent taxes are owed.

Sec. 4. Minnesota Statutes 2014, section 332B.02, subdivision 10, is amended to read:

Subd. 10. **Debt settlement services.** "Debt settlement services" means any one or more of the following activities:

(1) offering to provide advice, or offering to act or acting as an intermediary between a debtor and one or more of the debtor's creditors, where the primary purpose of the advice or action is to obtain a settlement for less than the full amount of debt, whether in principal, interest, fees, or other charges, incurred primarily for personal, family, or household purposes including, but not limited to, offering debt negotiation, debt reduction, or debt relief services; ~~or~~

(2) advising, encouraging, assisting, or counseling a debtor to accumulate funds in an account for future payment of a reduced amount of debt to one or more of the debtor's creditors; or

(3) offering to provide advice, or offering to act or acting as an intermediary between a debtor and the federal government, state government, or their political subdivisions to delay payment of delinquent taxes owed, establish a payment plan for delinquent taxes owed, or obtain a settlement for less than the full amount of delinquent taxes owed.

Any person so engaged or holding out as so engaged is deemed to be engaged in the provision of debt settlement services, regardless of whether or not a fee is charged for such services.