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State of Minnesota
HOUSE OF REPRESENTATIVES

EIGHTY-EIGHTH SESSION

H. F. No. **694**

02/18/2013 Authored by Lesch, Falk, Bly, Hilstrom, Wagenius and others

The bill was read for the first time and referred to the Committee on Commerce and Consumer Protection Finance and Policy

1.1 A bill for an act
1.2 relating to debt management and debt settlement; clarifying exemption for
1.3 attorneys at law; modifying regulation of debt settlement services; amending
1.4 Minnesota Statutes 2012, sections 332A.02, subdivision 8, by adding a
1.5 subdivision; 332B.02, subdivision 13, by adding a subdivision; 332B.06,
1.6 subdivisions 1, 4; 332B.09.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2012, section 332A.02, subdivision 8, is amended to read:

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

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

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

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

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

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

- (6) the state, its 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 2012, section 332A.02, is amended by adding a subdivision to read:

Subd. 10a. **Exempt attorney at law.** "Exempt attorney at law" means an attorney who:

- (1) is licensed or otherwise authorized to practice law in this state;
- (2) does not have a business relationship with the debt settlement services provider that is in any way related to the provision of debt settlement services; and
- (3) provides debt management services as an ancillary matter to the primary representation of a client.

Sec. 3. Minnesota Statutes 2012, section 332B.02, subdivision 13, is amended to read:

Subd. 13. Debt settlement services provider. "Debt settlement services provider" means any person offering or providing debt settlement services to a debtor domiciled in this state, regardless of whether or not a fee is charged for the services and regardless of whether the person maintains a physical presence in the state. The term includes any person to whom debt settlement services are delegated. The term shall not include an exempt attorney at law and persons listed in section 332A.02, subdivision 8, clauses (1) to (10), or a debt management services provider.

Sec. 4. Minnesota Statutes 2012, section 332B.02, is amended by adding a subdivision to read:

Subd. 13a. **Exempt attorney at law.** "Exempt attorney at law" means an attorney who:

- (1) is licensed or otherwise authorized to practice law in this state;
- (2) does not have a business relationship with the debt settlement services provider that is in any way related to the provision of debt settlement services; and
- (3) provides debt settlement services as an ancillary matter to the primary representation of a client.

Sec. 5. Minnesota Statutes 2012, section 332B.06, subdivision 1, is amended to read:

Subdivision 1. **Written agreement required.** (a) A debt settlement services provider may not perform, or impose any charges or receive any payment for, any debt settlement services until the provider and the debtor have executed a debt settlement services agreement that contains all terms of the agreement between the debt settlement services provider and the debtor, and the provider complies with all the applicable requirements of this chapter.

(b) A debt settlement services agreement must:

(1) be in writing, dated, and signed by the debt settlement services provider and the debtor;

(2) conspicuously indicate whether or not the debt settlement services provider is registered with the Minnesota Department of Commerce and include any registration number; and

(3) be written in the debtor's primary language if the debt settlement services provider advertises in that language, or in the language in which the agreement was negotiated, regardless of whether the debt settlement services provider advertises in that language.

(c) The registrant must furnish the debtor with a copy of the signed contract upon execution.

Sec. 6. Minnesota Statutes 2012, section 332B.06, subdivision 4, is amended to read:

Subd. 4. **Disclosures.** (a) A person offering to provide or providing debt settlement services must disclose both orally and in writing whether or not the person is registered with the Minnesota Department of Commerce and any registration number.

(b) No person may provide debt settlement services unless the person first has provided, both orally and in writing, on a single sheet of paper, separate from any other document or writing, the following verbatim notice:

CAUTION

We CANNOT GUARANTEE that you will successfully reduce or eliminate your debt.

If you stop paying your creditors, there is a strong likelihood some or all of the following may happen:

- YOUR WAGES OR BANK ACCOUNT MAY STILL BE GARNISHED.
- YOU MAY STILL BE CONTACTED BY CREDITORS.
- YOU MAY STILL BE SUED BY CREDITORS for the money you owe.
- FEES, INTEREST, AND OTHER CHARGES WILL CONTINUE TO MOUNT UP DURING THE (INSERT NUMBER) MONTHS THIS PLAN IS IN EFFECT.

Even if we do settle your debt, YOU MAY STILL HAVE TO PAY TAXES on the amount forgiven.

Your credit rating may be adversely affected.

(c) The heading, "CAUTION," must be in bold, underlined, 28-point type, and the remaining text must be in 14-point type, with a double space between each statement.

(d) The disclosures and notices required under this subdivision must be provided in the debtor's primary language if the debt settlement services provider advertises in that language, or in the language in which the agreement was negotiated, regardless of whether the debt settlement services provider advertises in that language.

Sec. 7. Minnesota Statutes 2012, section 332B.09, is amended to read:

332B.09 FEES; WITHDRAWAL OF CREDITORS; NOTIFICATION TO DEBTOR OF SETTLEMENT OFFER.

Subdivision 1. **Choice of fee structure.** A debt settlement services provider may calculate fees on a percentage of debt basis or on a percentage of savings basis. The fee structure shall be clearly disclosed and explained in the debt settlement services agreement.

Subd. 2. ~~Fees as a percentage of debt~~ Calculation of fees. (a) The total amount of the fees claimed, demanded, charged, collected, or received ~~under this subdivision by a debt settlement services agreement~~ shall be calculated as 15 percent of the aggregate debt. ~~A debt settlement services provider that calculates fees as a percentage of debt may:~~

~~(1) charge an origination fee, which may be designated by the debt settlement services provider as nonrefundable, of:~~

~~(i) \$200 on aggregate debt of less than \$20,000; or~~

~~(ii) \$400 on aggregate debt of \$20,000 or more;~~

~~(2) charge a monthly fee of:~~

~~(i) no greater than \$50 per month on aggregate debt of less than \$40,000; and~~

5.1 ~~(ii) no greater than \$60 per month on aggregate debt of \$40,000 or more; and~~
5.2 ~~(3) charge a settlement fee for the remainder of the allowable fees, which may be~~
5.3 ~~demand and collected no earlier than upon delivery to the debt settlement services~~
5.4 ~~provider by a creditor of a bona fide written settlement offer consistent with the terms of~~
5.5 ~~the debt settlement services agreement. A settlement fee may be assessed for each debt~~
5.6 ~~settled, but the sum total of the origination fee, the monthly fee, and the settlement fee~~
5.7 ~~may not exceed 15 percent of the aggregate debt.~~

5.8 ~~(b) The collection of monthly fees shall cease under this subdivision when the~~
5.9 ~~total monthly fees and the origination fee equals 40 percent of the total fees allowable~~
5.10 ~~under this subdivision.~~

5.11 ~~(c) In no event may more than 40 percent of the total amount of fees allowable be~~
5.12 ~~claimed, demanded, charged, collected, or received by a debt settlement services provider~~
5.13 ~~any earlier than upon delivery to the debt settlement services provider by a creditor of~~
5.14 ~~a bona fide written settlement offer consistent with the terms of the debt settlement~~
5.15 ~~services agreement.~~

5.16 (1) for fees calculated on a percentage of debt basis, 15 percent of the aggregate
5.17 debt; and

5.18 (2) for fees calculated on a percentage of savings basis, 30 percent of the savings
5.19 actually negotiated by the debt settlement services provider. The savings shall be
5.20 calculated as the difference between the aggregate debt that is stated in the debt settlement
5.21 services agreement at the time of its execution and the total amount that the debtor actually
5.22 pays to settle all the debts included in the debt settlement services agreement, provided
5.23 that only savings resulting from concessions actually negotiated by the debt settlement
5.24 services provider may be counted.

5.25 Subd. 3. **Fees as a percentage of savings** **Collection of fees.** ~~(a) The total amount~~
5.26 ~~of the fees claimed, demanded, charged, collected, or received under this subdivision~~
5.27 ~~shall be calculated as 30 percent of the savings actually negotiated by the debt settlement~~
5.28 ~~services provider. The savings shall be calculated as the difference between the aggregate~~
5.29 ~~debt that is stated in the debt settlement services agreement at the time of its execution~~
5.30 ~~and total amount that the debtor actually pays to settle all the debts stated in the debt~~
5.31 ~~settlement services agreement, provided that only savings resulting from concessions~~
5.32 ~~actually negotiated by the debt settlement services provider may be counted. A debt~~
5.33 ~~settlement services provider that calculates fees as a percentage of savings may:~~

5.34 ~~(1) charge an origination fee, which may be designated by the debt settlement~~
5.35 ~~services provider as nonrefundable, of:~~

5.36 ~~(i) \$300 on aggregate debt of less than \$20,000; or~~

~~(ii) \$500 on aggregate debt of \$20,000 or more;~~
~~(2) charge a monthly fee of:~~
~~(i) no greater than \$65 on aggregate debt of less than \$40,000; and~~
~~(ii) no greater than \$75 on aggregate debt of \$40,000 or more; and~~
~~(3) charge a settlement fee for the remainder of the allowable fees, which may be demanded and collected no earlier than upon delivery to the debt settlement services provider by a creditor of a bona fide, final written settlement offer consistent with the terms of the debt settlement services agreement. A settlement fee may be assessed for each debt settled, but the sum total of the origination fee, the monthly fee, and the settlement fee may not exceed 30 percent of the savings, as calculated under paragraph (a).~~

~~(b) The collection of monthly fees shall cease under this subdivision when the total of monthly fees and the origination fee equals 50 percent of the total fees allowable under this subdivision. For the purposes of this subdivision, 50 percent of the total fees allowable shall assume a settlement of 50 cents on the dollar.~~

~~(c) In no event may more than 50 percent of the total amount of fees allowable be claimed, demanded, charged, collected, or received by a debt settlement services provider any earlier than upon delivery to the debt settlement services provider by a creditor of a bona fide, final written settlement offer consistent with the terms of the debt settlement services agreement.~~

A debt settlement services provider may not impose or collect any payment pursuant to a debt settlement services agreement before the debt settlement service provider has fully performed all of the following:

- (1) the debt settlement services contained in the agreement; and
- (2) any additional services the debt settlement services provider has agreed to perform.

If more than one debt is the subject of the debt settlement services agreement, a debt settlement services provider may only charge or collect that proportion of total fees allowable under this section that equals the proportion of the aggregate debt the individual settled debt represents.

Subd. 4. **Fees exclusive.** No fees, charges, assessments, or any other compensation may be claimed, demanded, charged, collected, or received other than the fees allowed under this section. Any fees collected in excess of those allowed under this section must be immediately returned to the debtor.

Subd. 5. **Withdrawal of creditor.** Whenever a creditor withdraws from a debt settlement services plan, the debt settlement services provider must promptly notify the debtor of the withdrawal, identify the creditor, and inform the debtor of the right to modify

7.1 the debt settlement services agreement, unless at least 50 percent of the listed creditors
7.2 withdraw, in which case the debt settlement services provider must notify the debtor of the
7.3 debtor's right to cancel. In no case may this notice be provided more than 15 days after the
7.4 debt settlement services provider learns of the creditor's decision to withdraw from a plan.

7.5 Subd. 6. **Timely notification of settlement offer.** A debt settlement services
7.6 provider must make all reasonable efforts to notify the debtor within 24 hours of a
7.7 settlement offer made by a creditor.

7.8 Sec. 8. **EFFECTIVE DATE.**

7.9 Sections 5 to 7 are effective for debt settlement service agreements entered into on
7.10 or after August 1, 2013.