

JAN 24 2013

A BILL FOR AN ACT

RELATING TO DEBT SETTLEMENT SERVICES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF HAWAII:

1 SECTION 1. The Hawaii Revised Statutes is amended by
2 adding a new chapter to be appropriately designated and to read
3 as follows:

4 "CHAPTER

5 DEBT SETTLEMENT SERVICES

6 § -1 Definitions. As used in this chapter unless the
7 context requires otherwise:

8 "Affiliate" means any of the following:

- 9 (1) A person that controls, is controlled by, or is under
10 common control with the provider. For purposes of
11 this chapter, "control" means the right to control ten
12 per cent or more of the voting power of another
13 person;
- 14 (2) An executive officer or director of the provider or an
15 individual performing similar functions with respect
16 to the provider; or



1 (3) An executive officer or director of a person described
2 in paragraph (1) or an individual performing similar
3 functions with respect to the provider.

4 "Agreement" means an agreement between a provider and an
5 individual for the performance of debt settlement services.

6 "Bank" means a financial institution regulated under
7 chapter 412.

8 "Concessions" means an assent to repayment of a debt on
9 terms more favorable to an individual than the terms of the
10 contract between the individual and a creditor.

11 "Debt settlement services" means services as an
12 intermediary between an individual and one or more unsecured
13 creditors of the individual for the purpose of obtaining
14 concessions where the contemplated concessions involve a
15 reduction in principal of the individual's unsecured debt but
16 does not include the following; provided that the debt
17 settlement services are not the primary business purpose of the
18 person described herein:

19 (1) Legal services provided in an attorney-client
20 relationship by an attorney licensed or otherwise
21 authorized to practice law in this State;



1 (2) Accounting services provided in an accountant-client
2 relationship by a certified public accountant licensed
3 to provide accounting services in this State; or

4 (3) Financial planning services provided in a financial
5 planner-client relationship by a licensed member of a
6 financial planning profession.

7 "Department" means the department of commerce and consumer
8 affairs.

9 "Good faith" means honesty in fact and the observance of
10 reasonable standards of fair dealing.

11 "Person" means an individual, corporation, business trust,
12 estate, trust, partnership, limited liability company,
13 association, joint venture, or any other legal or commercial
14 entity. The term does not include a public corporation, a
15 government or a governmental subdivision, agency, or
16 instrumentality.

17 "Principal amount of the debt" means the amount of a debt
18 at the time of the execution of an agreement for debt settlement
19 services.

20 "Program" means a program or strategy in which a provider
21 furnishes debt settlement services.



1 "Provider" means a person required to be registered
2 pursuant to this chapter who provides, offers to provide, or
3 agrees to provide, debt settlement services.

4 "Record" means information that is inscribed on a tangible
5 medium or that is stored in an electronic or other medium and is
6 retrievable in perceivable form.

7 § -2 **Applicability of chapter.** This chapter shall not
8 apply to any of the following persons or their employees when
9 the person or the employee is engaged in the regular course of
10 the person's business or profession:

11 (1) A judicial officer, a person acting under an order of
12 a court or an administrative agency, or an assignee
13 for the benefit of creditors;

14 (2) A bank, bank holding company or the subsidiary, agent,
15 or affiliate of either the bank or the bank holding
16 company, or a credit union or other financial
17 institution licensed under chapter 412; or

18 (3) A title insurer, escrow company, or other person that
19 provides bill-paying services if the provision of debt
20 settlement services is incidental to the bill-paying
21 services.



1 § -3 **Registration required.** (a) Except as otherwise
2 provided in subsection (b), on or after July 1, 2013, no person
3 shall act as a provider in providing debt settlement services to
4 an individual who the person reasonably should know resides in
5 this State at the time the person agrees to provide the
6 services, unless the person is registered as a provider under
7 this chapter.

8 (b) The department shall maintain and publicize a list of
9 the names of all persons who are registered providers.

10 (c) The department shall charge fees for registration and
11 renewals of registration, which shall be deposited to the credit
12 of the compliance resolution fund established under section 26-
13 9(o).

14 § -4 **Application; form; fees; documentation.** (a) An
15 application for registration as a provider shall be in a form
16 prescribed by the department.

17 (b) An application for registration as a provider shall be
18 accompanied by the following:

19 (1) The fee as established by the department by rule;

20 (2) Proof of minimum required liability insurance coverage
21 in an amount specified by the department;



- 1 (3) In lieu of the aggregate umbrella insurance, a surety
2 bond filed with the department, in a form approved by
3 the department, for a term that ends not earlier than
4 the expiration of the term of registration and in an
5 amount of not less than the greater of \$10,000 or an
6 amount that the department determines is warranted by:
- 7 (A) The financial condition and business experience
8 of the provider;
- 9 (B) The history of the provider in performing debt
10 settlement services; and
- 11 (C) The risk to individuals and any other factor the
12 department considers appropriate,
13 but in no event greater than \$50,000. The surety bond
14 shall run to the State for the benefit of this State
15 and of individuals who reside in this State when they
16 agree to receive debt settlement services from the
17 provider, as their interests may appear, payment of
18 which is contingent upon the noncompliance of the
19 provider or its agent with this chapter; and
- 20 (4) Proof that the provider is registered under title 23
21 to conduct business in this State.



1 § -5 **Application; required information.** An application
2 for registration shall be signed by the applicant and declare as
3 true any material matter pursuant to the application for
4 registration. The application form shall contain a statement
5 informing the applicant that a false or dishonest answer to a
6 question may be grounds for denial, subsequent suspension, or
7 revocation of the applicant's registration. An application
8 shall include the following:

- 9 (1) The applicant's name, principal business address and
10 telephone number, and all other business addresses in
11 this State, electronic mail addresses, and internet
12 website addresses;
- 13 (2) All names under which the applicant conducts business
14 in this State;
- 15 (3) The address of each location in this State at which
16 the applicant will provide debt settlement services or
17 a statement that the applicant will have no such
18 location;
- 19 (4) A copy of each form of agreement that the applicant
20 will use with individuals who reside in this State;
21 and



1 (5) The schedule of fees and charges that the applicant
2 will use with individuals who reside in this State.

3 § -6 **Application information; updates.** An applicant or
4 a provider shall notify the department within sixty days after a
5 material change in the information required under section -5.

6 § -7 **Application information; government record.** The
7 department shall make the information in an application for
8 registration and renewal of registration as a provider available
9 to the public as a government record under chapter 92F.

10 § -8 **Certificate of registration; issuance; denial.** (a)
11 Except as otherwise provided in subsection (b), the department
12 shall issue a certificate of registration as a provider to a
13 person that complies with sections -4 and -5.

14 (b) The department shall deny registration if any of the
15 following applies:

16 (1) The application contains information that is
17 materially erroneous or incomplete;

18 (2) An officer, director, or owner of the applicant has
19 been convicted of a crime, or received a civil
20 judgment that involved dishonesty or the violation of
21 federal or state securities laws; or



1 (3) The application is not accompanied by the required
2 fee.

3 § -9 Procedure for registration. (a) The department
4 shall approve or deny an initial registration as a provider
5 within sixty days after an application is filed. The department
6 may extend the sixty-day period for not more than forty-five
7 days. Within seven days after denying an application, the
8 department, in a record, shall inform the applicant of the
9 reasons for the denial.

10 (b) If the department denies an application for
11 registration as a provider or does not act upon an application
12 within the time prescribed in subsection (a), the applicant may
13 appeal and request an administrative hearing under chapter 91.

14 (c) Subject to section -10(d), a registration as a
15 provider shall be valid for one year.

16 (d) Upon submission of an application for registration and
17 until such time as an application, or any appeal filed pursuant
18 to subsection (b), is approved or denied, the applicant may
19 continue to provide debt settlement services, but a denial of
20 registration terminates any further right to provide services,
21 unless approved by the department.



1 § -10 **Renewal of registration.** (a) A provider shall
2 renew registration annually.

3 (b) An application to renew registration as a provider
4 shall:

5 (1) Be in a form prescribed by the department;

6 (2) Signed under penalty of perjury;

7 (3) Be filed not less than thirty days and not more than
8 sixty days before the registration expires;

9 (4) Be accompanied by the registration fee;

10 (5) Disclose any changes in the information contained in
11 the applicant's application for registration or its
12 immediately previous application for renewal, as
13 applicable; and

14 (6) Provide any other information that the department
15 reasonably requires to perform the department's duties
16 under this section.

17 (c) If a provider files a timely and complete application
18 for renewal of registration, the registration shall remain
19 effective until the department, in a record, notifies the
20 applicant of a denial and states the reasons for the denial.

21 (d) If the department denies an application for renewal of
22 registration as a provider, the applicant, within thirty days



1 after receiving notice of the denial, may appeal and request an
2 administrative hearing under chapter 91. While the appeal is
3 pending, the applicant shall continue to provide debt settlement
4 services to individuals with whom it has agreements. If the
5 denial is affirmed, the applicant shall continue to provide debt
6 settlement services to individuals with whom it has agreements
7 until, with the approval of the department, it transfers the
8 agreements to another registered provider.

9 § -11 **Registration or licensure in another state.** If a
10 provider holds a license or certificate of registration in
11 another state that authorizes the provider to provide debt
12 settlement services, the provider may submit a copy of that
13 license or certificate of registration and the application for
14 that license or certificate of registration in lieu of an
15 application in the form prescribed by section -4(a), -5,
16 or -10(b). The department shall accept the application and
17 the license or certificate from the other state as an
18 application for registration as a provider or for renewal of
19 registration as a provider, as appropriate, in this State if the
20 following applies:

21 (1) The application from the other state contains
22 information substantially similar to or more



1 comprehensive than that required in an application
2 under this chapter; and

3 (2) The applicant, under penalty of unsworn falsification
4 to authorities under section 710-1063, certifies that
5 the information contained in the application from the
6 other states is current or, to the extent it is not
7 current, supplements the application to make the
8 information current.

9 § -12 Requirement of good faith. A provider shall act
10 in good faith in all matters under this chapter.

11 § -13 Prerequisites for providing debt settlement
12 services. (a) Before an individual consents to pay for goods
13 or services offered, a provider shall disclose truthfully, in a
14 clear and conspicuous manner, all of the following material
15 information:

16 (1) A good faith estimate of the amount of time necessary
17 to achieve the represented results, and to the extent
18 that the debt settlement services may include a
19 settlement offer to any of the individual's creditors
20 or debt collectors, a good faith estimate of the time
21 by which the provider will start to make bona fide
22 settlement offers to the individual's creditors, and



1 the cost to the individual for providing debt
2 settlement services;

3 (2) To the extent that the debt settlement services may
4 include a settlement offer to any of the individual's
5 creditors or debt collectors, a good faith estimate of
6 the amount of money or the percentage of each
7 outstanding debt that the individual shall accumulate
8 before the provider will make a bona fide settlement
9 offer to one or more of the creditors;

10 (3) To the extent that any aspect of the debt settlement
11 services relies upon or results in the individual's
12 failure to make timely payments to creditors or debt
13 collectors, that the use of the debt settlement
14 services will likely adversely affect the individual's
15 creditworthiness, may result in the individual being
16 subject to collection actions or sued by creditors or
17 debt collectors, and may increase the amount of money
18 the individual owes due to the accrual of fees and
19 interest; and

20 (4) To the extent that the provider requests or requires
21 the individual to place funds in an account at a bank,
22 that the individual owns the funds held in the



1 account, and that the individual may withdraw from the
2 debt settlement services at any time without penalty.

3 (b) A provider shall not misrepresent, directly or by
4 implication, any material aspect of any debt settlement
5 services, including but not limited to:

6 (1) The amount of money or the percentage of the debt
7 amount that an individual may save by using the
8 service;

9 (2) The effect of the service on the individual's
10 creditworthiness;

11 (3) The effect of the service on collection efforts of the
12 individual's creditors or debt collectors;

13 (4) The percentage or number of individuals who attain the
14 represented results; and

15 (5) Whether debt settlement services are offered or
16 provided by a nonprofit entity.

17 (c) A provider shall not receive payment of any fee or
18 consideration for any debt settlement services until and unless:

19 (1) The provider has renegotiated, settled, reduced, or
20 otherwise altered the terms of at least one debt under
21 a debt settlement plan;



1 (2) The individual has made at least one payment to a
2 creditor in furtherance of a settlement with that
3 creditor; and

4 (3) The fee or consideration for settling each individual
5 debt enrolled in a debt settlement plan shall either:

6 (A) Bear the same proportional relationship to the
7 total fee for settling the entire debt amount as
8 the individual debt amount bears to the entire
9 debt amount. The individual debt amount and the
10 entire debt amount are amounts owed at the time
11 the debt was enrolled on the debt relief service;
12 or

13 (B) Be a percentage of the amount saved as a result
14 of the settlement. The percentage charged shall
15 not change from one individual debt to another.
16 The amount saved is the difference between the
17 amount owed at the time the debt was enrolled in
18 the debt relief service and the amount actually
19 paid to satisfy the debt.

20 (d) Nothing in this section shall prohibit the provider
21 from requesting or requiring the individual to place funds in an
22 account to be used to pay the provider's fees and the



1 individual's creditors or debt collectors in connection with the
2 renegotiation, settlement, reduction, or other alteration of the
3 terms of payment or other terms of debt; provided that:

- 4 (1) The funds are held in a specifically designated
5 account at a bank;
- 6 (2) The individual, not the provider, owns and controls
7 the funds held in the account and is paid accrued
8 interest on the account, if any;
- 9 (3) If the provider does not administer the account, the
10 entity administering the account is not owned or
11 controlled by, or an affiliate of, the provider;
- 12 (4) The entity administering the account does not give or
13 accept any money or other compensation in exchange for
14 referrals of business by the provider; and
- 15 (5) The individual may withdraw from the debt settlement
16 services at any time without penalty, and shall
17 receive all funds in the account, other than funds
18 earned by the provider in compliance with this
19 section, as specified in the account agreement between
20 the individual and the bank.



1 (e) If a provider is not registered as required by this
2 chapter when an individual assents to an agreement, the
3 agreement is voidable by the individual.

4 § -14 Powers of the department. (a) The department may
5 act on its own initiative or in response to complaints and may
6 receive complaints, take action to obtain voluntary compliance
7 with this chapter, and seek or provide remedies as provided in
8 this chapter.

9 (b) The department may investigate and examine, in this
10 State or elsewhere, by subpoena or otherwise, the activities,
11 books, accounts, and records of a person that provides or offers
12 to provide debt settlement services, or a person to which a
13 provider has delegated its obligations under an agreement or
14 this chapter, to determine compliance with this chapter.
15 Information that identifies individuals who have agreements with
16 the provider shall not be disclosed to the public. In
17 connection with the investigation, the department may:

18 (1) Charge the person the reasonable expenses necessarily
19 incurred to conduct the examination; and

20 (2) Require or permit a person to file a statement under
21 oath as to all the facts and circumstances of a matter
22 to be investigated.



1 (c) The department may enforce violations of this chapter
2 by taking one or more of the following actions:

3 (1) Order a provider or a director, employee, or other
4 agent of a provider to cease from any violations;

5 (2) Order a provider or a person that has caused a
6 violation to correct the violation, including making
7 restitution of money or property to a person aggrieved
8 by a violation;

9 (3) Levy upon a provider or a person that has caused a
10 violation a civil penalty not exceeding \$1,000 for
11 each violation; and

12 (4) Prosecute a civil action to enforce an order or to
13 obtain restitution or an injunction or other equitable
14 relief, or both.

15 § -15 Suspension, revocation, nonrenewal of

16 registration. (a) The department may suspend, revoke, or deny
17 renewal of a provider's registration if:

18 (1) The provider has committed a material violation of
19 this chapter; or

20 (2) The provider is insolvent.



1 (b) If the department suspends or revokes a provider's
2 registration, the provider may appeal and request a hearing
3 pursuant to chapter 91."

4 SECTION 2. This Act shall take effect upon its approval.

5

INTRODUCED BY:

Randy DeBor



Report Title:

Debt Settlement Services; Registration

Description:

Requires persons who act as providers of debt settlement services to be registered by DCCA.

The summary description of legislation appearing on this page is for informational purposes only and is not legislation or evidence of legislative intent.

