

SB 969

Measure Title: RELATING TO DEBT SETTLEMENT SERVICES.
Report Title: Debt Settlement Services; Registration
Description: Requires persons who act as providers of debt settlement services to be registered by DCCA.
Companion:
Package: None
Current Referral: CPN, WAM
Introducer(s): BAKER

<u>Sort by Date</u>		Status Text
1/24/2013	S	Introduced.
1/24/2013	S	Passed First Reading.
1/24/2013	S	Referred to CPN, WAM.
1/29/2013	S	The committee(s) on CPN has scheduled a public hearing on 02-06-13 9:00AM in conference room 229.



NEIL ABERCROMBIE
GOVERNOR

SHAN S. TSUTSUI
LT. GOVERNOR

STATE OF HAWAII
OFFICE OF THE DIRECTOR
DEPARTMENT OF COMMERCE AND CONSUMER AFFAIRS
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PRESENTATION OF THE
OFFICE OF CONSUMER PROTECTION

TO THE SENATE COMMITTEE ON COMMERCE AND CONSUMER PROTECTION

THE TWENTY-SEVENTH LEGISLATURE
REGULAR SESSION OF 2013

WEDNESDAY, FEBRUARY 6, 2013
9:00 A.M.

TESTIMONY ON SENATE BILL NO. 969, RELATING TO DEBT SETTLEMENT
SERVICES.

TO THE HONORABLE ROSALYN BAKER, CHAIR,
AND TO THE HONORABLE BRICKWOOD GALUTERIA, VICE CHAIR,
AND MEMBERS OF THE COMMITTEE:

The Department of Commerce and Consumer Affairs ("DCCA"), Office of Consumer Protection ("OCP") appreciates the opportunity to appear today and testify on S.B. 969, Relating to Debt Settlement Services. My name is Bruce B. Kim and I am the Executive Director of OCP. OCP opposes S.B. 969.

S.B. 969 establishes a new registration program within the department for debt settlement service activity. The department opposes this bill because debt settlement services are already regulated by Chapter 446, Hawaii Revised Statutes. Chapter 446, commonly referred to as the Debt Adjuster law, prohibits for-profit debt adjusting in the

state and renders for-profit debt adjustment contracts void and unenforceable. Violators may be fined not more than \$500 or imprisoned not more than six months, or both. The registration program proposed in S.B. 969 does not prohibit for-profit activity. A copy of Chapter 446, Hawaii Revised Statutes is attached to this testimony.

In 1967, the Hawaii State Legislature passed H.B. 33 which became HRS Chapter 446, making for-profit debt adjusting illegal in Hawaii. House and Senate committee reports noted at the time that:

1. [Debt adjustment] service is available to those needing debt advice from civic organizations and private financial institutions at far less, or no cost.
2. Debt adjusting intrinsically involves practice of law; no one can effectively represent a debtor badgered by creditors without performing functions constituting practice of law, e.g., legal determination of:
 - a. Validity of contracts;
 - b. Propriety of interest charges and credits;
 - c. Compromise of debts;
 - d. Availability and use of wage-earner's act proceedings or rights under the Bankruptcy Act;
 - e. Validity of secured creditors' liens;
 - f. Extent of property exempt from execution all of which matters only lawyers can properly consider and furnish counsel for a debtor.
3. **Prohibition is the only feasible way to control the abuses of debt adjusting** (emphasis added).
4. A usual sequence of events is that either the creditors, or some of them, fail to accept the plan or the debtor finds it impossible to live with; and as a

consequence the only thing the debtor gains is the additional debt incurred by virtue of the fee payable to the adjuster.

5. The nature of the business lends itself to fraud. The debt adjuster promises nothing; whereas the debtor unconditionally becomes obligated to pay a fee to the debt adjuster.
6. It deals unfairly among creditors.

All of these serious concerns are just as relevant today as they were 46 years ago.

The bill's sponsor, Representative George W. T. Loo, said of debt adjusting at the time that he sought to ban such practices when he learned of a "commercial debt adjusting firm [that] had over 4,000 cases and that of these 4,000 cases only 10 to 15 percent were successfully completed." Rep. Loo stated that the "firm was taking money under false pretense by promising relief from creditors' harassment and was causing its clients to sink further into debt."¹

Now, decades after the Legislature saw fit to ban for-profit debt adjustment as a legal business activity in this state, for-profit debt adjusting is back despite serious concerns about the industry that led the Legislature to ban the practice in 1967.

The Government Accountability Office ("GAO"), in testimony before the U.S. Senate's Committee on Commerce, Science, and Transportation in April 2010, stated that:

¹ George W. T. Loo, Hawaii Becomes 22nd State to Prohibit Commercial Debt Adjusting, 21 PERS. FIN. L.Q. REP. 108, 108 (1967)

Our investigation found that some debt settlement companies engage in fraudulent, deceptive, and abusive practices that pose a risk to consumers already in difficult financial situations. The debt settlement companies and affiliates we called while posing as fictitious consumers with large amounts of debt generally follow a business model that calls for advance fees and stopping payments to creditors—practices that have been identified as abusive and harmful. While we determined that some companies gave consumers sound advice, most of those we contacted provided information that was deceptive, abusive, or, in some cases, fraudulent. Representatives of several companies claimed that their programs had unusually high success rates, made guarantees about the extent to which they could reduce our debts, or offered other information that we found to be fraudulent, deceptive, or otherwise questionable.²

Please note the similarities between the GAO's 2010 testimony and statements made by Rep. Loo almost fifty years ago.

OCP submits that this bill is unnecessary, would needlessly expose Hawaii consumers to a host of problematic financial issues, and would open the door to a flood of for-profit debt adjusting companies who work primarily from out of state call centers or over the internet.

Thank you for the opportunity to testify in opposition on S.B. 969. I will be happy to answer any questions that the members of the Committee may have.

² <http://www.gao.gov/new.items/d10593t.pdf> , pg. 7

**PRESENTATION OF THE
BOARD OF PUBLIC ACCOUNTANCY**

**TO THE SENATE COMMITTEE ON
COMMERCE AND CONSUMER PROTECTION**

**TWENTY-SEVENTH LEGISLATURE
Regular Session of 2013**

Wednesday, February 6, 2013
9:00 a.m.

**TESTIMONY ON SENATE BILL NO. 969, RELATING TO DEBT SETTLEMENT
SERVICES.**

TO THE HONORABLE ROSALYN H. BAKER, CHAIR,
AND MEMBERS OF THE COMMITTEE:

My name is Nelson K.M. Lau, and I am the Vice-Chair of the Board of Public Accountancy ("Board"). Thank you for the opportunity to provide comments and suggested amendments to Senate Bill No. 969, Relating to Debt Settlement Services.

This bill proposes to require persons who act as providers of debt settlement services to be registered by the Department of Commerce and Consumer Affairs. The Board's comments are directed specifically to the definition of "debt settlement services" and the provision for the exemption of accounting services from the definition in Section 1 of the bill.

The Board would like to provide clarifying language to sub-section (2) of this definition (on page 3, lines 1 through 3) for the committee's consideration, as follows:

- (2) Accounting services provided in an accountant-client relationship by [a]an individual certified public accountant or firm [licensed to provide accounting services] authorized to actively engage in the practice of public accountancy in this State, pursuant to section 466-7;

The proposed amendment will include both individual certified public accountants ("CPA") and CPA firms as entities that are authorized to engage in the practice of public accountancy in Hawaii. The language tracks section 466-7 of the Board's statutes relating to the requirement that a license and permit are required for an individual to practice, and that a permit is needed for a CPA firm to practice in Hawaii.

In addition, the Board proposes the deletion of the following provision in the definition of "debt settlement services" (on page 2, lines 11 through 18), as follows:

"Debt settlement services" means services as an intermediary between an individual and one or more unsecured creditors of the individual for the purpose of obtaining concessions where the contemplated concessions involve a reduction in principal of the individual's unsecured debt but does not include the following[; provided that the debt settlement services are not the primary business purpose of the person described herein]."

The Board believes that this proviso language may not be necessary as CPAs are comprehensively and specifically regulated by chapter 466. It is also believed that legal services and financial planning services are regulated separately as well.

Thank you for the opportunity to provide the Board's comments on Senate Bill No. 969. I will be available to answer any questions you may have.

**Testimony of
Gary M. Slovin
on behalf of
American Fair Credit Council**

DATE: February 4, 2013

TO: Senator Rosalyn H. Baker
Chair, Committee on Commerce and Consumer Protection
Submitted Via CPNTestimony@Capitol.hawaii.gov

RE: **S.B. 969 – Relating to Debt Settlement Services**
Hearing Date: Wednesday, February 6, 2013 at 9:00am
Conference Room: 229

Dear Chair Baker and Members of the Committee on Commerce and Consumer Protection,

Thank you for the opportunity to speak in favor of SB 969, a bill that would place strong, market-based regulations in place for Hawaii citizens and, in so doing, encourage a robust and competitive marketplace for debt settlement services, a debt relief service that is needed in Hawaii.

I am submitting these remarks on behalf of the American Fair Credit Council (AFCC). The AFCC is the leading national association of settlement companies and represents the interests of consumers and the industry both at the state level, working closely with state legislatures and regulators, and at the Federal level, working closely with the Federal Trade Commission and the Consumer Financial Protection Bureau. AFCC's goals are to promote good business practices in the debt settlement industry, protect the interests of consumer debtors, articulate strong, consumer-centric operating standards for member companies and educate legislators and regulators at all levels of government with respect to the issues involved in the debt settlement industry. The mission of AFCC is to encourage debt settlement companies to provide services in accordance with the highest professional and ethical standards in order to retain the confidence of the public, the creditors with whom we work and local, state, and federal government. The standards AFCC upholds and promotes nationwide are available on its website at www.americanfaircreditcouncil.org.

Gary M. Slovin
Mihoko E. Ito
Christine Ogawa Karamatsu
Tiffany N. Yajima

1099 Alakea Street, Suite 1400
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(808) 539-0840

To help ensure that the above guidelines are in fact being followed by our members, AFCC started a “secret shopping” program wherein each AFCC member debt settlement company is contacted by an AFCC representative posing as a consumer. Members are graded on the accuracy, transparency and compliance with disclosure standards of their responses to consumer inquiries. The second program involves an examination of each debt settlement company member’s website, a random examination of marketing material and, for accredited members, an annual audit conducted by a third-party licensing entity to ensure that the member company’s business practices are consistent with AFCC standards.

AFCC has terminated the membership of non-compliant companies as well as imposed discipline on other members for various violations of its standards. Further, where AFCC has found non-compliant material being used by non-member companies an enforcement referral to the appropriate agency (FTC, CFPB and/or one or more states Attorneys General).

AFCC has supported stringent regulation for debt settlement companies on the state level that provides significant consumer protections including bills that have passed and become law in more than 13 states. Since 2010, Texas, Colorado, Utah, Missouri, and Maryland have passed bills supported by AFCC that contain protections similar to S.B. 969.

Introduction to Debt Settlement

Debt settlement is an effective and needed debt relief option for consumers at a time when they need more options in managing their unsecured debt. Debt settlement does not involve mortgages, loan modification, foreclosure or any other secured debt issues. Debt settlement serves those who cannot qualify for or afford other options such as bankruptcy and traditional credit counseling.

The debt settlement industry historically charged fees in advance of performing services, a business practice that encouraged some providers to charge fees but never deliver services. In October 2010, as a result of a two-year effort led by the Federal Trade Commission with the active participation of the AFCC, the “advance fee” model was banned, with the result that virtually all of the “bad actors” left the industry. SB 969 would enact into state law the FTC model, which permits fees only when a consumer receives a settlement and then only the fee applicable to the debt actually settled.

Debt settlement is extremely effective when compared to other debt relief options. The national rate of completion for confirmed Chapter 13 bankruptcy plans is less than 15%, according to the latest statistics released by the Federal bankruptcy trustee’s office. Nonprofit credit counseling companies historically have an approximate success rate of 21-26%, according to statistics released by the National Federation of Credit Counselors. Debt settlement completion rates for AFCC members prior to the FTC action were higher

– approximately 32-37%; after two years of experience with the “no advance fee” model it appears that completion rates will be significantly higher (programs are generally 36-42 months, so very few post-FTC programs have “completed” yet). Moreover, even those who only complete part of the debt settlement plan often benefit tremendously– for example, someone who had 10 debts coming into the program and has resolved only seven may decide to leave the program comfortable that his or her debt is at a manageable level and without any fee associated with the remaining unsettled debts.

A significant difference between debt settlement and credit counseling is that debt settlement is a reduction in principal of the debt, not just a reduction in the interest rate. For example, a consumer with \$15,000 of credit card debt may expect to pay about \$23,250 over more than five years if they make just their minimum payments; entering a five-year credit counseling program the same consumer should expect to pay approximately \$18,750; in a debt settlement program, however, the same consumer is likely to pay about \$11,000 over three years, fees included. Debt settlement results in significant savings for the most needy consumers. In 2009, the most recent year for which industry statistics are available, AFCC companies settled over \$1 billion of debt nationwide for between 40-45 cents on the dollar. AFCC estimates that, in 2012, more than \$1.5 billion of debt was settled, at a comparable rate.

S.B. 969 imposes the following requirements on providers.

- a. Requirements for licensure, including the following:
 - i. Personal information of business officers and directors
 - ii. Disclosure of any criminal history
 - iii. Copies of form agreements to be used with consumers
 - iv. Schedule of fees to be charged
 - v. Registration
 - vi. Clear identification of company information on website
 - vii. Bond/security
- b. Mandatory disclosures –the provider must warn the consumer of the risks of the program as well as the benefits.
- c. Financial Analysis – A financial analysis by the debt settlement provider must be performed to ensure that consumers enrolling in its program are appropriate for debt settlement.
- d. Form of agreement – The bill also mandates certain information be spelled out in service agreements with consumers including the amount of the fee, the payment schedule, and how the consumer can obtain reports from the provider.
- e. Prohibited activity – There are over 20 prohibitions against certain types of activity including misrepresentations regarding the service to be provided and the cost of the services, and misleading advertising.
- f. Enforcement power – S.B. 969 gives the regulator strong enforcement authority as well as a private right of action for the consumer.

The true story and statistics about complaints.

The industry's opponents cite consumer complaints in support of their opposition to debt settlement. Given that virtually all consumer complaints are attributable to pre-FTC experience, these positions are no longer relevant.

- A. An FOIA request made to the FTC regarding the volume of complaints against debt settlement companies actually reveals very few complaints. In response to the request, the FTC provided a breakdown of complaints by company for 2009 of the Top 100 complaint targets in the category of "debt negotiation/credit counseling" complaints. There are no debt settlement companies in the Top 20, and the highest number of complaints received by any debt settlement company is 47 (received by a company no longer in business) compared to the 3209 complaints received by the highest listed company, HSBC.
- B. Likewise, Maryland Attorney General statistics received pursuant to an FOIA request by another organization, USOBA, reveal that once the complaints against Richard Brennan, a lawyer, and his law firms, are removed (who was shut down, disbarred and jailed after enforcement action was taken against him), only approximately 71 complaints over a three (3) year period were made against the hundreds of debt settlement companies then operating in Maryland, or an average of 24 complaints a year.

Therefore, even before the FTC rule against advance payment of fees was promulgated, there was not a significant complaint volume. Now with the FTC rule, complaints have virtually disappeared. SB 969 proposes substantial additional consumer protections.

Myths about debt settlement.

Critics have historically attacked debt settlement by using the following arguments:

- A. Debt settlement takes advantage of uneducated, low income individuals.
In fact, debt settlement clients are not usually low income individuals. In order for an individual to get into sufficient financial trouble to need debt settlement services, the person generally has had sufficient employment to qualify for a substantial amount of credit. The average debt in a debt settlement program ranges from \$20,000 to \$30,000 and is usually comprised of 6-7 credit cards. Debt settlement clients have usually experienced some financial hardship such as a divorce, job loss, or a medical issue that makes untenable the paydown of the debt by any means other than continuation of monthly minimum payments (if that is even possible), which indentures them for years and bleeds all available resources. Denying such people debt settlement services deprives many of them an opportunity to regain sound financial footing.

B. There is no reason to use a debt settlement provider since an individual can negotiate his or her own debt.

While debt settlement can theoretically be done by individuals on their own, negotiating down the principal of a debt is difficult. Debt settlement providers provide expertise and knowledge that helps provide an advantage in many ways including knowing who to contact, when to negotiate, tendencies of certain creditors and the many changing policies of creditors.

AFCC believes that the combination of (1) strong regulation of all matters through licensing, and (2) the prohibition of charging fees until a settlement is reached, that the consumer accepts, provides comprehensive consumer protection.

Testimonials by consumers who have been helped by debt settlement.

AFCC has received numerous testimonials in favor of debt settlement; positive testimonials greatly outweigh negative comments. As an example, the FTC sought comment on its proposed rule and received approximately 200 consumer comments regarding debt settlement. Of those comments, only 4 were negative and, of those, 3 were focused on creditors, not debt settlement companies. These testimonials are available at www.ftc.gov.

The matter of people being in debt is not pleasant or easy. Perhaps there is a temptation to limit the options of people in debt with the thought that this helps them. But the fact is that people do need alternatives. The regulation of a viable alternative such as debt settlement is a better approach than leaving the field as it presently is.



Association of Credit Counseling Professionals

February 2, 2013

Senator Rosalyn Baker
Chair, Senate Committee on Commerce and Consumer Protection

-Via Email-

Re: SB 969 – SUPPORT with amendments

Dear Senator Baker:

The Association of Credit Counseling Professionals (ACCPros) is a national industry trade association representing 26 consumer credit counseling agencies, many of which serve Hawaii residents. ACCPros supports the adoption of SB 969, which would require registration of debt settlement providers in Hawaii, but we would encourage some additional consumer protections.

While the vast majority of our member companies do not currently offer debt settlement services, ACCPros recognizes that, with proper screening and financial analysis at intake, debt settlement represents a viable alternative for at least some consumers trying to avoid bankruptcy.

We would raise three issues for your consideration. First, Hawaii law currently limits the provision of debt management services to non-profit entities. ACCPros supports a level playing field for legitimate providers of debt relief services, and the tax status of a provider (tax-exempt, non-profit, not-for-profit, or for-profit) is not a reliable or accurate indicator of that provider's ability to offer appropriate debt relief. We would urge you to consider modernizing the existing law in this regard, as many states have done over the past few years. Specifically, we point out that HRS Section 446:1-4 needs to be amended to eliminate conflicts with the proposed bill. Attached, please find some suggested amendments intended to eliminate these conflicts and provide some basic consumer protections for consumers utilizing credit counseling services.

Association of Credit Counseling Professionals
299 South Shore Road
Marmora, NJ 08223
(p) 866-278-1567



Association of Credit Counseling Professionals

Secondly, we would urge you to consider a debt settlement fee cap, in particular one tied to the actual savings realized by the consumer. While we are not advocating a particular numerical cap, we believe it is good public policy to align the interests of the settlement provider with that of the consumer – the more the consumer saves, the more the provider can receive in fees.

Finally, while nonprofit credit counseling agencies are mandated by operation of federal tax law to provide financial education to consumers, no such requirement applies to for-profit settlement agencies. Accordingly, we would urge consideration of the financial education and counselor certification requirements included in the Uniform Debt-Management Services Act, which has been under consideration previously in Hawaii.

Thank you for your support of this important legislation, and please contact me if you have any questions.

Sincerely,

//RG//

Russell Graves
President, ACCPros
609-425-7931

Cc: Senators Galuteria, Nishihara, Solomon, Taniguchi, Wakai, and Slom

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CHAPTER 446 of Hawaii Revised Statutes is amended to read:

§446-1 Definitions. As used in this chapter:

- (1) "Person" means an individual, partnership, corporation, firm, association, or any other legal entity;
- (2) "Debt adjuster" means a person who ~~for a profit~~ engages in the business of acting as an intermediary between a debtor and the debtor's creditors for the purpose of settling, compromising, or in any way altering the terms of payment of any debts of the debtor and who:
 - (A) Receives money, property, or other thing of value from the debtor, or on behalf of the debtor, for distribution among the creditors of the debtor, or
 - (B) Otherwise arranges for payment to, or distribution among, the creditors of the debtor;
- (3) "Credit Counseling Organization" means a debt adjuster that offers services in compliance with Section 446-2, where those services involve a repayment plan agreed to by the debtor's creditors at or near the time of execution of the agreement. "Credit counseling organization" does not include a person who provides debt settlement services under *[insert new title reference from bill]*
- (4) "Debtor" means an individual and includes two or more individuals who are jointly and severally or jointly or severally indebted;
- ~~(4)~~(5) "Nonprofit organization" means a corporation or association, no part of the net earnings of which may inure to the benefit of any private shareholder or individual. [L 1967, c 3, §2; HRS §446-1; gen ch 1985]

§446-2 Credit Counseling Organizations; requirements. Any person offering credit counseling services in this state shall:

- (1) exercise fiduciary responsibility over any debtor funds collected for disbursement to that debtor's creditor;
- (2) provide in any agreement with a resident of this state that a credit counseling or debt management plan may be cancelled at any time, and any debtor funds not already disbursed to creditors or earned as fees in compliance with paragraph (3) shall be returned to the debtor within seven business days;

(3) provide in any agreement with a resident of this state that it shall not require or receive any fee until and unless at least one creditor included in debt management plan has agreed to a repayment plan, and that the monthly fees for debt management or credit counseling services shall not exceed fifteen percent of the amount disbursed to creditor in any particular month;

(4) maintain a bond payable for the benefit of the residents of this state, equal to the greater of \$50,000, or the average daily balance of funds held in trust for residents of this state over the past six months

(5) provide financial and budgeting education as part of its services to residents of this state.

~~Debt adjusting prohibited; penalty; contracts void.~~ Any person who acts or offers to act as a debt adjuster in this State shall be fined not more than \$500 or imprisoned not more than six months, or both. Any contract for debt adjusting entered into with a person engaged in the business for a profit shall be void and unenforceable and the debtor may recover from the debt adjuster all sums or things deposited with the debt adjuster and not disbursed to the debtor's creditors. [L 1967, c 3, §3; HRS §446-2; gen ch 1985]

§446-3 Persons not affected. The following persons are not debt adjusters for the purposes of this chapter:

- (1) An attorney licensed or otherwise authorized to practice law in this State, including the Legal Aid Society of Hawaii;
- (2) A person who is a regular full-time employee of a debtor and who acts as an adjuster of the person's employer's debt;
- (3) A person acting pursuant to any order or judgment of court or pursuant to authority conferred by any law of this State or of the United States;
- (4) A credit counseling organization, either nonprofit or for-profit, that provides debt management plans, financial education, or both, in compliance with Section 446-2.
- (5) A debt settlement agency that is duly registered with the Department of Commerce and Consumer Affairs under [insert new title reference for bill] A nonprofit or charitable corporation or association who acts as an

~~adjuster of a debtor's debts, even though the
nonprofit corporation or association may charge and
collect nominal sums as reimbursement for expenses in
connection with such services. [L 1967, c 3, §4; HRS
§446-3; gen ch 1985]~~