

**HOUSE OF REPRESENTATIVES STAFF ANALYSIS**

**BILL #:** CS/HB 1045 Debt Settlement Services  
**SPONSOR(S):** Insurance, Business & Financial Affairs Policy Committee, Hudson  
**TIED BILLS:** **IDEN./SIM. BILLS:**

|    | REFERENCE  | ACTION           | ANALYST | STAFF DIRECTOR |
|----|--|------------------|---------|----------------|
| 1) | Insurance, Business & Financial Affairs Policy Committee | 16 Y, 0 N, As CS | Tanner  | Cooper         |
| 2) | Civil Justice & Courts Policy Committee                  |                  |         |                |
| 3) | General Government Policy Council                        |                  |         |                |
| 4) | Government Operations Appropriations Committee           |                  |         |                |
| 5) |  |                  |         |                |

**SUMMARY ANALYSIS**

Debt settlement services reduce a consumer’s outstanding balance, including principal. They negotiate with creditors to reduce the consumer’s debt in exchange for an agreement of regular repayments, but debt settlement services do not handle consumer money. Debt settlement services are unsubsidized, for-profit entities that operate mostly on fees charged to the consumers. The fees are often based on the total amount of debt handled and amount saved by the debtor.

Debt settlement services are distinguishable from credit counseling organizations (CCOs), which generally reduce only the interest and late fees of a debt. CCOs provide counseling to debtors on developing budgets, managing money, using credit, and building a savings plan. They also negotiate with creditors and debtors to set up ‘debt management plans.’ CCOs are usually nonprofits, funded by creditors and banks which subsidize CCO operations. Most creditors will not stop interest from accruing during repayment, but many will lower it.

Part IV of ch. 817, F.S. governs the regulation of credit counseling agencies, which includes fees, financial reporting, insurance requirements, and penalties for noncompliance. Essentially, this bill would make a distinction between credit counseling agencies and debt settlement services and require debt settlement services to be licensed with the Office of Financial Regulation (OFR). The bill creates the “Debt Settlement Services Act” to govern debt settlement services with the following provisions:

- Requires debt settlement advisors to register and renew annually with the OFR in accordance with specified requirements. Currently, Florida does not require registration or licensure of debt settlement advisors.
- Establishes grounds for denying registration; establishes prohibited acts for debt settlement advisors, including limitations on fees and debt settlement amounts; and establishes standards for debt settlement agreements.
- Requires registrants to maintain insurance coverage; in lieu of the insurance, registrants may obtain a minimum \$10,000 surety bond (max \$50K) for the use and benefit of any client who suffers any loss due to any violation of this part.
- Creates civil remedies for clients.
- Authorizes the OFR to enforce this act through disciplinary proceedings, rulemaking authority, investigation and examination authority.

This bill appears to have a fiscal impact on state government revenues and expenditures. The OFR estimates that the bill will provide \$770,000 in revenue for each of the next three fiscal years and total expenditures of \$820,635 (FY 08-09), \$737,603 (FY 09-10) and \$737,603 (FY 10-11).

The bill takes effect July 1, 2009.

## HOUSE PRINCIPLES

Members are encouraged to evaluate proposed legislation in light of the following guiding principles of the House of Representatives

- Balance the state budget.
- Create a legal and regulatory environment that fosters economic growth and job creation.
- Lower the tax burden on families and businesses.
- Reverse or restrain the growth of government.
- Promote public safety.
- Promote educational accountability, excellence, and choice.
- Foster respect for the family and for innocent human life.
- Protect Florida's natural beauty.

## FULL ANALYSIS

### I. SUBSTANTIVE ANALYSIS

#### A. EFFECT OF PROPOSED CHANGES:

##### **Background**

Debt settlement companies act on behalf of client debtors to help them resolve their debts.<sup>1</sup> They do this by entering into direct negotiations with creditors in order to facilitate the repayment of debts, reducing the client's outstanding balance, including principle.<sup>2</sup> In return for their services, debt settlement companies are generally paid a fee based upon a combination of the total amount of the debt handled and the amount saved by the client debtor.<sup>3</sup> Most debt settlement companies do not escrow, handle, manage, or otherwise control client money, usually requiring the client to set up a separate bank account or use an escrow company in making the new payments with the creditor.<sup>4</sup> This is a distinguishing factor between debt settlement companies and other debt management business models including the nonprofit consumer credit counseling companies.

Debt settlement services are distinguishable from credit counseling organizations (CCOs), which generally reduce only the interest and late fees of a debt.<sup>5</sup> CCOs provide counseling to debtors on developing budgets, managing money, using credit, and building a savings plan.<sup>6</sup> They also negotiate with creditors and debtors to set up 'debt management plans.' These organizations may attempt to help debtors avoid foreclosure and bankruptcy, reduce interest rates and late fees, and lower and consolidate monthly loan payments. By agreement, the client deposits funds with the CCO every month. The CCO in turn sends the money directly to the creditors. Under these agreements, creditors will close or suspend the client's lines of credit, except in limited circumstances. Upon completion of the repayment plan, some creditors will reestablish credit based on current ability to pay and payment history during the repayment period. CCOs are usually nonprofits, funded by creditors and banks which subsidize CCS operations.<sup>7</sup> Another major difference is that debt settlement services are unsubsidized, for-profit entities that operate mostly on fees charged to the clients which are based on the total amount of debt handled and the amount saved by the debtor.<sup>8</sup> CCOs usually perform these

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<sup>1</sup> The Association of Settlement Companies (TASC) White Paper dated March 9, 2006 on file with the Insurance, Business and Financial Affairs Policy Committee.

<sup>2</sup> Office of Financial Regulation (OFR) Bill Analysis dated March 16, 2009 on file with the Insurance, Business and Financial Affairs Policy Committee.

<sup>3</sup> TASC White Paper, *supra* note 1.

<sup>4</sup> OFR Bill Analysis, *supra* note 2.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

services at little or no cost to clients. Most creditors will not stop interest from accruing during repayment, but many will lower it.<sup>9</sup>

## **Current Law**

Part IV of ch. 817, F.S., titled “Consumer Counseling Services,” governs the regulation of credit counseling agencies, which includes fees, financial reporting, insurance requirements, and penalties for noncompliance.

In Florida, credit counseling agencies are organizations providing credit counseling services or debt management services.<sup>10</sup> The term, “credit counseling services,” means confidential money management, debt reduction, and financial educational services.<sup>11</sup> Debt management services generally means services for a fee to adjust or discharge the indebtedness of the debtor.<sup>12</sup> Persons engaged in credit counseling or debt management services are prohibited from charging fees to any client or debtor residing in Florida in excess of amounts prescribed in s. 817.802, F.S. Each person providing credit counseling or debt management services must obtain an annual financial audit<sup>13</sup> and maintain insurance coverage for employee dishonesty, depositor’s forgery, and computer fraud.<sup>14</sup>

Under Florida law, no state agency is charged with enforcing the laws regulating credit counseling agencies or debt settlement services.<sup>15</sup> Although, a violation of any provision of part IV of ch. 817, F.S., is an unfair or deceptive trade practice under the Florida Deceptive and Unfair Trade Practices Act<sup>16</sup> (Act) and the Office of the Attorney General could potentially enforce the Act against debt settlement companies engaging in unfair and deceptive trade practices.<sup>17</sup> A client harmed by a violation of this act may bring an action for recovery of damages, costs and attorney’s fees.<sup>18</sup> A person who violates any provision of the act commits a third degree felony,<sup>19</sup> punishable by not more than 5 years in prison<sup>20</sup> and a fine of up to \$5,000.<sup>21</sup>

## **Effect of Bill**

This bill creates an act entitled the “Debt Settlement Services Act,” which requires debt settlement services to be licensed with the Office of Financial Regulation. The bill defines a “debt settlement advisor” as a person who provides debt settlement services to a client and the term also includes an employee or agent of the debt settlement advisor. A “client” means a person who has entered into an agreement with a debt settlement advisor for debt settlement services.

“Debt settlement services” is defined as services provided for a client by a debt settlement advisor who acts as an intermediary between the client and unsecured creditors for the purpose of obtaining favorable concessions<sup>22</sup> for the client. The debt settlement advisor does not receive money from the client with the intent to distribute money to a client’s creditors. Debt settlement services does not include:

- Legal services provided by licensed Florida attorneys;

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<sup>9</sup> *Id.*

<sup>10</sup> Section 817.801(1), F.S.

<sup>11</sup> Section 817.801(2), F.S.

<sup>12</sup> Section 817.801(4), F.S.

<sup>13</sup> Section 817.804(1)(a), F.S.

<sup>14</sup> Section 817.804(1)(b), F.S.

<sup>15</sup> OFR Bill Analysis, *supra* note 2.

<sup>16</sup> ch. 501 part II, F.S.

<sup>17</sup> Section 817.806(1), F.S.

<sup>18</sup> *Id.*

<sup>19</sup> Section 817.806(2), F.S.

<sup>20</sup> Section 775.082(3)(d), F.S.

<sup>21</sup> Section 775.083(1)(c), F.S.

<sup>22</sup> “Concessions” means consent to repay a debt on terms more favorable to a client than the terms of the original contract between a client and a creditor.

- Accounting services provided by licensed Florida CPAs; or
- Financial planning services provided by a member of a financial planning profession.

The act does not apply to:

- A debt settlement advisor who does not receive compensation for providing debt settlement services to a client;
- A judicial officer, persons acting under court or an assignee for the benefit of creditors;
- A bank;<sup>23</sup> or
- A title insurer, escrow company, or other entity that provides bill-saving services if the debt settlement services are incidental to the bill-paying services.

This bill creates licensure requirements for a person who intends to provide or offer to provide debt settlement services. A debt settlement advisor is subject to annual registration with Office of Financial Regulation (OFR) of the Financial Services Commission. The application fee may not exceed \$350. The debt settlement advisor must provide proof that they are covered by a minimum insurance policy in an amount specified by the OFR; or in lieu of insurance the applicant can file for a surety bond with OFR for a term not less than the expiration date of the license and the bond must be in an amount of at least \$10,000. The surety bond is if for the use and benefit of any client who suffers any loss due to any debt settlement service from a debt settlement advisor. OFR may require an applicant to file a bond greater than \$10,000 if it determines necessary, but OFR cannot require a surety bond greater than \$50,000.

The debt settlement advisor must provide specified information in a format prescribed by OFR, including, but not limited to: the name which the applicant will conduct business, judgments and actions (civil, criminal, and administrative) relating to financial fraud or misuse from any jurisdiction; copies of all debt settlement service agreement forms that will be used by the applicant; schedule of fees; a description of any ownership interest of 10 percent or greater; and copies of financial analyses used to estimate client repayment. An applicant or licensed debt settlement advisor is also required to notify OFR of any changes in their information. OFR must make all application information available to the public.

The bill requires OFR to approve or deny an initial licensure application within 60 days of the applications completion (OFR may extend the 60-day period but not more than 45 days). OFR may deny or refuse to issue an initial licensure for materially erroneous or incomplete applications and for convictions to crimes involving dishonesty, or the violation of state or federal securities laws. Applicants could also be denied if there has been a civil judgment entered against them involving dishonesty or if there is reasonable evidence that the applicant will not operate as a debt settlement advisor in a lawful, honest or fair manner. If OFR denies an application it must provide a written explanation for the decision. The bill also provides a means for licensure for debt settlement advisors with licensure from another state. The application from the other state must be substantially similar to the application required by OFR.

A licensed debt settlement advisor is required to apply for renewal annually and must file for renewal at least 30 days in advance but not more the 60 days. The licensure renewal applicant is required to disclose any changes in their information as well as any other information that OFR reasonable requires to perform its duties. If the debt settlement advisor files a timely and complete application for license renewal, its license will remain in effect until OFR notifies the applicant of its decision. The debt settlement advisor may appeal the denial and request a hearing pursuant to ch. 120, F.S. The bill requires debt settlement advisors to act in good faith. Additionally, it requires each licensed debt settlement advisor to maintain a toll-free number that clients can call during regular business hours to speak to a customer service representative.

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<sup>23</sup> "Bank" means a financial institution, including a commercial bank, savings bank, savings and loan association, credit union, mortgage bank, and trust company, which is engaged in the business of banking, chartered under federal or state law, and regulated by a federal or state banking regulatory authority.

The bill sets forth required prerequisites for advisors to follow before executing debt settlement agreements, including but not limited to:

- preparing a financial analysis for the client; and
- informing the client that participation may adversely affect their credit rating, no specific results can be guaranteed, and unless the client is insolvent and a creditor settles for less than the full amount of the debt, participation in the program may result in the creation of taxable income to the client.

A debt settlement advisor is an advocate for the client and cannot receive compensation from creditors, banks, or third-party collection agencies. The debt settlement advisor must also not make monthly payments to the client's creditors. The advisor may communicate with the consumer via the Internet or other electronic means with the consent of the consumer. If a client requests the information in written form, the debt settlement advisor must supply such material at no charge within 3 business days after receipt of the request. If a client who has previously consented to electronic communication in a manner provided by the federal act,<sup>24</sup> a debt settlement advisor may terminate the agreement with the client. In order for the debt settlement advisor to terminate the agreement, they must notify the client and, unless the client consents to electronic communication within 30 days after receiving notification, the agreement is terminated.

The debt settlement agreement must be in writing, signed by both the client and debt settlement advisor, and state that the client has a right to terminate the agreement at any time by giving the debt settlement advisor written or electronic notice. The agreement may allow the debt settlement advisor a power of attorney to settle a client's debt, but for no more than 50 percent of the principle amount of the debt. Before accepting a concession settlement of more than 50 percent of the principle amount of the debt the advisor must obtain the client's consent.

A debt settlement agreement may be cancelled by a client up to three business days after the execution of the agreement. The agreement must be accompanied by a form that notifies the client in bold-faced type of the right to cancellation. If the agreement does not comply with the cancellation notice or report filing requirements then the client may cancel the agreement within 30 days of the agreement's execution.

The bill also requires that the agreements be in English unless OFR provides otherwise. If the debt settlement advisor communicates with a client primarily in a language other than English, the advisor must furnish a translated version of the documents required by this act.

A debt settlement advisor may not impose a fee or other charge on a client unless authorized by this act. The bill prohibits debt settlement advisors from assessing fees in excess of 20% of the client's principle debt and requires that the client sign the debt settlement agreement before the advisor can charge fees. Debt settlement advisors are prohibited from soliciting a voluntary contribution from a client or affiliate of a client for any debt settlement services. If the debt settlement advisor imposes a fee not authorized by the bill the client may void the contract. The debt settlement advisor may terminate the agreement if the client fails to make a required payment for 60 days.

Debt settlement advisors must maintain records for each of their clients for at least 4 years after the client's final payment. The bill provides that in specified situations the debt settlement advisor must provide accounting reports that contain information, such as the amount of the client's debt when the creditor agrees to a settlement; and the amount of the debt the creditor accepts as settlement of the debt.

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<sup>24</sup> "Federal act" means the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. s. 7001 et seq., as amended, which was enacted by Congress to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically. Section 101(c)(1)(C)(ii) of the Act requires businesses to obtain from consumers electronic consent or confirmation to receive information electronically that a law requires to be in writing. Information available at <http://www.ftc.gov/os/2001/06/esign7.htm>.

The bill prohibits debt settlement advisors from engaging in specified acts, including but not limited to:

- settling a debt on behalf of a client for more than 50% of the amount of the presettlement debt unless the client agrees in writing to the settlement;
- holding a power of attorney that authorizes the debt settlement advisor to settle a debt, unless the power is limited to the settlement of debts not more than 50 percent of the amount of the debt owed;
- structuring a settlement that results in a negative amortization schedule for repayment of any of a client's debts; or
- employing deceptive and unfair trade practices, including the knowing omission of any material information.

Additionally, the debt settlement advisor is prohibited from purchasing a debt of the client or providing credit to the client.

Each debt settlement service must establish a process to internally review and resolve formal complaints. Every client who files a complaint must receive a response from the advisor in a reasonable time. The advisor must maintain a file that documents each formal complaint and the file must be disclosed upon request.

The bill authorizes OFR to act on its own initiative or in response to a complaint and initiate enforcement actions as provided by the act. OFR may enforce this act, through investigative, examination, and rulemaking authority, including requiring statements under oath and the authority to charge reasonable fees necessary for the expense of administering this act. OFR is also authorized to enter into cooperative arrangements with other state or federal agencies having authority over debt settlement advisors.

This bill authorizes OFR to enforce this act and rules adopted under this act, by:

- ordering an advisor to cease and desist from any violation;
- ordering a debt settlement advisor to correct a violation, including making restitution of money or property to the person aggrieved by the violation;
- imposing a civil penalty not to exceed \$1,000 for each violation; and
- initiating an enforcement action in the circuit court.

If a person violates or knowingly authorizes another person to violate a final order issued, OFR may impose an additional civil penalty no greater than \$1000 for each violation. Furthermore, OFR may recover the reasonable costs of enforcing this act, including attorney's fees. OFR is authorized under this act to suspend, revoke, or deny the renewal of debt settlement advisor's license for reasons such as insolvency, a material violation of this act, and failure to respond to OFR within a reasonable time.

The bill allows a client who voids an agreement to recover all money paid. Clients injured by a debt settlement advisor's violation of this act may seek the greater of compensatory damages or \$1,000 from advisors, in addition to attorney's fees and costs. There is a limitation of liability for advisors acting in good faith and can demonstrate that the violation was not intentional.

The bill sets 4-year statute of limitation for any enforcement action and a two-year statute of limitation for any private enforcement action.

## B. SECTION DIRECTORY:

Section 1 provides that the act may be cited as the "Debt Settlement Services Act."

Section 2 provides definitions.

Section 3 provides exemptions to the application of the act.

Section 4 provides licensure requirements.

Section 5 provides requirements for the license application form and fees.

Section 6 provides for certain required licensure application information.

Section 7 provides an obligation to update information within a prescribed time.  
 Section 8 requires that the Office of Financial Regulation make available to the public the information contained in an initial application and a renewal application for a debt settlement advisor license.  
 Section 9 provides procedures for the acceptance and rejection of an initial application.  
 Section 10 provides details for license renewal.  
 Section 11 requires Office of Financial Regulation to consider documents from other states as an application to become a debt settlement advisor in Florida.  
 Section 12 requires each debt settlement advisor act in good faith.  
 Section 13 requires each debt settlement advisor to maintain a toll-free telephone service.  
 Section 14 provides prerequisites for providing debt settlement services.  
 Section 15 provides communication requirements.  
 Section 16 provides form and content requirements for a debt settlement agreement.  
 Section 17 provides for cancellation of an agreement.  
 Section 18 provides language requirements.  
 Section 19 details the fees other charges that the debt settlement advisor may impose.  
 Section 20 prohibits a debt settlement advisor from soliciting contribution from clients.  
 Section 21 specifies agreements that are voidable.  
 Section 22 authorizes a debt settlement advisor to terminate the agreement in specified circumstances.  
 Section 23 requires the debt settlement service to prepare periodic reports.  
 Section 24 prohibits a debt settlement advisor from engaging in certain acts and practices.  
 Section 25 provides advertisement requirements.  
 Section 26 requires each debt settlement advisor to establish an internal formal complaint process for the advisor to resolve formal complaints.  
 Section 27 describes the powers of the Office of Financial Regulation.  
 Section 28 provides administrative remedies for violations of the act.  
 Section 29 authorizes the Office of Financial Regulation to suspend, revoke, or deny renewal of a license to a debt settlement advisor under certain circumstances.  
 Section 30 provides for private enforcement of the act.  
 Section 31 provides that a violation of this act is a deceptive and unfair trade practice.  
 Section 32 provides time limitations for commencing proceedings.  
 Section 33 provides for the act's relation to the Electronic Signatures in Global and National Commerce Act.  
 Section 34 provides for severability.  
 Section 35 provides an effective date of July 1, 2009.

## II. FISCAL ANALYSIS & ECONOMIC IMPACT STATEMENT

### A. FISCAL IMPACT ON STATE GOVERNMENT:

#### 1. Revenues:

The OFR estimates recurring revenues from application and renewal fees (2,200 applications x \$350 maximum) to be \$770,000 for each of the next three fiscal years.

#### 2. Expenditures:

OFR estimates total expenditures to be:

|                       | (FY 08-09)   | (FY 09-10)   | (FY 10-11)   |
|-----------------------|--------------|--------------|--------------|
|                       | Amount / FTE | Amount / FTE | Amount / FTE |
| 1) Recurring – 11 FTE |              |              |              |
| Salary and Benefits   | \$ 629,660   | \$ 629,660   | \$ 629,660   |
| Expense               | \$ 103,400   | \$ 103,400   | \$ 103,400   |
| Transfer to DMS       | \$ 4,543     | \$ 4,543     | \$ 4,543     |
| Total Recurring       | \$ 737,603   | \$ 737,603   | \$ 737,603   |
| 2) Non-Recurring      |              |              |              |
| Expense               | \$ 37,532    |              |              |

|                     |            |            |            |
|---------------------|------------|------------|------------|
| OCO                 | \$ 15,500  |            |            |
| OPS                 | \$ 30,000  |            |            |
| Total Non-Recurring | \$ 83,032  |            |            |
| Total Expenditures  | \$ 820,635 | \$ 737,603 | \$ 737,603 |

Positions included:

|                         |                                 |
|-------------------------|---------------------------------|
| Licensing               | 1 Financial Examiner/Analyst II |
| Examinations/Complaints | 2 Financial Specialists         |
|                         | 4 Financial Examiner/Analyst II |
|                         | 3 Financial Examiner/Analyst II |
| Legal                   | 1 Senior Attorney               |

The OFR fiscal projections include the following:

“It is estimated there are approximately 2,200 debt settlement service advisors who would be required to register under the bill. It is estimated that 1 FTE would be required to process applications and renewals on a normal basis, along with OPS assistance to process the initial wave of applications expected after passage of the bill.

In reviewing the complaints on collection agencies, OFR receives 500 complaints a year on average. This includes the handling and processing of the complaints and the telephone calls from consumers and industry. The percentage of complaints based on total number of licensees is 40%. Using the estimated 2,200 licensees, this would mean 880 complaints (2200 X 40%) per year regarding debt management advisors. This would require 4 FTE to handle the complaint process (1 FTE per 220 complaints per year).

To conduct examinations over a 5 year period of 2,200 licensees would require 440 examinations per year to be conducted. Based on an estimated average of 2 exams per week including travel time, on-site review, and drafting the exam report, 1 FTE could conduct 89 exams per year (1854 hrs in a year / 40 = 46.3 weeks X 2 = 92.4 exams). 440 exams / 92.4 exams = 4.78 FTEs (round to 5). A Senior Attorney would be required to handle legal work related to the licensing and examination processes.

Under the proposed language, fees would be deposited into the General Inspection Trust Fund which is not currently used by the Office. Licensing fees for other Finance license types are deposited into the Regulatory Trust Fund and the budget for the Division of Finance is appropriated from the Regulatory Trust Fund.

It should be noted that all licenses currently administered by the Office renew on a date certain rather than renewing one year after issuance. Requiring renewal of all licenses one year after issue would require substantial changes to the existing Regulatory Enforcement and Licensing (REAL) System and would cause substantial additional cost to implement the bill.”

**B. FISCAL IMPACT ON LOCAL GOVERNMENTS:**

1. Revenues:

None.

2. Expenditures:

None.

**C. DIRECT ECONOMIC IMPACT ON PRIVATE SECTOR:**



Currently, debt settlement service advisors are not required to register or pay a fee. Each advisor will be required to pay an initial application fee not to exceed \$350 and an annual renewal fee not to exceed \$350. Additionally, each advisor would be required to obtain an insurance policy or surety bond. The cost of the insurance policy or surety bond is indeterminate.<sup>25</sup>

D. FISCAL COMMENTS:

None.

### III. COMMENTS

A. CONSTITUTIONAL ISSUES:

1. Applicability of Municipality/County Mandates Provision:

None.

2. Other:

OFR notes that the Pennsylvania Legislature enacted its Debt Management Services Act (2008-117) last year, with an effective date of February 6, 2009.<sup>26</sup> However, in late January of this year, the Association of Settlement Companies and two Pennsylvania debt settlement company members filed suit against the Pennsylvania Department of Banking, seeking declaratory judgment on the Act's constitutionality. The lawsuit brings several claims including allegations that the new law violates the due process rights of the businesses, violates Equal Protection rights in the unequal application of law to varying debt relief businesses and interferes with existing contractual relationships between consumers and debt settlement companies. It also claims that the statute as written is defective and grants the Department unconstitutional authority.<sup>27</sup> The Commonwealth Court of Pennsylvania granted a preliminary injunction.<sup>28</sup> In accordance with the injunction, the Pennsylvania Department of Banking is not accepting applications for debt settlement services at this time.<sup>29</sup>

B. RULE-MAKING AUTHORITY:

The bill authorizes OFR to adopt rules under ss. 120.536(1) and 120.54, F.S. to administer this part.

C. DRAFTING ISSUES OR OTHER COMMENTS:

None.

### IV. AMENDMENTS/COUNCIL OR COMMITTEE SUBSTITUTE CHANGES

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<sup>25</sup> OFR Bill Analysis, *supra* note 2.

<sup>26</sup> *Id.* at 5; *see also* Pennsylvania Debt Management Services Act *available at* <http://www.legis.state.pa.us/CFDOCS/Legis/PN/Public/btCheck.cfm?txtType=PDF&sessYr=2007&sessInd=0&billBody=H&billTyp=B&billNbr=2294&pn=4525>.

<sup>27</sup> OFR Bill Analysis, *supra* note 2; which references *Debt Settlement Industry Sues Pennsylvania – Department of Banking creates unconstitutional law; hurts consumers, suit claims*, TASC website, *available at* <http://www.tascsite.org/article.php?id=30> (Feb. 3, 2009).

<sup>28</sup> OFR Bill Analysis, *supra* note 2; which references *Debt Settlement Industry Earns Injunction on New Pennsylvania Law*, TASC website, *available at* <http://www.tascsite.org/article.php?id=31> (Feb. 3, 2009).

<sup>29</sup> Pennsylvania Department of Banking website, *available at* <http://www.banking.state.pa.us/banking/cwp/view.asp?a=1351&q=548320> (website states: "The Department of Banking has been enjoined by the PA Commonwealth Court from enforcing the debt settlement provisions of the Debt Management Services Act. Therefore, the Department will not be accepting applications for debt settlement services at this time.") (Last visited March 22, 2009).