

By Senator Silver

38-1612-02

1                                   A bill to be entitled  
2           An act creating the "Debt Management Services  
3           Act"; defining terms; providing for licensure  
4           by the Department of Banking and Finance;  
5           providing license fees; providing restrictions  
6           on marketing, promotion, and advertising;  
7           providing for pre-contract information and for  
8           contract terms; providing standards for advice  
9           to be given by debt management companies;  
10          providing criteria for debt management  
11          services; providing penalties; providing an  
12          effective date.

14 Be It Enacted by the Legislature of the State of Florida:

16           Section 1. Short title.--This act may be cited as the  
17 "Debt Management Services Act."

18           Section 2. Definitions.--As used in this act, the  
19 term:

20           (1) "Debt management services" means any of the  
21 following when provided to debtors who are consumers under  
22 consumer credit agreements:

23           (a) Advising how to restructure debts, how to alter  
24 debt repayments, or how to achieve early resettlement of  
25 debts;

26           (b) Contacting creditors in order to make any of the  
27 arrangements in paragraph (a), whether that contact amounts to  
28 negotiation or not;

29           (c) Providing a facility for the debtor to make a  
30 single repayment that is then distributed on the debtor's  
31 behalf to his or her creditors; and

1           (d) Reviewing a debtor's financial circumstances or  
2 payments.

3           (2) "Debt management company" means any person that is  
4 licensed to provide debt management services under this act.

5           (3) "Department" means the Department of Banking and  
6 Finance.

7           Section 3. License.--

8           (1) A debt management company may not provide debt  
9 management services without a license under this section.

10           (2) An application for a license under this section  
11 must be submitted to the department on a form as the  
12 department may prescribe by rule together with a nonrefundable  
13 application fee of \$200. The license renewal fee is \$200. The  
14 department shall adopt by rule a biennial licensure period and  
15 procedures for renewal of licenses.

16           (3) Each license must specify the location for which  
17 it is issued and must be conspicuously displayed at that  
18 location.

19           (4) Each debt management company shall designate and  
20 maintain an agent for service of process in this state.

21           Section 4. Marketing, promotion, and advertisements.--

22           (1) The advertising or promotion of debt management  
23 services, whether written or on television or radio, must be  
24 accurate and clear and must not mislead, either expressly or  
25 by implication or omission.

26           (2) Advertising of debt management services should  
27 not:

28           (a) State or imply that the service will free the  
29 consumer of the need to meet their debts;

30           (b) Emphasize the savings to be made by rescheduling  
31 debts without making it equally clear that this will usually

1 lead to an increase in the size of the sum to be repaid and  
2 that rescheduling the debt may impair the consumer's credit  
3 record. Where specific savings are quoted there must be a  
4 similar indication of the likely increase in the total amount  
5 of the sum to be repaid or the period of repayment and the fee  
6 that will be charged; and

7 (c) Claim or imply that the debt management company  
8 can guarantee an outcome favorable to the consumer in  
9 negotiations with creditors.

10 (3) When the arrangements with the debt management  
11 company will lead to a period in which contractual payments  
12 are not made by the consumer, the consumer must be warned of  
13 this in the marketing literature.

14 Section 5. Pre-contract information.--

15 (1) A consumer must be provided with adequate  
16 information about the debt management service to be provided  
17 and the consequences and costs of it before entering into an  
18 agreement. All documentation must be clear and in plain  
19 language and must state clearly the implications of entering a  
20 debt-management program.

21 (2) When a debt management company contacts a  
22 potential client after a referral from a credit broker or  
23 lender, the debt management company must disclose at the  
24 outset of the conversation how it has obtained the consumer's  
25 details, what service they offer, and the fact that the  
26 company cannot itself provide a loan.

27 (3) The nature of the service that is being offered,  
28 the total cost to the consumer of the service, including any  
29 initial or fixed charge fee or deposit, the periodic  
30 management fee to be paid to the debt management company  
31 multiplied by the estimated length of the contract, the amount

1 to be repaid, and the likely duration of the contract must be  
2 clearly explained to the consumer at the outset.

3 (4) When it is not possible to establish at the  
4 pre-contract stage the cost or duration of the contract, the  
5 consumer must be given a realistic estimate of the cost and  
6 duration of the contract. This should be accompanied in close  
7 proximity by a clear warning that it is an estimate. The  
8 assumptions on which the estimate are based should be set out.  
9 If during the pre-contractual stage it becomes clear that the  
10 estimate does not adequately reflect the consumer's  
11 circumstances, a revised estimate must be given.

12 (5) If an initial up-front fee or deposit is payable,  
13 the consumer must be given a clear explanation of:

14 (a) What aspect of the service is covered by the fee  
15 or for what reason the deposit is held;

16 (b) The manner in which it is to be calculated; and

17 (c) Whether it is refundable, with due regard to the  
18 principles of contract law in relation to deposits and part  
19 payments.

20 (6) The consumer must be advised that he or she will  
21 be given the opportunity to withdraw from the contract if,  
22 when informed of the total cost of the service, he or she  
23 decides that the service is unsuitable.

24 (7) Consumers must be clearly warned in writing:

25 (a) When the first payment goes to the debt management  
26 company and not to the creditors, whether as an initial  
27 up-front fee, a deposit, or for some other reason, that they  
28 will miss a payment to their creditors and will therefore go  
29 into arrears or further into arrears;

30 (b) That creditors are not obliged to accept reduced  
31 repayments or to freeze interest and that, unless they do so,

1 repaying the same debt over a longer period of time will lead  
2 to an increase in the total amount to be paid;

3 (c) That collection actions, including default notices  
4 and litigation, can ensue and that there is no guarantee that  
5 any existing or threatened proceedings will be suspended or  
6 withdrawn. The possibility of default notices, including that  
7 they may incur costs that are added to the debt, must be made  
8 clear;

9 (d) Of the likely impact of the debt management  
10 program on the consumer's credit rating. In particular it  
11 should be stated that he or she might not be able to obtain  
12 credit in the short term and that there is some likelihood  
13 that medium-to-long-term credit will not be available either.  
14 Consumers must not be misled into thinking that their credit  
15 rating will improve before the payment of their debts is  
16 completed or even immediately thereafter;

17 (e) Of the importance of meeting debts such as  
18 mortgage, rent, and utility payments; and

19 (f) Not to ignore correspondence or other contacts  
20 from creditors or those acting on behalf of creditors.

21 (7) The nature of those commitments that will and,  
22 especially important, those that as a matter of the debt  
23 management company's own decision will not be included within  
24 the repayment plan must be made clear to potential clients.  
25 The debt management company must exercise all due care to  
26 ensure that debts that it says it cannot deal with are not  
27 included in a program.

28 (8) When a debt management company is aware that a  
29 particular creditor refuses to deal with it, for whatever  
30 reason and whether or not the debt management company regards  
31 this refusal as justified, the consumer must be informed as

1 soon as the debt management company is aware that the consumer  
2 has an account with that creditor.

3 Section 6. Contract terms.--Contract terms and  
4 conditions should be fair, written in plain, intelligible  
5 language and easily legible.

6 (1) COST AND DURATION OF CONTRACT.--

7 (a) The contract should set out the:

8 1. Nature of the services that are being supplied,  
9 including the kinds of debt that will and will not be covered;

10 2. Total cost to the consumer of the service,  
11 including any initial or fixed-charge fee or deposit and the  
12 periodic management fee to be paid to the debt management  
13 company multiplied by the estimated length of the contract;

14 3. Amount to be repaid; and

15 4. Duration of the contract.

16 (b) When it is not possible to state firmly the cost  
17 or duration of the contract, the contract must include  
18 realistic estimates of the cost and duration of the contract.  
19 This should be accompanied in close proximity by a clear  
20 warning that it is an estimate. The assumptions on which the  
21 estimate is based should be set out.

22 (c) The contract should specify the circumstances in  
23 which the consumer may withdraw and receive a refund of any  
24 moneys paid to the debt management company.

25 (d) The contract must not include any term that states  
26 or implies that there are circumstances in which a client is  
27 not entitled to a refund. For example a refund, and in some  
28 cases a full refund, may be due to a dissatisfied client if:

29 1. The debt management company has promised more than  
30 it can deliver. This may be the case even when the debt

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1 management company's contract is appropriately worded, if it's  
2 written or oral marketing is overly optimistic; or

3 2. The debt management company has failed to conduct  
4 negotiations with reasonable care and skill; or

5 3. There has been a total failure of consideration.

6 (e) The contract should allow the client to withdraw  
7 from the contract when, following signing of the contract, the  
8 total fee differs significantly from the estimate given before  
9 the contract was signed.

10 (2) HANDLING MONEY.--

11 (a) Any moneys held on behalf of consumers must be  
12 kept in a client account not usable by the debt management  
13 company for the purposes of its own business. This includes,  
14 in particular, any deposit that under the contract may be  
15 returned to the client at any date in the future and any  
16 moneys received by the company for payment to creditors. Any  
17 interest earned on this account should accrue to the benefit  
18 of the client, not the company.

19 (b) The contract must specify a period within which  
20 payments received from the client will normally be passed on.  
21 Delays that adversely affect the individual consumer's  
22 financial position and which exceed 5 working days from  
23 receipt of cleared funds are unacceptable. If the debt  
24 management company fails to disburse payments to creditors in  
25 accordance with the contract, it must accept responsibility  
26 and inform the client of the delay, together with the reason  
27 for the delay. When the delay is not beyond its control, the  
28 debt management company should take appropriate action to put  
29 the consumer in the position in which he or she would have  
30 been had the contract been fulfilled. This includes making  
31 good any additional interest that has accrued and any default

1 charges that have been applied to the account as a result of  
2 the delay. In this respect, the debt management company must  
3 have appropriate systems in place to deal with foreseeable  
4 problems and to minimize delays, even when the initial cause  
5 is not its fault. As the consumer relies on the debt  
6 management company to be made aware of any delay, the debt  
7 management company must take reasonable steps to anticipate  
8 delays and make good the losses.

9 (3) OTHER TERMS.--

10 (a) A contract must not prohibit clients from  
11 corresponding with or responding to written or oral  
12 communications from creditors or others acting on behalf of  
13 creditors. However, in order to avoid duplicate or  
14 contradictory action, contracts may reasonably require the  
15 client to send to the debt management company a copy of any  
16 communication from a creditor. When the contract requires or  
17 suggests that the client should send such correspondence to  
18 the debt management company, the company must deal with it  
19 appropriately and promptly. The debt management company must  
20 send to the client a copy of any written communication it  
21 sends to or receives from the creditor, and unless the  
22 creditor itself sends a copy to the client must keep the  
23 client informed of other communications.

24 (b) A contract must not include declarations such as  
25 "I fully understand the requirements of the contract" or  
26 confirmation that certain provisions have been explained.

27 Section 7. ADVICE--All advice given to the client  
28 should be in the best interests of the client. Debt management  
29 programs are not suitable for all debtors, and debt management  
30 companies must exercise all due discretion, in the best

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1 interests of the debtor, in deciding whether or not to take a  
2 debtor as a client.

3 (1) FINANCIAL POSITION.--A realistic assessment of the  
4 financial circumstances of the consumer, including both income  
5 and expenses must be made before advice is given.

6 (a) Consumer income must be verified by appropriate  
7 means, such as pay slips.

8 (b) Reasonable steps must also be taken to verify  
9 regular expenses. Estimates of expenditures on certain items  
10 are permitted, but only if precise figures are not available.  
11 Standard expenditure guidelines may be used when there is no  
12 better indication of the client's expenses if there is nothing  
13 to suggest that they are inappropriate. A copy of any  
14 financial statement sent to creditors must also be sent to the  
15 client.

16 (2) PAYMENTS.--

17 (a) Any advice given to the client to cancel direct  
18 debits or standing orders before the repayment plan being  
19 agreed upon with creditors must be demonstrably in the best  
20 interests of the client. Debt management companies must  
21 clearly warn clients of the risks and consequences of this  
22 course of action if they advise it. When this course is taken,  
23 regular payments to creditors, even if lower than the  
24 contractual ones, should continue to be made whenever  
25 possible.

26 (b) The difficulties associated with stopping  
27 contractual payments are especially acute when they are  
28 accompanied by a period in which no payments at all are made  
29 or if there is a delay in distributing payments to creditors.  
30 If this will, or is likely to, happen under the plan the  
31 consumer must be clearly informed and warned of the

1 consequences. It is not sufficient for this purpose that a  
2 statement is included to this effect in the small print of the  
3 terms and conditions.

4 (c) Clients should not be advised to make payments to  
5 accounts at a rate lower than the rate at which any interest  
6 and other charges are accruing or may accrue, unless this is  
7 demonstrably in their best interests. In such a case, a clear  
8 explanation must be given to the client as to why this course  
9 is necessary and its implications.

10 (d) If the client follows the plan in order to cancel  
11 direct debits or reduce the level of contractual payments and  
12 it becomes clear that the course of action is not producing  
13 results in the client's interest, then the client must be  
14 informed immediately so that he or she may be advised  
15 appropriately and take whatever action is in his or her best  
16 interests, including the possibility of withdrawing from the  
17 plan.

18 (e) Clients must be advised of the importance of  
19 meeting debts such as mortgages, rent, and utility payments.  
20 More generally it should not be assumed that it is always in  
21 the client's best interests simply to divide available income  
22 between debts in proportion to their size. For example advice  
23 should take into account the fact that some loans may lose the  
24 benefit of a reduced rate of interest if payments are missed  
25 or that there may be a benefit in settling a loan with a  
26 higher rate of interest sooner than one with a lower rate of  
27 interest.

28 Section 8. Debt management services.--

29 (1) A debt management company must inform the client  
30 of the outcome of negotiations with creditors. This is not  
31 limited to the situation when creditors have refused to deal

1 with the debt management company, have returned payments to  
2 the debt management company, or refused to freeze interest.  
3 But it is especially important in those cases.

4 (2) A client must be kept informed of any developments  
5 in the relationship with creditors, in particular the issue of  
6 default notices or the threat of issue of legal proceedings.

7 (3) When the service provided by the debt management  
8 company includes debt repayment, the debt management company  
9 must:

10 (a) Take full account of debts such as mortgage  
11 payments, rent, and utility payments, including any arrears  
12 already incurred on those debts, in setting monthly  
13 repayments; and

14 (b) Reassess the payment plan and consider any  
15 necessary changes, including bringing the plan to an end, to  
16 ensure that it remains in the client's best interests as soon  
17 as it becomes aware of material changes in the client's  
18 financial position. The client should be advised of any  
19 recommended changes without delay. Repayment plans should in  
20 any event be reassessed on at least an annual basis and the  
21 client informed of the outcome of the reassessment.

22 (4) A client should be given at the outset a statement  
23 of how his or her money is being disbursed. In addition, when  
24 a plan has been agreed to, the balance owed or, if an accurate  
25 figure is not known, the best estimate. The period of payment  
26 needed to clear the debts and the fee charged by the debt  
27 management company must be included in the statement. A client  
28 must be kept informed of any material changes to these  
29 arrangements at the time they occur. A debt management company  
30 should meet any reasonable request by a client for a statement  
31 of his or her position.

1           (5) A debt management company should respond to  
2 complaints promptly and fairly.

3           (6) All correspondence, statements, and other  
4 paperwork sent to or received from the client or the client's  
5 creditors and which has not already been copied to or returned  
6 to the client should be retained by the debt management  
7 company until such time as the contract is completed or  
8 terminated. On termination or completion of the contract, all  
9 retained paperwork should be returned to the client unless, at  
10 that time, the client says that he or she does not want the  
11 paperwork.

12           Section 9. Penalties.--If the department finds that  
13 any person has violated this act, the department may take one  
14 or more of the following actions:

- 15           (1) Revoke or suspend a license;  
16           (2) Place a licensee on probation for a period of time  
17 subject to conditions the department may specify;  
18           (3) Issue a reprimand; or  
19           (4) Impose an administrative fine not exceeding \$250  
20 for each violation.

21           Section 10. This act shall take effect October 1,  
22 2002.

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25 SENATE SUMMARY

26 Creates the Debt Management Services Act providing for  
27 the licensure and regulation of debt management services  
28 by the Department of Banking and Finance. Provides for  
29 fees and penalties.  
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