SUBJECT: Revising regulation of debt management service providers and fees

COMMITTEE: Pensions, Investments, and Financial Services — committee substitute recommended

VOTE: 9 ayes — Truitt, Anchia, C. Anderson, Creighton, Hernandez Luna, Legler, Nash, Orr, Veasey

0 nays

WITNESSES: (*On introduced bill:*)
For — None

Against — Marianne D'Aquila, Money Management International

(*On committee substitute:*)
For — Michael Croxson, Care One Services, Inc.; Jenna Keehnen, United States Organizations for Bankruptcy Alternatives; Wesley Young, The Association of Settlement Companies; (*Registered, but did not testify:* Celeste Embrey, Texas Bankers Association)

Against — (*Registered, but did not testify:* John Daetwyler, Association of Credit Counseling Professionals)

On — Leslie Pettijohn, Office of Consumer Credit Commissioner

BACKGROUND: Finance Code, Title 5 addresses the protection of consumers of financial services. Within that title, ch. 394, subch. C regulates consumer debt management services and their providers. The subchapter requires debt management service providers to:

- register with the consumer credit commissioner (OCCC);
- maintain and make available records as required by the OCCC;
- maintain a bond or insurance to pay any damages or penalties to consumers for violations of the subchapter;
- not engage in false or deceptive advertising;
- abide by certain required business practices related to interactions with consumers;
- obey regulations on written debt management services agreements;

- comply with certain limits on the fees they charge consumers;
- use a trust account for the money paid by consumers for disbursement to their creditors; and
- not participate in certain other prohibited acts and practices.

The subchapter gives a range of enforcement powers to the OCCC, including levying administrative penalties and seeking injunctions with assistance of the attorney general. The subchapter also names a partial list of private remedies a consumer may seek for violations of the subchapter.

In the debtor assistance industry, debt management services are distinguished from debt settlement services. Typically, a debt management company seeks to reduce the finance charges on a consumer's debt but not the principal owed, while a debt settlement company seeks to reduce the principal owed by the consumer. Furthermore, a debt management company receives and holds money from the consumer to disburse to the consumer's creditors, while a debt settlement company does not receive or hold a consumer's money.

DIGEST:

CSHB 1222 would amend Finance Code, ch. 394, subch. C to redefine "debt management service," change permitted fees, require the return of a consumer's money upon cancellation of a debt management service agreement, and make many of the subchapter's provisions applicable only to certain debt management service providers.

The bill would rewrite the definition of "debt management service." It would remove the existing provisions regarding distribution of payments from a consumer to a creditor and instead define "debt management service" as a service in which a provider obtained or sought to obtain a concession from one or more creditors on behalf of a consumer. The bill would define "concession" as assent to repayment of a debt on terms more favorable to a consumer than the terms of the agreement under which the consumer became indebted to the creditor.

The bill would prohibit a debt management service provider from imposing fees on or accepting payment from a consumer until the consumer had entered into a debt management service agreement with the provider. The bill would provide one fee and payment structure option for a provider to use in conjunction with a debt management plan that reduced finance charges as a concession from creditors, and it would provide two fee and payment structure options for a provider to use in conjunction with

a debt management plan that reduced debt principal as a concession from creditors. The bill would prohibit a provider that had entered into a debt management service agreement with a consumer from charging that person for debt counseling or similar services, but it would allow a provider that had not entered into such an agreement to charge a limited fee for such services. The bill would allow the OCCC to adjust the amount of the fees or other charges for inflation.

The bill would require a provider, upon cancellation of a debt management service agreement, to immediately return any of the consumer's money held in trust, as well as 65 percent of any portion of an account set-up fee that had not been credited against settlement fees.

The bill would change various provisions to make them applicable only to a provider that received money from or on behalf of a consumer for disbursement to a creditor. The bill would change other provisions to make them applicable only to a provider of a debt management plan that did not provide for a reduction of principal as a concession. Such provisions include a condition under which a provider's registration could be suspended or terminated, certain conditions under which a provider could enroll a consumer in a debt management plan, a requirement for reporting to consumers, a requirement on the content of debt management service agreements, a requirement to use a trust account, and a requirement to ensure client money was managed properly. The bill would also place different requirements on the amount of money that would have to be maintained in a bond by a provider that received and held money from or on behalf of a consumer for disbursement than on the amount of money that must be maintained in a bond by a provider that did not.

The bill would take effect September 1, 2011.

SUPPORTERS SAY:

CSHB 1222 would provide much-needed consumer protection for Texans struggling with debt. As the economy has worsened and so many families have lost their sources of income and been pushed into debt, the need for such protections has grown.

By redefining "debt management service," CSHB 1222 would bring debt settlement companies under state regulation for the first time, as debt management companies have been for years. The debt settlement industry has a history of consumer abuse that should be curbed. Since 2007, the Office of the Attorney General has received more than 800 complaints

against debt settlement companies, and the Office of Consumer Credit Commissioner (OCCC) receives three debt settlement complaints for every one debt management complaint. The attorney general also has had to spend taxpayer money on litigation against debt settlement companies .

Because of the seriousness of the issue, the House Pensions, Investment, and Financial Services Committee studied the debt settlement industry over the interim. Chairwoman Truitt coordinated discussions with two large debt settlement trade associations, United States Organizations for Bankruptcy Alternatives (USOBA) and The Association of Settlement Companies (TASC), to work out legislation acceptable to the debt settlement industry. Those negotiations are embodied in CSHB 1222, which is supported by USOBA, TASC, and Care One Services, Inc.

The bill would bring debt settlement companies and practices under substantial, meaningful regulation, while still allowing these companies to make reasonable, non-abusive profits through carefully structured fee schedules. Although some would like the bill to more tightly restrict the fees that debt settlement companies could charge, CSHB 1222 would be an enormous first step in bringing these companies under state regulation for the very first time.

OPPONENTS SAY:

CSHB 1222 would inadequately protect the consumer rights of Texans by continuing to allow debt settlement companies to charge substantial fees before providing any settlement services. In reputable industries, it is common practice to collect payment only after successfully providing service to the customer, and several debt settlement companies have proven that such a business model is financially viable, operating on a "success-fee" basis and collecting a fee only after securing a settlement for the consumer.

Debt settlement companies that charge up-front fees can be so abusive that the Federal Trade Commission, the Attorney General of Texas, and the Better Business Bureau have all condemned the practice. A more comprehensive, protective bill would prohibit advance fees, such as the newly revised Uniform Debt Management Services Act developed by the National Conference of Commissioners on Uniform State Laws.

NOTES:

The committee substitute differs from the bill as filed by amending Finance Code, ch. 394, subch. C, rather than repealing it and replacing it with entirely new regulatory statute.

The companion bill, SB 141 by Eltife, passed the Senate by 31-0 on March 15 and was reported favorably, as substituted, by the House Pensions, Investments, and Financial Services Committee on April 5, making it eligible to be considered in lieu of HB 1222.