DEPARTMENT OF FINANCE BILL ANALYSIS

AMENDMENT DATE: May 10, 2011 **BILL NUMBER:** SB 708
POSITION: Neutral, note concerns **AUTHOR:** E. Corbett

BILL SUMMARY: Debt Settlement Consumer Protection Act

This bill would require debt settlement companies to be licensed with the Department of Corporations (DOC). The bill also would require debt settlement companies to abide by certain licensing requirements, including a prohibition on charging fees that exceed 20 percent of the total debt that the debt settlement company successfully discharges on behalf of a customer.

FISCAL SUMMARY

Finance has not yet received an estimate from DOC of its resource needs associated with this bill. However, since the bill allows DOC to fully recover its costs through annual pro rata assessments on debt settlement companies, the bill would not negatively impact the State Corporations Fund.

COMMENTS

Finance notes the following policy concern regarding this bill:

- The licensing and disclosure requirements mandated by this bill appear reasonable. However, if a customer is willing to enter into a fully disclosed contract with a debt settlement company, and knowingly agrees to pay a fee that exceeds 20 percent of the debt that the company successfully discharges on their behalf, it is unclear that the state should prohibit the customer and the company from executing that contract.

Analyst/Principal	Date	Program Budget Manager	Date
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Department Deputy Director Date

Governor's Office: By: Date: Position Approved_______
Position Disapproved

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ANALYSIS

A. Programmatic Analysis

Debt settlement companies work with over-leveraged consumers and their creditors to reach settlements wherein the creditors agree to forgive a portion of the consumer's debt in exchange for a pledge to pay the remaining debt. In exchange for this service the debt settlement companies charge consumers a variable fee based on the amount of debt that the company successfully discharges.

Regulations promulgated by the Federal Trade Commission (FTC) in 2010 prohibit debt settlement companies from charging up-front fees. Instead, companies may only charge fees after they have succeeded in discharging a portion of the customer's debt. The FTC regulations do not, however, limit the fees that companies may charge.

This bill would establish the Debt Settlement Protection Act, to be administered by the Department of Corporations (DOC). The bill would require debt settlement companies to be licensed by the DOC, and also would make the following significant changes:

- Allow DOC to charge both an investigation and an application fee to potential licensees of $1,000 each.
- Require debt settlement companies to maintain a surety bond of $50,000 and a net worth of $100,000.
- Require debt settlement companies to file annual audited financial statements with DOC, and to file annual reports with DOC disclosing specified financial information.
- Require each debt settlement company to pay an annual fee to DOC, equal to the pro rata cost incurred by DOC to license and oversee that company. The fee would be proportionate to each company's total enrolled debt as compared to the total enrolled debt of all debt settlement companies statewide.
- Allow DOC to revoke a debt settlement company's license for specified purposes, including commission of crimes, failure to provide promised services, or insolvency.
- Require debt settlement companies to provide certain information to consumers before entering into a contract with them, including an individual financial analysis, an estimate of the time it will take to complete the debt settlement program, and a written determination that the consumer (a) can meet the requirements of the settlement program, (b) is suitable for the program, and (c) can reasonably expect to receive a tangible benefit from the program.
- Before a contract is executed, require debt settlement companies to disclose how all fees will be calculated, and to provide an estimate of those fees.
- Prohibit debt settlement companies from charging fees that exceed 20 percent of the total debt that the company successfully discharges on a consumer's behalf.

B. Fiscal Analysis

Finance has not yet received an estimate from DOC of its resource needs associated with this bill. However, since the bill allows DOC to fully recover its costs through annual pro rata assessments on debt settlement providers, the bill would not negatively impact the State Corporations Fund.

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Code/Department Agency or Revenue Type	SO LA CO RV	PROP 98	FC	2010-2011	FC	2011-2012	FC	2012-2013	Fund Code
				(Fiscal Impact by Fiscal Year) (Dollars in Thousands)					
2180/Corporations	SO	No		--------------------- See Fiscal Summary ---------------------					0067

Fund Code	Title
0067	Corporations Fund, State