

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRBa0522/1dn

MDK:kjf:rs

May 25, 2007

Rep. Newcomer:

This amendment incorporates the changes to the uniform act made by the Colorado bill provided by Caren Hanson. Please note the following about the amendment:

1. The Colorado bill's references to "administrator" are changed to "division," which is the Division of Banking in DFI, and the references to "bank" are changed to "financial institution."
2. The Colorado bill includes exemptions for lawyers, CPAs, and financial planners in the definition of "debt-management services." AB 218 includes exemptions for lawyers and CPAs in proposed s. 218.02 (3) (c) 5. and 6., rather than in the definition of "debt-management services." I added the exemption for financial planners to proposed s. 218.02 (3) (c) 7.
3. The Colorado bill first applies to persons who provide debt-management services on or after July 1, 2008. However, AB 218 has a delayed effective date of approximately one year. Is AB 218's delayed effective date okay? If not, let me know and I will revise the amendment.
4. The Colorado bill requires licensing fees to be deposited in Colorado's Uniform Credit Code Cash Fund. There is no comparable fund under Wisconsin law. Instead, all fees received by DFI under AB 218 will be deposited in the general fund. Under current law (i.e., s. 20.144 (1) (g)), DFI may use 88 percent of the fees received for general program operations, including administering the requirements of the bill.
5. The Colorado bill refers to signing various documents "under penalty of false statement." AB 218 requires instead that a document must be "signed and verified under oath or affirmation," which is more consistent with Wisconsin law. Therefore, I did not make any changes to AB 218 on this issue.
6. The provision in the Colorado bill comparable to proposed s. 218.02 (6) (k) in AB 218 includes a statement that the description of an applicant's financial analysis and initial plan shall be deemed confidential commercial data under Colorado law. I did not add a similar statement to AB 218 because I amended proposed s. 218.02 (8) to require DFI to withhold such information from public inspection and copying. Therefore, the statement is not necessary. The same is true for the provision in the Colorado bill comparable to proposed s. 218.02 (6) (o).

7. The provision in the Colorado bill comparable to proposed s. 218.02 (6) (k) in AB 218 refers to an applicant's initial "plan," whereas AB 218 refers to an initial "budget plan." I did not affect the reference to "budget plan." Is that okay?
8. The provision in the Colorado bill comparable to proposed s. 218.02 (6) (n) in AB 218 includes a statement that the administrator (which would be DFI) "shall be the authorized agency to receive information regarding the result of the national criminal history records check." I'm not sure why this statement is necessary and I did not include it.
9. AB 218 has the following grounds for denying a license that are not included in the Colorado bill: proposed s. 218.02 (9) (c) 2. (failure to provide bond), 4. (state tax delinquency), and 5. (failure to pay child support). I did not affect these grounds. Is that okay? See also comparable grounds for discipline in proposed s. 218.02 (33) (b) 6., (c), and (d).
10. Section 12-14.5-210 (c) of the Colorado bill provides that an applicant may continue to provide debt-management services until an application is approved or denied. However, s. 12-14.5-204 (a) prohibits a person from providing services unless the person is registered. Because s. 12-14.5-210 (c) appears to conflict with s. 12-14.5 204 (a), I did not include s. 12-14.5-210 (c).
11. Proposed s. 218.02 (21) (e) refers to a cash balance equal *or greater than* the sum of certain balances. The Colorado bill refers instead to a cash balance equal to that sum. I did not affect proposed s. 218.02 (21) (e) because I think that it is preferable to the Colorado bill.
12. Proposed s. 218.02 (31) (a) allows DFI to refer to cases to the attorney general. Although this authority is not included in the Colorado bill, I did not eliminate it. Is that okay? Also, proposed s. 218.02 (31) (b) 1. allows DFI to charge for reasonable "costs," but the Colorado bill refers to reasonable "expenses." DFI prefers the term "costs," so I did not change the reference to "costs." Is that okay?
13. Proposed s. 218.02 (32) allows DFI to recover civil forfeitures in a court action. The Colorado bill would allow DFI to directly impose civil forfeitures without going to court. Although some Wisconsin statutes allow agencies to directly impose civil forfeitures, the majority of civil forfeitures under Wisconsin law are imposed by courts. Therefore, I did not affect proposed s. 218.02 (32) on this issue.
14. Proposed s. 218.02 (33) (b) 4. refers to an employee, affiliate, or agent of a provider. The Colorado bill refers to an employee or affiliate, but not an agent. I did not affect the reference to an agent. Is that okay?

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