



WISCONSIN LEGISLATIVE COUNCIL

UNIFORM DEBT MANAGEMENT SERVICES

Room 411 South, State Capitol
Madison, Wisconsin

October 11, 2006
10:00 a.m. – 12:15 p.m.

[The following is a summary of the October 11, 2006 meeting of the Special Committee on Uniform Debt Management Services. The file copy of this summary has appended to it a copy of each document prepared for or submitted to the committee during the meeting. A digital recording of the meeting is available on our Web site at <http://www.legis.state.wi.us/lc>.]

Call to Order and Roll Call

Chairperson Wieckert called the meeting to order. The roll was called and it was determined that a quorum was present.

COMMITTEE MEMBERS PRESENT: Rep. Steve Wieckert, Chair; Rep. Dean Kaufert; Sens. Spencer Coggs and Michael Ellis; and Public Members Kathryn Crumpton, Joanne Huelsman, Linda Kennedy, Claire Ann Resop, Rose Oswald Poels, Rick Sense, and Cindy Tang.

COMMITTEE MEMBER EXCUSED: Rep. Robin Kreibich.

COUNCIL STAFF PRESENT: Mary Matthias, Senior Staff Attorney; and Dan Schmidt, Senior Analyst.

APPEARANCES: Terry C. Anderson, Director, Legislative Council; John McCabe, Legislative Director, National Conference of Commissioners on Uniform State Laws, Chicago, Illinois; Doug Miskew, Account Director, Capstrat, Raleigh, North Carolina; Caren Lock Hanson, Director, The Association of Settlement Companies and General Counsel, DebtXS, LP, Addison, Texas; and Pat Essie, President, Essie Kammer Group, Madison.

Opening Remarks

Chairperson Wieckert welcomed the members of the committee and explained the Legislative Council study committee process. He briefly described the committee's charge and the major aspects of the legislation proposed by the National Conference of Commissioners on Uniform State Laws (NCCUSL).

Terry Anderson, Director, Legislative Council, welcomed the committee members and thanked them for their service to the Legislature. He gave a brief overview of the history of the Legislative Council and discussed rules for voting by committee members. He explained the procedures for public members to obtain reimbursement and said that all material received by the committee, as well as digital recordings of the committee's meetings, would be available on the committee's Web site.

Introduction of Committee Members

At Chairperson's Wieckert's request, the members of the committee introduced themselves and described their particular area of interest or expertise related to debt management services.

Mr. Schmidt described the materials that had been mailed to the committee members prior to the meeting:

- [LRB-5042/1](#), relating to adopting the Uniform Debt-Management Services Act, granting rule-making authority, and providing a penalty.
- [Sections 422.501 through 422.506](#), 2003-04 Wis. Stats.
- [Section 218.02](#), 2003-04 Wis. Stats.
- [Chapter DFI-Bkg 73](#), Wis. Adm. Code.
- [Summary](#) and [Facts](#), Uniform Debt-Management Services Act, Uniform Law Commissioners, the National Conference of Commissioners on Uniform State Laws.
- [Copy](#) of the Uniform Debt-Management Services Act, National Conference of Commissioners on Uniform State Laws (November 10, 2005).
- [Report](#) by the National Consumer Law Center, An Investigation of Debt Settlement Companies: An Unsettling Business for Consumers (March 2005).
- [Report](#), prepared by the Permanent Subcommittee on Investigations of the Committee on Homeland Security and Governmental Affairs United States Senate, Profiteering in a Non-Profit Industry: Abuse Practices in Credit Counseling (April 13, 2005).
- [Text](#) of section 1220 of H.R. 4, the federal Pension Protection Act of 2006.
- [Legislative History](#) of H.R. 4, the federal Pension Protection Act of 2006.
- [Excerpt](#) from "Technical Explanation of H.R. 4, the 'Pension Protection Act of 2006,'" prepared by the staff of the Joint Committee on Taxation (August 3, 2006).

Invited Speakers

[Note: PowerPoint presentations and other documents referred to by the speakers are posted on the committee's Internet site.]

- ***John McCabe, Legislative Director, National Conference of Commissioners on Uniform State Laws, Chicago, Illinois***

Mr. McCabe described NCCUSL and explained that NCCUSL decided to draft legislation on the topic of debt management services because the rise in consumer debt, along with the new federal requirement that all persons filing for bankruptcy must obtain credit counseling, made it important to guarantee fair and honest services. He said the Model Act was promulgated in 2005 and was adopted by three states this year.

Mr. McCabe discussed the main features of the Act, which were also described in a handout provided to the committee. He pointed out that the draft prepared for the committee, LRB-5042/1, is unique in that it provides for a private right of action for violations of the Act. He explained that the NCCUSL Act is neutral on the issue of whether a state should allow debt management services entities to operate on a for-profit basis. He pointed out that LRB-5042/1 does allow the for-profit option.

Mr. McCabe said it is likely that many states will adopt the Act and stressed that uniformity among states is very important for effective enforcement. Therefore, he urged the committee to adopt the Act as recommended by NCCUSL.

At Chairperson Wieckert's request, Mr. Schmidt described the current law's system of regulation of adjustment service companies in ch. 218, Stats., and regulation of credit services organizations in ch. 422, Stats. He explained that the Department of Financial Institutions (DFI) administers both chapters and would also administer the new regulations established in LRB-5042/1.

Mike Mach, Division of Banking, DFI, and **Carrie Templeton**, Executive Assistant, Office of the Secretary, DFI, appeared before the committee to answer questions. Mr. Mach explained that there had been disagreement in the past as to whether debt settlement companies are subject to ch. 422, Stats., but that a recent Wisconsin Court of Appeals decision clarifies that they are subject to that chapter. Ms. Templeton said LRB-5042/1 would provide needed clarity to the law.

Mr. McCabe told the committee that all three states that have already adopted the NCCUSL Model Act have allowed debt management services to operate as for-profit entities.

- ***Doug Miskew, Account Director, Capstrat, Raleigh, North Carolina***

Mr. Miskew said he represents "Freedom Point," a for-profit debt management services company that is licensed in Wisconsin. He said his company participated in development of the NCCUSL Model Act and supports its adoption in Wisconsin. He stated that LRB-5042/1 should be adopted as drafted, allowing for-profit debt management services companies to operate in Wisconsin. He said 33 states currently allow for-profits. He said that the typical customer of his company is a female in her mid-30s with a 50% debt-to-income ratio. He said 60% of the customers are homeowners and most have no basic financial education. He described the types of services provided by his company.

In response to a question, Mr. Miskew described the rate plan used by his company and explained that the company does not accept payments from creditors. In response to another question, he said that under federal law, not-for-profit debt management entities must show that they are serving low-income persons in order to meet the requirement that they be “charitable.” He also explained the typical concessions that his company negotiates on behalf of a client.

- ***Caren Lock Hanson, Director, The Association of Settlement Companies and General Counsel, DebtXS, LP, Addison, Texas***

Ms. Hanson described the types of companies that her trade association represents. She said it is a “young” industry and that they support regulation. She stated that they have some concerns, however, regarding the NCCUSL Model Act and corresponding provisions in LRB-5042/1 and would like to see several amendments adopted before LRB-5042/1 is enacted in Wisconsin. She raised concerns about the following provisions: the requirement that a company disclose the salaries of the five most highly-compensated individuals in the company; the requirement that a company obtain an insurance policy with no deductible; and the requirement that all companies must obtain a bond, regardless of whether they hold money in escrow for clients. She also requested changes in the limitations on fee structures.

In response to a request from Chairperson Wieckert, Ms. Hanson said she would send the committee a written list of all of her specific concerns with the draft. In response to a question from Mr. Schmidt, Ms. Hanson said that companies she represents were sued in Wisconsin for failing to comply with statutory fee structuring requirements and that, since losing their case in court, they may not continue operating in Wisconsin.

- ***Pat Essie, President, Essie Kammer Group, Madison***

Mr. Essie provided a brief historical background on debt management services in Wisconsin and urged the committee to allow for-profit debt management companies to operate in Wisconsin. He said that the for-profit companies typically serve clients with larger incomes than that of the clients served by the not-for-profits.

Discussion of Committee Assignment

The committee requested information from staff, including an explanation and analysis of the amendments requested by Ms. Hanson and a description of amendments to the NCCUSL Model Act that have been adopted in other states. The committee was in general agreement that maintaining uniformity among states is important.

Other Business Related to Committee Assignment

There was no other business discussed.

Plans for Future Meetings

The next meeting of the Special Committee will be held on ***Friday, December 8, 2006, at 10:00 a.m., in Room 411 South, State Capitol, Madison.***

Adjournment

The meeting was adjourned at 12:15 p.m.

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