



## WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 2

**TO:** MEMBERS OF THE SPECIAL COMMITTEE ON UNIFORM DEBT MANAGEMENT SERVICES

**FROM:** Mary Matthias, Senior Staff Attorney and Dan Schmidt, Senior Analyst

**RE:** Proposed Changes to LRB-5042/1, Relating to Adopting the Uniform Act on Debt Management Services, Requested by the Department of Financial Institutions

**DATE:** November 30, 2006

This memo sets forth proposed changes to LRB-5042/1 that have been requested by the Department of Financial Institutions (DFI), along with a brief explanation of why each change was requested. Representatives from DFI will address the committee at the December 8 meeting to explain and discuss these suggested changes.

1. Repeal s. 218.02 (1) to (8), Stats. Replace those provisions with the provisions of LRB-5042/1 regulating providers of debt management services, renumbered as appropriate. This change will replace the current law regulating “adjustment service companies,” in s. 218.02, Stats., with the provisions of the draft creating a new system of regulation of providers of debt management services.

2. Eliminate the repeal of subch. V of ch. 422, Stats. This statutory subchapter regulates credit services organizations. Since the draft does not regulate credit services organizations, the current law regulating those entities should remain intact.

3. Amend the cross-reference in s. 220.02 (2) (b), Stats., to authorize DFI to enforce the newly created provisions regulating providers of debt management services.

4. Throughout the draft, replace references to “registration” to “licensure.” Other financial entities regulated by DFI are required to be “licensed” rather than “registered.”

5. Eliminate the option for a provider to submit alternatives to a surety bond [page 20, line 15 to page 21, line 9]. DFI has stated that the alternatives permitted under the draft do not guarantee the same level of protection for consumers as a bond.

The draft allows a provider to submit any of the following in lieu of a surety bond:

- A certificate of insurance issued by an insurance company authorized to do business in Wisconsin and rated at least “A,” with no deductible.
- An irrevocable letter of credit issued or confirmed by a bank (if approved by DFI).
- Bonds or other obligations of the United States, the State of Wisconsin, or a political subdivision of the State of Wisconsin (if approved by DFI).

6. Amend the language on page 12, lines 22-25, to clarify that a criminal records check must be conducted on all of the following:

- (a) Every officer of the applicant; and
- (b) Every employee or agent of the applicant who is authorized to have access to the trust account required to be held by the applicant.

DFI is concerned that the language in the draft could be interpreted to mean that the only officers for whom a background check must be conducted are those who have access to the trust account.

7. The draft requires an application for registration to include “the name and home address of each officer and director of the applicant and each person that owns at least 10% of the applicant” [page 10, lines 18 and 19]. Require, in addition, submission of the following:

- (a) The title of each officer and director of the applicant; and
- (b) A statement of the percentage of ownership that each officer and director has in the applicant.

DFI has stated that they currently require this information to be included in an application under the current law regulating adjustment service companies.

8. Amend the material on page 14, lines 5-6, as follows:

- (a) The application ~~contains information that is materially erroneous or incomplete~~ is incomplete or contains erroneous information.

DFI has stated that the current language is unclear and that requiring DFI to prove that erroneous information provided in an application is “materially” erroneous will hamper its enforcement of the law.

9. Add language as needed to clarify that DFI may deny a license application or revoke, suspend, or deny renewal of a license due to delinquency in child support payments or taxes. DFI has this authority under the current law regulating adjustment service companies and the draft was intended to include this authority. Due to a drafting error, additional language is needed to clarify that DFI has this authority.

10. Amend the bill to specifically authorize DFI to revoke, suspend, or deny renewal of a license if the licensee has failed to pay required license fees or has failed to maintain in effect the required bond (or bond alternative, if one is allowed).

DFI has this authority under the current law regulating adjustment service companies. The draft provides this authority in the provision that authorizes DFI to suspend, revoke, or deny renewal of a registration if “a fact or condition exists that, if it had existed when the registrant applied for registration as a provider, would have been a reason for denying registration.” However, DFI has stated that adding a specific provision will facilitate enforcement of the bond and fee requirements.

11. Require a license applicant to provide, along with their application, a “certificate of good standing” from the state in which the business is incorporated.

12. Delete the language on page 7, lines 5-15. Create new pars. (e) and (f) on page 9, after line 23, to specify that the provisions of the draft do not apply to the following:

(e) An attorney licensed or otherwise authorized to practice law in this state providing legal services in an attorney-client relationship; or

(f) A certified public accountant licensed to provide accounting services in this state providing accounting services in an accountant-client relationship.

These changes will move material identifying practices that are exempt from regulation under the Act from their current location within the definition of “debt-management services” and place it more appropriately in the section of the draft entitled “**Exempt agreements and persons.**”

This change also deletes the reference to financial planners on page 7, lines 9-15. Under the draft, financial planners who are licensed by the state are exempt from regulation as providers of debt management services. DFI has stated that financial planners are not licensed under Wisconsin law, nor is the term “financial planner” defined in the statutes. Therefore, this exemption has no effect in Wisconsin and could create confusion.

13. Add, to sub. (3) (intro.), after “profession” (page 9, line 15), insert:

“unless the person or the employee acts with the intent of evading the provisions of this subchapter.”

This language addresses DFI’s concern that the exemptions for persons engaged in certain professions are too broad. This language clarifies that the exemption does not apply if a person acts with the intention of avoiding regulation under the Act.

14. On page 9, line 12, after “creditors,” insert:

“unless the services are provided free of charge with the intent of evading the provisions of this subchapter.”

This language addresses DFI's concern that a person might attempt to avoid regulation by providing debt management services for "free" while charging a correspondingly higher fee for another related service.

15. On page 11, line 25, delete both occurrences of "material."

The draft requires an applicant for licensure to provide a statement describing any "material" civil or criminal judgment or litigation and any "material" administrative or enforcement action against the applicant, any of its officers, directors, owners, or agents, or any person who is authorized to have access to the trust account.

As written, the draft allows the applicant to determine whether a civil or criminal judgment or litigation or an administrative or enforcement action against it is "material." If the applicant believes it is not material, the applicant does not have to provide information about that judgment or litigation or administrative or enforcement action to DFI. Removing "material" will require an applicant to provide information on all civil or criminal judgments or litigation and all administrative or enforcement action against the applicant, any of its officers, directors, owners, or agents, or any person who is authorized to have access to the trust account.

16. On page 43, line 12, replace "expenses" with "costs."

The term "costs" rather than "expenses" is used in other statutes administered by DFI. This change will provide consistency with those statutes.

17. Delete the term "bank" on page 6, lines 14-17, and replace it with the term "financial institution." The term "bank" is generally used more narrowly in the statutes, and defining it in this broad manner could cause confusion.

18. On page 33, replace lines 24 to 25 with the following:

"A trust account must at all times have a cash balance equal to or greater than the sum of the positive balances of each individual's account."

DFI is concerned that if negative balances are allowed to be counted with positive balances, the trust account could be underfunded. This language ensures that only positive balances may be counted.

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