



WISCONSIN LEGISLATIVE COUNCIL STAFF MEMORANDUM

Memo No. 3

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

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

RE: Description of LRB-0917/1, Relating to Adopting the Uniform Debt-Management Services Act

DATE: February 14, 2007

LRB-0917/1, relating to adopting the Uniform Debt-Management Services Act (“the draft”), contains the revisions to LRB-5042/1 that were requested by the Special Committee at its December 8, 2006 meeting. At that meeting, the Special Committee granted preliminary approval to most of the changes to the original draft that were requested by the Department of Financial Institutions (DFI), described in Memo No. 2, dated November 30, 2006. When reviewing that memo, the Special Committee asked staff to make modifications to several of DFI’s requested changes prior to including them in the revised draft. The items that were modified in response to the committee’s discussion are described below.

Certificate of Good Standing

The draft provides that a license applicant that is a corporation or limited liability company organized under the laws of another state must provide to DFI a “certificate of good standing” issued by the other state.

Exempt Agreements and Persons

LRB-5042/1 contained, in the definition of “debt management services” a statement that “debt management services” does not include any of the following:

- Legal services provided in an attorney-client relationship by an attorney licensed or otherwise authorized to practice law in this state.
- Accounting services provided in an accountant-client relationship by a certified public accountant licensed to provide accounting services in this state.

- Financial-planning services provided in a financial planner-client relationship by a member of a financial-planning profession whose members the administrator, by rule, determines are all of the following:
 - a. Licensed by this state.
 - b. Subject to a disciplinary mechanism.
 - c. Subject to a code of professional responsibility.
 - d. Subject to a continuing-education requirement.

In place of this language, in the draft, the section entitled “Exempt agreements and persons” is expanded to specify that the provisions of the Act do not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person’s business or profession:

- An attorney licensed or otherwise authorized to practice law in this state providing legal services in an attorney-client relationship, if the provision of debt-management services is incidental to the provision of legal services.
- A certified public accountant licensed to provide accounting services in this state providing accounting services in an accountant-client relationship, if the provision of debt-management services is incidental to the provision of accounting services.

Financial planning services are not exempted because all references to financial planning services were deleted from the draft. As discussed at the December 8, 2006 meeting, financial planners are not regulated in Wisconsin and the term “financial planner” is not defined in the statutes. Therefore, reference to “licensed financial planners” would be meaningless and could cause confusion.

Exemption for Debt-Management Services Provided Free of Charge

The draft specifies that the Act does not apply to a person who receives no compensation for debt-management services that they provide unless the services are provided free of charge with the intent of evading the provisions of the Act.

Information on Prior Convictions and Other Actions Against the Applicant

The draft requires a license applicant to provide a statement describing all of the following, to the extent it is known or should be known by the applicant, in any jurisdiction against the applicant, any of its officers, directors, owners, or agents, or any person who is authorized to have access to the required trust account:

1. All criminal convictions.
2. All actions by governmental agencies, and all judgments, relevant to the provision of debt-management services.
3. All pending charges, actions, suits, and claims, relevant to the provision of debt-management services.