

Date of Hearing: April 27, 2015

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Matthew Dababneh, Chair

AB 1113 (Chau) – As Introduced February 27, 2015

SUBJECT: Check Sellers, Bill Payers and Proraters Law

SUMMARY: Requires that a person subject to a desist and refrain order for violating the Check Sellers, Bill Payers and Proraters Law (Proraters Law) has 30 days to request a hearing to challenge the order.

EXISTING LAW:

- 1) Specifies under the Proraters Law the licensing of entities. A check seller sells checks, money orders, or drafts to be used by others for the payment of obligations and the transfer of money. Most checks and money orders are sold by agents who split the check fee with the licensee. The checks are sold through a network of agents such as small markets and check cashing businesses. A check or money order is usually purchased to pay rent, utilities, or some other obligation that must be sent through the mail. In addition, checks are purchased to send money back to a foreign country. A bill payer receives money as an agent of an obligor to pay bills. For this service, it receives a fee from the obligor. A general prorater contracts with delinquent debtors and intercedes with creditors to settle debts on behalf of the debtor. A special prorater pays its customers' bills as part of its management of its customers' affairs, and is generally a business agent or a manager.
- 2) Provides that if a request for a hearing is made and no hearing occurs within 30 days then the desist and refrain order shall be deemed to have been rescinded. (Financial Code, Section 12103)

FISCAL EFFECT: Unknown

COMMENTS:

Under current law, the Department of Business Oversight (DBO) is authorized to issue a desist and refrain order to require a person to cease violations of the Proraters Law. The person may request an administrative hearing to contest such an order; however, the law does not specify the time frame by which the request must be submitted to DBO. This open-ended period creates uncertainty on whether and when an order has become final. If an order is not considered final, the DBO cannot use other means to enforce it, such as a civil action. When a violation is discovered, DBO sends a letter with a desist and refrain order that informs the violator of their right to an administrative hearing, if they opt to challenge the order. The letter notes that any request for a hearing must be made within 15 days after service of the order.

There are four different types of businesses licensed under the Proraters Law: (1) check sellers sell checks, money orders, or drafts to be used by others for the payment of obligations and the transfer of money; (2) bill payers receive money as an agent of an obligor to pay bills; (3) general proraters contract with delinquent debtors and intercede with creditors to settle debts on behalf of the debtors; and (4) special proraters pay customers' bills as part of the management of

their customers' affairs. Many of these entities operate as debt settlement companies that for a fee negotiate with creditors on behalf of consumers to lower their debt.

Non-profit credit counseling organizations are exempt from licensing under the Proraters Law. A nonprofit credit counseling agency may rely on the licensing exemption under the Proraters Law if the organization is in compliance with the requirements of that section, and the organization files the documents required under that section.

A nonprofit credit counseling agency must meet the following requirements in order to receive the exemption:

- 1) Incorporates in this state or any other state as a nonprofit corporation and operates pursuant to either the Nonprofit Public Benefit Corporation Law or the Nonprofit Mutual Benefit Corporation Law.
- 2) Its membership is limited to retailers, lenders in the consumer credit field, educators, attorneys, social service organizations, employer and employee organizations, and related groups that serve educational, benevolent, fraternal, religious, charitable, social, or reformatory purposes.
- 3) The organization has as its principal functions the following:
 - a) Consumer credit education;
 - b) Counseling on consumer credit problems and family budgets;
 - c) Arranging or administering debt management plans. "debt management plan" means a method of paying debtor's obligations in installments on a monthly basis; and,
 - d) Arranging or administering debt settlement plans. "debt settlement plans" means a method of paying debtor's obligations in a negotiated amount to each creditor on a one-time basis.

Among other requirements, the exemption limits monthly fees that may be charged to a debtor for a debt management plan to the lesser of 8% of the amount paid to creditors monthly, or \$35. The fees for a debt settlement plan are limited to 15% of the amount of debt forgiven. An education and counseling fee of \$50 may also be charged for either type of plan.

REGISTERED SUPPORT / OPPOSITION:

Support

None on file.

Opposition

None on file.

Analysis Prepared by: Mark Farouk / B. & F. / (916) 319-3081

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