

Date of Hearing: June 17, 2024

ASSEMBLY COMMITTEE ON BANKING AND FINANCE

Timothy Grayson, Chair

SB 985 (Ochoa Bogh) – As Introduced January 29, 2024

SENATE VOTE: 39-0

SUBJECT: Check Sellers, Bill Payers and Proraters Law: exemption: nonprofit community service organizations

SUMMARY: Increases the allowable fees that a nonprofit community service organization exempt from the Check Sellers, Bill Payers, and Proraters Law (Proraters Law) may collect.

Specifically, **this bill:**

- 1) Modifies the criteria a nonprofit community service organization must meet to be eligible for a Proraters Law’s exemption as follows:
 - a) Increases, from \$50 to \$100, the maximum allowable fee for education and counseling services provided in connection with debt management or debt settlement services.
 - b) Increases the maximum allowable fee for debt management plans be the lesser of 15% (from 8%) of the monthly disbursed money or \$75 (from \$35) per month.
 - a) Increases, from \$25,000 to \$100,000, the required surety bond.
- b) Allows the nonprofit community service organization to pay referral fees to consumers or other third parties if the fees are not contingent upon the enrollment of consumers by the organization.
- c) Clarifies that the nonprofit community service organization may counsel on consumer credit problems and family budgets via in-person, telephone, and virtual communication.

EXISTING LAW:

- 1) Provides the Check Sellers, Bill Payers, and Proraters Law, administered by the Department of Financial Protection and Innovation (DFPI), which requires a prorater to be licensed by DFPI and regulates their activities. (Financial Code Section 12000 et seq.)
- 2) Defines “prorater” as a person who, for compensation, is engaged in the business of receiving money and distributing it among creditors in payment of a debtor’s obligations. (Financial Code Section 12002.1)
- 3) Exempts a nonprofit community service organization that meets specified criteria from requirements imposed on proraters. The criteria include, but are not limited to, the following:
 - a) The nonprofit community service organization has as its principal functions the following:
 - i) Consumer credit education.

- ii) Counseling on consumer credit problems and family budgets.
 - iii) Arranging or administering debt management plans. “Debt management plan” means a method of paying debtor’s obligations in installments on a monthly basis.
 - iv) 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. (Financial Code Section 121014(c))
- b) The nonprofit community service organization receives no more than the following maximum amounts to offset the organization’s actual and necessary expenses:
- i) \$50 for education and counseling combined in connection with debt management or debt settlement services,
 - ii) For debt management plans, a sum not to exceed 8% of the money disbursed monthly, or \$35 per month, whichever is less.
 - iii) For debt settlement plans, a sum not to exceed 15% of the amount of the debt forgiven for negotiated debt settlement plans. (Financial Code Section 121014(d))
- c) The nonprofit community service organization may not require any upfront payments or deposits on debt settlement plans and may only require payment of fees once the debt has been successfully settled. (Financial Code Section 121014(d))
- d) The nonprofit community service organization maintains a surety bond in the amount of \$25,000, as specified. (Financial Code Section 12104(g))
- e) The nonprofit community service organization reports the following to the debtor at least once every three months, or upon the debtor’s request, for any debt management plan or debt settlement plan:
- i) Total amount received from the debtor.
 - ii) Total amount paid to each creditor.
 - iii) Total amount any creditor has agreed to accept as payment in full on any debt owed by the debtor.
 - iv) Any amount paid to the organization by the debtor.
 - v) Any amount held in reserve. (Financial Code Section 12104(h))
- f) The nonprofit community service organization complies with specified accounting, record-keeping, audit, and reporting requirements. (Financial Code Section 12104(e),(i), and (j))
- g) The nonprofit community service organization complies with specified conduct rules, one of which is a prohibition from paying referral fees to consumers or other third parties who refer new clients to the agency. (Financial Code Section 12104(n))

FISCAL EFFECT: Unknown. This bill is keyed Fiscal by Legislative Counsel.

COMMENTS:

1) Purpose.

According to the author:

Senate Bill 985 will grant nonprofit financial counseling agencies a one-time adjustment to their fee schedule so they can continue to provide debt management and settlement services to Californians.

The bill will ensure that consumers have access to financial counseling at a time when consumer debt is at an all-time high, interest rates continue to climb, and student loan repayments have resumed.

Modifying the current fee schedule will not affect those clients currently enrolled in debt management or settlement plans. The adjusted cap merely gives nonprofit agencies the ability to use a higher sliding scale, which gives all consumers access to valuable credit counseling services.

Restructuring credit card debt and learning how to manage debt are key aspects of financial literacy. Amending the fee cap will allow these nonprofit agencies to maintain and expand their services to help more Californians gain financial freedom, especially those in underserved communities.

2) Background: Check Sellers, Bill Payers, or Proraters.

Existing law requires any person or corporation who engages in the following activities to obtain a license from DFPI:

- Check selling. 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.
- Bill paying. A bill payer receives money as an agent of an obligor to pay bills. For this service, it receives a fee from the obligor.
- Prorating. A prorater is someone who, for compensation, engages in the business of receiving money or something of value from a debtor to distribute to creditors in payment or partial payment of the debtor's obligations.

As of May 2024, there were nine active licensees under the DFPI program, including three bill payers, and six proraters.

3) Background: Credit counseling service.

Credit counseling services aim to help consumers with unmanageable debt burdens. Credit counseling services, many of which are nonprofit organizations, typically work with a consumer to help them manage their budget, develop a payment plan, or reach an agreement with creditors. Credit counseling can take on many different forms, including engaging in activities covered under the Proraters Law. Under the Proraters Law, a person who receives money to distribute a creditor must obtain a license from DFPI and comply with the law's requirements, including a prohibition on cancellation fees and a cap on the allowable amount that a prorater can charge the consumer.

In 1968, the Legislature exempted certain nonprofit organizations from the Proraters Law's licensure requirement, provided these organizations met certain criteria specified in the law. For example, an eligible organization can only serve the following principal functions: (1) Consumer credit education; (2) Counseling on consumer credit problems and family budgets; (3) Arranging or administering debt management plans; (4) Arranging or administering debt settlement plans.

The nonprofit exemption also imposes conditions related to fees, which this bill aims to modify. To be eligible for the exemption, the nonprofit cannot receive from a debtor no more than the following:

- \$50 for education and counseling combined in connection with debt management or debt settlement services,
- For debt management plans, a sum not to exceed 8% of the money disbursed monthly, or \$35 per month, whichever is less.
- For debt settlement plans, a sum not to exceed 15% of the amount of the debt forgiven for negotiated debt settlement plans

4) Background: Debt settlement providers

California's Proraters Law applies to a modest number of entities because since the law's enactment, credit counseling and debt-relief organizations have evolved and embraced different models outside the law's purview. For example, in recent years both the Legislature and DFPI have scrutinized the practices of for-profit debt settlement providers that take a more proactive and sometimes confrontational approach with creditors. These companies may also advise the debtor to stop paying a creditor altogether or to save money in a settlement account, the payments from which are facilitated by a third-party processor. Because debt settlement providers do not handle the customer's funds, they do not meet the definition of "prorater" in current law.

California has taken two significant steps to regulate the debt settlement industry. First, the Legislature passed AB 1405 (Wicks), Chapter 454, Statutes of 2021, to establish the Fair Debt Settlement Practices Act (FDSPA). The FDSPA, among other provisions, requires debt settlement providers and payment processors must provide specified disclosures and account information to consumers and prohibits providers from collecting any upfront fees.

Second, DFPI has proposed registering debt settlement providers via its California Consumer Financial Protection Law (CCFPL) authority. Under the CCFPL, established in 2021, the DFPI can supervise and register financial service providers previously unregulated by the

DFPI. As part of a rulemaking package pending with the Office of Administrative Law (OAL), DFPI proposes registering debt settlement providers and requiring them to submit annually specified information about their products and services.

Importantly, the community service organizations affected by SB 985 are exempt from both the FDSPA and the proposed CCFPL rulemaking.

5) What does SB 985 do?

SB 985 updates the exemption criteria for nonprofit community service organizations. This criteria has not been updated since 2003, and supporters note that the existing static fee cap has become increasingly burdensome. Importantly, a higher allowable fee does not mean that every new customer is now paying this fee, as these organizations generally charge a sliding fee scale.

The Financial Counseling Association of America writes the following justifying the fee increase:

Non-profit credit counseling agencies can help consumers create reasonable and affordable debt management plans that won't significantly damage their credit profile. Unfortunately, many of the non-profit agencies that do this good work are themselves struggling to survive, caught between rising operational/security/staff costs and federal rules that require the majority of our fees to come from the consumers we serve.

Modifying the current fee schedule, which is undeniably outdated, will not affect any of those clients currently enrolled in debt management plans. Their contracts are locked in. In fact, state and federal laws require that debt management plans be based solely on the consumer's budget. Adjusting the fee cap merely gives nonprofit agencies the ability to increase the upper end of our sliding scale, putting California's fee structure in line with the rest of the states.

Based on recent enrollment data, our agencies estimate that perhaps only 10% of future enrollees may be able to afford a higher monthly fee. That may not sound like much, but we feel that a modest increase in the fee cap strikes a reasonable balance between the consumer's need to find affordable and supportive services with our goal of staying in business. This isn't hyperbole – since 2001 roughly half of all credit counseling agencies have merged with larger agencies or gone under.

REGISTERED SUPPORT / OPPOSITION:

Support

Financial Counseling Association of America (Sponsor)
Greenpath Financial Wellness
Money Management International, INC.
Springboard Nonprofit Consumer Credit Management

Opposition

None on file.

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