

2009 HOUSE JUDICIARY

HCR 3006

2009 HOUSE STANDING COMMITTEE MINUTES

Bill/Resolution No. HCR 3006

House Judiciary Committee

☐ Check here for Conference Committee

Hearing Date: 1/7/09

Recorder Job Number: 6633

Committee Clerk Signature



Minutes:

Chairman DeKrey: We will open the hearing on HCR 3006

Rep. Klemin: Sponsor. This resolution deals with Uniform Debt-Management Services Act, including consideration of the most appropriate administrator of the law, how the Act would

impact existing state laws, and what issues other states have addressed in enacting the Act.

In 2005, the National Conference of Commissioners on Uniform State Laws approved and recommended for enactment in all states the Uniform Debt-Management Services Act. The Act provides guidance and regulation to the debt counseling industry, applying to both consumer debt counseling services and debt-management services. As a result of the federal bankruptcy reform enacted in 2005, the Act is an essential part of debtor-creditor law. ND Commission on Uniform State Laws supports introduction of the Act. The Act requires an enacting state to make several substantive selections, including which state agency should administer the Act, whether the Act will regulate for-profit and not-for-profit service providers, and whether a not-for-profit service provider will be exempt from state taxes. Existing ND law regulates multiple aspects of the debt-counseling industry. We want to study this issue to see what we currently have and how this would apply to ND and who would be the administrator. I

had discussions with both the AG's office and Dept. of Banking. Both of them would be willing to do it. The AG's office would prefer that the Dept. of Banking handle the administrator duties.

Chairman DeKrey: Thank you. Further testimony in support of HCR 3006. We will close the hearing.

Rep. Zaiser: I move a Do Pass motion.

Rep. Delmore Second.

Chairman DeKrey: We have a Do Pass motion and second. Any further discussion. The clerk will take the vote.

13 YES

0 NO 0 ABSENT

DO PASS

Rep. Klemin

Date: 1/7/09
Roll Call Vote #: 1

2009 HOUSE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. HCR 3006

HOUSE JUDICIARY COMMITTEE

☐ Check here for Conference Committee

Legislative Council Amendment Number _____

Action Taken ☒ DP ☐ DNP ☐ DP AS AMEND ☐ DNP AS AMEND

Motion Made By Rep. Zaiser Seconded By Rep. Delmore

Representatives	Yes	No	Representatives	Yes	No
Ch. DeKrey	✓		Rep. Delmore	✓	
Rep. Klemin	✓		Rep. Griffin	✓	
Rep. Boehning	✓		Rep. Vig	✓	
Rep. Dahl	✓		Rep. Wolf	✓	
Rep. Hatlestad	✓		Rep. Zaiser	✓	
Rep. Kingsbury	✓				
Rep. Koppelman	✓				
Rep. Kretschmar	✓				

Total (Yes) 13 No 0

Absent 0

Floor Carrier: Rep. Klemin

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
January 7, 2009 11:23 a.m.

Module No: HR-02-0080
Carrier: Klemin
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HCR 3006: Judiciary Committee (Rep. DeKrey, Chairman) recommends DO PASS and BE PLACED ON THE CONSENT CALENDAR (13 YEAS, 0 NAYS, 0 ABSENT AND NOT VOTING). HCR 3006 was placed on the Tenth order on the calendar.

2009 SENATE INDUSTRY, BUSINESS AND LABOR

HCR 3006

2009 SENATE STANDING COMMITTEE MINUTES

Bill/Resolution No. 3006

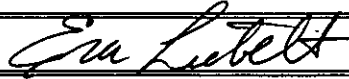
Senate Industry, Business and Labor Committee

☐ Check here for Conference Committee

Hearing Date: March 23, 2009

Recorder Job Number: 11410

Committee Clerk Signature



Minutes:

Representative Klemin: Had handouts on the Uniform Debt- Management Services Act. The federal law is forcing it on everyone that goes into bankruptcy they have to go into counseling. Right now it says the debt reduction is illegal in North Dakota. He explains the differences in debt adjusting and which ones are illegal. You must fall into one of the ten exceptions. He also explained for profit debt adjusting businesses and the misunderstanding that people may have about these types of businesses. The point of the study is to see what state agencies should regulate the act. They would like to study this issue in North Dakota over the next interim and see what agencies would be in charge. Explains the Act.

Senator Potter: You said it's not regulated at this time did you mean illegal. You suggested that for profit debt management is illegal in North Dakota currently?

Representative Klemin: It is.

Senator Potter: What's the reason for uniformity here, what's the justification?

Representative Klemin: One of the aspects of this uniform act is reciprocity. If the company is doing business in Minnesota and they are registered there. Then they would

show that they complied there and wouldn't have to go through all the requirements again.

Senator Potter: Is there any indications that are current law in regard to debt management are somehow inadequate?

Representative Klemin: More is coming to us because of the increase of bankruptcy and the requirements of federal bankruptcy law. We need to insure they are getting the best advice from someone who is in it because they want to do some good rather than make some money themselves.

Senator Nodland: Why is it illegal to go into debt counseling for profit?

Representative Klemin: Why we choose to do it that way I am not sure. There are a lot of for profit companies out there taking advantage of the people. We need to have some enforcement of them.

Chairman Klein: We have in North Dakota some non-profit agencies?

Representative Klemin: We do.

Senator Horne: So is the goal to make it uniform around the country or to make for profit agencies illegal?

Representative Klemin: We want to make it uniform around the country. We want organizations that are doing business in North Dakota in that line of work to be registered here, so we can supervise their activities. And enforce any violations of the law. That is the main goal here. Registration and enforcement.

Chairman Klein: Would this fall under consumer protection?

Representative Klemin: That would be correct but the only law we have is the debt adjustment law.

Chairman Klein: Closed the hearing.

Senator Wanzek: Motioned a do pass.

Senator Andrist: Seconded the motion.

Passed 6-1

Senator Nodland to carry the bill.

Date: 3/23/09

2009 SENATE STANDING COMMITTEE ROLL CALL VOTES
BILL/RESOLUTION NO. 3006

Senate

Committee

Industry, Business and Labor

☐ Check here for Conference Committee

Legislative Council Amendment Number

Action Taken

☒ **Pass**

☐ **Do Not Pass**☐ **Amended**

Motion Made By Senator Wanzek Seconded By Senator Andrist

[illegible]

Total (Yes) 6 No 1

Absent ☐

Floor Assignment Senator Nodland

If the vote is on an amendment, briefly indicate intent:

REPORT OF STANDING COMMITTEE (410)
March 23, 2009 2:21 p.m.

Module No: SR-52-5624
Carrier: Nodland
Insert LC: . Title: .

REPORT OF STANDING COMMITTEE

HCR 3006: Industry, Business and Labor Committee (Sen. Klein, Chairman)
recommends **DO PASS** (6 YEAS, 1 NAY, 0 ABSENT AND NOT VOTING). HCR 3006
was placed on the Fourteenth order on the calendar.

2009 TESTIMONY

HCR 3006



SUMMARY

Uniform Debt-Management Services Act

Consumer debt counseling and management services have been available to individuals with serious credit problems going back to the 1950's. There are generally two kinds of services that have been available. Some of these services have provided counseling coupled with assisting debtors in establishing programs to pay off debts over an extended time. Others have provided consolidation and management services, in which agreements are reached with creditors to settle on a percentage of debt. Most of these services have collected a periodic amount from the debtors from which payment to creditors has been made. The general objective of these services has been debt satisfaction without resort to bankruptcy.

The history of debt counseling and management services is checkered. There have been numerous abuses and efforts to counter abuses statutorily in many states. These services have been criticized for their efforts to steer debtors away from bankruptcy when it may have been more advantageous and less costly to debtors to file. Many states prohibit for-profit debt management services while permitting nonprofit debt counseling services. One of the continuing controversies is whether for profit services should be allowed even if regulated.

However, federal bankruptcy reform effective in 2005 has changed the perspective on such services. For an individual to file for Chapter 7 bankruptcy, that individual will in most cases have to show that consumer debt counseling/management has been sought and attempted. This shifts a highly significant burden upon private services to perform honestly and effectively. Because the new bankruptcy rules are federal and apply in every state, regulating the counseling and management services in every state must be uniform in character for the new bankruptcy rules to be effective and for consumers to be protected.

In 2005, just in time for consideration in the state legislatures, the Uniform Law Commissioners promulgated the **Uniform Debt-Management Services Act (UDMSA)**. It provides the states with a comprehensive act governing these services that will mean national administration of debt counseling and management in a fair and effective way.

UDMSA may be divided into three basic parts: registration of services, service-debtor agreements and enforcement. Each part contributes to the comprehensive quality of the Uniform Act.

Registration

No service may enter into an agreement with any debtor in a state without registering as a consumer debt-management service in that state. Registration requires submission of detailed information concerning the service, including its financial condition, the identity of principals, locations at which service will be offered, form for agreements with debtors and business history in other jurisdictions. To register, a service must have an effective insurance policy against fraud, dishonesty, theft and the like in an amount no less than \$250,000.00. It must also provide a security bond of a minimum of \$50,000.00 which has the state administrator as a beneficiary. If a registration substantially duplicates one in another state, the service may offer proof of registration in that other state to satisfy the registration requirements in a state. A satisfactory application will result in a certificate to do business from the administrator. A yearly renewal is required.

Agreements

In order to enter into agreements with debtors, there is a disclosure requirement respecting fees and services to be offered, and the risks and benefits of entering into such a contract. The service must offer counseling services from a certified counselor and a plan must be created in consultation by the counselor for debt-management service to commence. The contents of the agreements and fees that may be charged are set by the statute. There is a penalty-free three-day right of rescission on the part of the debtor. The debtor may cancel the agreement also after 30 days, but may be subject to fees if that occurs. The service may terminate the agreement if required payments are delinquent for at least 60 days.

Any payments for creditors received from a debtor must be kept in a trust account that may not be used to hold any other funds of the service. There are strict accounting requirements and periodic reporting requirements respecting funds held.

Enforcement

The Act prohibits specific acts on the part of a service including: misappropriation of funds in trust; settlement for more than 50% of a debt with a creditor without a debtor's consent; gifts or premiums to enter into an agreement; and representation that settlement has occurred without certification from a creditor. Enforcement of the Uniform Act occurs at two levels, the administrator and the individual level. The administrator has investigative powers, power to order an individual to cease and desist; power to assess a civil penalty up to \$10,000.00, and the power to bring a civil action. An individual may bring a civil action for compensatory damages, including triple damages if a service obtains payments not authorized in the Uniform Act, and may seek punitive damages and attorney's fees. A service has a good faith mistake defense against liability. The statute of limitations pertaining to an action by the administrator is four years, and two years for a private right of action.

Banks as regulated entities under other law are not subject to the Uniform Act, as are other kinds of activities that are incidental to other functions performed. For example, a title insurer that provides bill-paying service that is incidental to title insurance is not subject to it.

UDMSA provides comprehensive regulation of debt counseling and management services. It becomes an essential part of the law of creditor and debtor as bankruptcy reform enacted by Congress in 2005 takes effect.

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