

THE GENERAL ASSEMBLY OF PENNSYLVANIA

HOUSE BILL

No. 2294

Session of
2008

INTRODUCED BY D. EVANS, DALEY, BLACKWELL, DeLUCA, GEORGE,
HARKINS, JOSEPHS, KORTZ, MUNDY, PASHINSKI, WATERS, WHEATLEY,
BELFANTI AND CALTAGIRONE, MARCH 5, 2008

AS REPORTED FROM COMMITTEE ON COMMERCE, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 17, 2008

AN ACT

1 Providing for the licensure of persons providing debt management
2 services and for the powers and duties of the Department of
3 Banking; requiring surety bonds; prohibiting certain fees and
4 costs; providing for debt management plans; and prohibiting
5 certain acts by persons providing debt management services.

6 The General Assembly of the Commonwealth of Pennsylvania
7 hereby enacts as follows:

8 Section 1. Short title.

9 This act shall be known and may be cited as the Debt
10 Management Services Act.

11 Section 2. Definitions.

12 The following words and phrases when used in this act shall
13 have the meanings given to them in this section unless the
14 context clearly indicates otherwise:

15 "Consumer." An individual who owes money for personal,
16 family or household expenses to at least one creditor. The term
17 does not include an individual who owes money for business debt.

18 "Consumer education program." A program designed to improve

1 a consumer's ability to manage the consumer's personal finances
2 and that includes the following: budgeting, saving, investing,
3 managing debt and maintaining creditworthiness.

4 "Debt management services." The service of receiving funds
5 periodically from a consumer under a debt management services
6 agreement and then distributing those funds to creditors of the
7 consumer in partial or full payment of the consumer's debts.

8 "Department." The Department of Banking of the Commonwealth.

9 "Person." An individual, corporation, partnership or other
10 entity legally recognized by the Commonwealth for business
11 purposes that provides debt management services.

12 "Secretary." The Secretary of Banking of the Commonwealth.

13 Section 3. License required.

14 No person may provide debt management services unless the
15 person is licensed by the department.

16 Section 4. Nonapplicability.

17 This act shall not apply to the following persons when they
18 are engaged in the regular course of their respective businesses
19 or professions:

20 (1) Attorneys who are admitted to the bar of this
21 Commonwealth and provide legal services within an attorney-
22 client relationship.

23 (2) Certified public accountants who are licensed by the
24 Commonwealth and provide accounting services within an
25 accountant-client relationship.

26 ~~(3) Financial institutions chartered under Federal or~~ <—
27 ~~State law.~~

28 (3) STATE-CHARTERED BANKS, BANK AND TRUST COMPANIES, <—
29 SAVINGS BANKS, PRIVATE BANKS, NATIONAL BANKS, FEDERALLY
30 CHARTERED OR STATE-CHARTERED SAVINGS ASSOCIATIONS, CREDIT

1 UNIONS OR AN OPERATING SUBSIDIARY OF ANY OF THESE ENTITIES.

2 (4) Title insurance companies licensed under the act of
3 May 17, 1921 (P.L.682, No.284), known as The Insurance
4 Company Law of 1921, or their agents.

5 (5) Judicial officers or persons acting under court
6 order.

7 (6) LICENSES UNDER THE ACT OF DECEMBER 22, 1989 <—
8 (P.L.687, NO.90), KNOWN AS THE MORTGAGE BANKERS AND BROKERS
9 AND CONSUMER EQUITY PROTECTION ACT.

10 Section 5. Application for licensure.

11 An application for a license under this act shall be
12 submitted to the department in the form required by the
13 department and shall include following:

14 (1) The applicant's name, address, telephone number,
15 electronic mail address and Internet website.

16 (2) The address of each location in the Commonwealth
17 where the applicant will provide debt management services.

18 (3) The name and address of each owner, officer,
19 director or principal of the applicant.

20 (4) The name and address of the applicant's agent for
21 service of process in this Commonwealth.

22 (5) A description of the ownership interest of any
23 officer, director, agent or employee of the applicant in an
24 affiliate or subsidiary of the applicant or in any other
25 business entity that will provide any service to the
26 applicant or to a consumer relating to the applicant's
27 provision of debt management services.

28 (6) A list of other states in which the applicant
29 engages in the business of providing debt management
30 services, including any relevant license or registration

1 number and information regarding whether a license or
2 registration in another state has ever been suspended or
3 revoked.

4 (7) The financial statement from the applicant's most
5 recent fiscal year, including an audit opinion from an
6 independent certified public accountant.

7 (8) A copy of a liability or fidelity insurance policy
8 that insures against dishonesty, fraud, theft or other
9 malfeasance on the part of the applicant's employees,
10 officers, directors or principals.

11 (9) A copy of the applicant's standard debt management
12 services agreement.

13 (10) Information regarding the applicant's trust
14 account, including the name and address of the FDIC-insured
15 depository institution where the account is located and the
16 number of the account.

17 (11) Information regarding the number of the applicant's
18 credit counselors, supervisors or managers who are certified
19 by an independent certifying organization acceptable to the
20 department and a plan to ensure that any of the credit
21 counselors, supervisors or managers who are not certified
22 become certified within six months of the issuance date of
23 the license.

24 (12) Evidence that the applicant is ~~certified~~ ACCREDITED <—
25 by an independent ~~certifying~~ ACCREDITING organization <—
26 acceptable to the department.

27 (13) A ~~surety~~ PENAL bond meeting the requirements of <—
28 section 6.

29 (14) A nonrefundable fee of ~~\$1,000~~ \$2,000. <—

30 (15) Any other information that the department requires.

1 ~~Section 6. Surety bond.~~ <—

2 ~~An application for a new license or for renewal of a license~~
3 ~~shall contain a surety bond in the amount of \$50,000. The bond~~
4 ~~shall run to the Commonwealth for the benefit of any consumer~~
5 ~~who is injured by a violation of this act or any regulation~~
6 ~~promulgated under this act, when the violation is committed by~~
7 ~~the licensee or its agent, including an agent managing the~~
8 ~~licensee's trust account. The bond shall be issued by a company~~
9 ~~authorized to do business in this Commonwealth and approved by~~
10 ~~the department. The bond shall be conditioned upon the licensee~~
11 ~~complying with all applicable Federal and State laws.~~

12 SECTION 6. PENAL BOND. <—

13 (A) GENERAL RULE.--THE DEPARTMENT SHALL ISSUE A LICENSE
14 UNDER THIS ACT IF THE APPLICANT OBTAINS AND MAINTAINS A BOND IN
15 THE AMOUNT OF \$100,000, IN A FORM ACCEPTABLE TO THE DEPARTMENT,
16 PRIOR TO THE ISSUANCE OF THE LICENSE, FROM A SURETY COMPANY
17 AUTHORIZED TO DO BUSINESS IN THIS COMMONWEALTH. THE BOND SHALL
18 BE A PENAL BOND CONDITIONED ON COMPLIANCE WITH THIS ACT AND
19 SUBJECT TO FORFEITURE BY THE DEPARTMENT AND SHALL RUN TO THE
20 COMMONWEALTH FOR ITS USE. THE BOND SHALL ALSO BE FOR THE USE OF
21 ANY PERSON AGAINST THE LICENSEE FOR THE BENEFIT OF ANY CONSUMER
22 WHO IS INJURED BY A VIOLATION OF THIS ACT OR REGULATION
23 PROMULGATED UNDER THIS ACT.

24 (B) RIGHTS OF AGGRIEVED PERSONS.--

25 (1) IF THE PERSON IS AGGRIEVED, THE PERSON MAY, WITH THE
26 WRITTEN CONSENT OF THE DEPARTMENT, RECOVER FEES AND COSTS
27 FROM THE BOND BY FILING A CLAIM WITH THE SURETY COMPANY OR
28 MAINTAINING AN ACTION ON THE BOND.

29 (2) IN THE ALTERNATIVE, AN AGGRIEVED PERSON MAY RECOVER
30 FEES AND COSTS BY FILING A FORMAL COMPLAINT AGAINST THE

LICENSEE WITH THE DEPARTMENT WHICH SHALL ADJUDICATE THE
MATTER. THE ADJUDICATION SHALL BE BINDING UPON THE SURETY
COMPANY AND ENFORCEABLE BY THE DEPARTMENT IN COMMONWEALTH
COURT AND BY AN AGGRIEVED PERSON IN ANY COURT.

(3) ANY AGGRIEVED PERSON SEEKING TO RECOVER FROM A BOND
THAT HAS ALREADY BEEN FORFEITED BY THE DEPARTMENT OR WHICH
THE DEPARTMENT IS IN THE PROCESS OF FORFEITING MAY RECOVER
PAYMENT ON THE BOND IF, AFTER FILING A PETITION WITH THE
DEPARTMENT, THE DEPARTMENT CONSENTS TO THE AGGRIEVED PERSON'S
REQUESTED PAYMENT OR PORTION THEREOF. THE DEPARTMENT MAY PAY
THE AGGRIEVED PERSON FROM THE BOND PROCEEDS IT RECOVERS.

(C) OTHER RELIEF.--

(1) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT
THE ABILITY OF ANY COURT OR MAGISTERIAL DISTRICT JUDGE TO
AWARD TO ANY AGGRIEVED PERSON OTHER DAMAGES, COURT COSTS AND
ATTORNEY FEES AS PERMITTED BY LAW, BUT THOSE CLAIMS THAT ARE
NOT ADVANCE FEES OR RELATED COSTS MAY NOT BE RECOVERED FROM
THE BOND.

(2) THE DEPARTMENT, IN ITS DISCRETION, MAY CONSENT TO OR
ORDER PRO RATA OR OTHER RECOVERY ON THE BOND FOR ANY
AGGRIEVED PERSON IF CLAIMS AGAINST THE BOND MAY OR DO EXCEED
ITS FULL MONETARY AMOUNT.

(D) CANCELLATION OF BONDS.--NO BOND SHALL COMPLY WITH THE
REQUIREMENTS OF THIS SECTION UNLESS IT CONTAINS A PROVISION THAT
IT SHALL NOT BE CANCELED FOR ANY CAUSE UNLESS NOTICE OF
INTENTION TO CANCEL IS GIVEN TO THE DEPARTMENT AT LEAST 30 DAYS
BEFORE THE DAY UPON WHICH CANCELLATION SHALL TAKE EFFECT.
CANCELLATION OF THE BOND SHALL NOT INVALIDATE THE BOND REGARDING
THE PERIOD OF TIME IT WAS IN EFFECT.

Section 7. Issuance of license.

1 (a) Time for issuance.--The department shall decide whether
2 to issue a license to an applicant within 60 days of receiving
3 the applicant's completed application. If the department needs
4 longer than 60 days to make a decision, it may extend the time
5 period for 30 days. The department shall notify the applicant of
6 the extended time period, including a final decision date, in
7 writing.

8 (b) Investigation.--Upon receipt of a completed application,
9 the department may conduct an investigation of the applicant,
10 including its owners, officers, directors, principals or agents
11 in order to decide whether to issue the license.

12 (c) Appeal of denial.--If the department refuses to issue a
13 license, it shall notify the applicant in writing that the
14 license has been denied, including the reason for the denial and
15 that the applicant has the right to appeal the denial to the
16 secretary within 30 days.

17 (d) Duration.--A license shall be issued for a period of one
18 year.

19 (e) Contents.--The license shall be on a form determined by
20 the department and shall contain, at a minimum, the name of the
21 licensee, the address at which the licensee is conducting
22 business and a license number.

23 (f) Display.--The license shall be displayed prominently at
24 the licensee's business location.

25 (g) Transfer prohibited.--The license shall not be
26 transferred, assigned or pledged.

27 Section 8. Renewal of license.

28 (a) General rule.--An application for renewal of a license
29 shall be submitted to the department on the form determined by
30 the department and in the time period determined by the

1 department. Each application for renewal shall be accompanied by
2 a fee of ~~\$500~~ \$1,250. <—

3 (b) Required condition.--The department shall determine the
4 information and documentation that shall be provided in the
5 application for renewal of a license sufficient to establish
6 that the licensee continues to conduct its business in
7 accordance with this act.

8 (C) CONTINUING EDUCATION.--IN ORDER TO MAINTAIN ITS LICENSE, <—
9 A LICENSEE SHALL DEMONSTRATE TO THE SATISFACTION OF THE
10 DEPARTMENT THAT ITS CREDIT COUNSELORS, SUPERVISORS AND MANAGERS
11 PARTICIPATE IN CONTINUING EDUCATION AS REQUIRED BY THE
12 DEPARTMENT BY REGULATION.

13 Section 9. Reasons for denial, suspension, revocation or
14 refusal.

15 The department may deny, suspend, revoke or refuse to renew a
16 license for the following reasons, if committed by the applicant
17 or one of its owners, officers, directors, principals or agents:

18 (1) Made a material misstatement in the license
19 application or any other submission required by this act or
20 the department.

21 (2) Failed to comply with or violated any provision of
22 this act or any regulation, order or statement of policy
23 issued by the department under this act.

24 (3) Engaged in unfair or unethical conduct in connection
25 with the debt management services business.

26 (4) Does not possess the financial responsibility,
27 character, reputation, integrity and general fitness
28 sufficient to warrant the belief that the debt management
29 services business will be conducted lawfully, honestly and in
30 the public interest.

(5) Been convicted of or pleaded guilty or nolo
contendere to a crime of moral turpitude or to an offense
graded as a felony.

(6) Been enjoined by a court of competent jurisdiction
from engaging in the business of debt management services.

(7) Has had a license issued by the department denied,
not renewed, suspended or revoked.

(8) Became the subject of a United States Postal Service
fraud order.

(9) Demonstrated negligence or incompetence in
performing an act for which the applicant is required to hold
a license under this act.

(10) HAS AN OUTSTANDING DEBT TO THE COMMONWEALTH OR ANY
COMMONWEALTH AGENCY. <—

Section 10. Reinstatement.

The department may reinstate a license that was previously
suspended, revoked or denied renewal, if all of the following
exist:

(1) A condition that warranted the original action has
been corrected to the department's satisfaction.

(2) The department has reason to believe that the
condition is not likely to occur again.

(3) The licensee satisfies all other requirements of
this act.

SECTION 11. LIMITATIONS ON LICENSE. <—

(A) NAME OR ADDRESS.--A LICENSEE SHALL NOT CONDUCT BUSINESS
UNDER THIS ACT UNDER A NAME OR AT AN ADDRESS DIFFERENT FROM THAT
CONTAINED ON THE LICENSEE'S LICENSE. WHEN A LICENSEE CHANGES ITS
NAME OR ITS BUSINESS ADDRESS, IT SHALL NOTIFY THE DEPARTMENT
WITHIN TEN DAYS OF THE CHANGE AND THE DEPARTMENT MAY ISSUE A NEW

1 LICENSE SPECIFYING THE LICENSEE'S NEW NAME OR ADDRESS.

2 (B) OTHER BUSINESSES.--A LICENSEE SHALL NOT CONDUCT A
3 BUSINESS OTHER THAN THE DEBT MANAGEMENT SERVICE BUSINESS
4 LICENSED BY THE DEPARTMENT UNDER THIS ACT UNLESS IT NOTIFIES THE
5 DEPARTMENT IN WRITING AT LEAST 30 DAYS BEFORE BEGINNING TO
6 CONDUCT THAT BUSINESS.

7 SECTION 12. ANNUAL REPORT.

8 (A) DUTY TO FILE.--A LICENSEE SHALL FILE AN ANNUAL REPORT
9 WITH THE DEPARTMENT ON A DATE DETERMINED BY THE DEPARTMENT
10 SETTING FORTH SUCH INFORMATION AS THE DEPARTMENT SHALL REQUIRE
11 CONCERNING THE DEBT MANAGEMENT SERVICES BUSINESS CONDUCTED BY
12 THE LICENSEE DURING THE PRECEDING CALENDAR YEAR. THE REPORT
13 SHALL BE ON A FORM PROVIDED BY THE DEPARTMENT.

14 (B) PENALTY FOR NONCOMPLIANCE.--A LICENSEE WHO FAILS TO FILE
15 ITS ANNUAL REPORT ON THE REQUIRED DATE MAY BE SUBJECT TO A
16 PENALTY OF \$100 FOR EACH DAY AFTER THE DUE DATE UNTIL THE REPORT
17 IS FILED.

18 Section ~~11~~ 13. Requirements for providing debt management
19 services. <—

20 A licensee shall provide debt management services in
21 accordance with the following requirements:

22 (1) The licensee shall provide each consumer for whom it
23 provides debt management services with a consumer education
24 program at no ~~extra cost~~. COST TO A CONSUMER WHO ENTERS INTO <—
25 A DEBT MANAGEMENT SERVICES AGREEMENT.

26 ~~(2) Before the licensee and consumer enter into a debt~~ <—
27 ~~management services agreement, the licensee shall prepare an~~

28 (2) (I) BEFORE THE LICENSEE AND CONSUMER ENTER INTO A <—
29 DEBT MANAGEMENT SERVICES AGREEMENT, THE LICENSEE SHALL
30 PREPARE AN analysis of the consumer's financial situation

1 and a budget for the consumer. The analysis shall include
2 a determination that the consumer will benefit from debt
3 management services and an explanation of that benefit.

4 ~~The licensee shall discuss the analysis and budget with~~ <—
5 ~~the consumer and provide copies of them to the consumer.~~

6 (II) THE LICENSEE MAY COMMUNICATE WITH THE CONSUMER <—
7 BY ELECTRONIC MAIL OR THE INTERNET, BUT SHALL NOT ENTER
8 INTO A DEBT MANAGEMENT SERVICES AGREEMENT UNLESS THE
9 LICENSEE AND THE CONSUMER HAVE ORALLY REVIEWED THE
10 ANALYSIS, THE BUDGET AND THE DEBT MANAGEMENT SERVICES
11 AGREEMENT THROUGH A PERSON-TO-PERSON DISCUSSION. THE
12 LICENSEE SHALL PROVIDE COPIES OF THE ANALYSIS, BUDGET AND
13 DEBT MANAGEMENT SERVICES AGREEMENT TO THE CONSUMER.

14 (3) A debt management services agreement shall be in
15 writing, signed by the licensee and the consumer, in plain
16 English and printed in at least 12-point type. It shall
17 contain at least the following information:

18 (i) The name, address and telephone number of the
19 consumer and of the licensee.

20 (ii) The license number of the licensee.

21 (iii) A description of the debt management services
22 to be provided to the consumer.

23 (iv) A description of the fees that will be charged
24 to the consumer.

25 (v) The name and address of the depository
26 institution where the trust account into which the
27 consumer's funds, paid to the licensee for disbursement
28 to the consumer's creditors, is located.

29 (vi) A list of each of the consumer's creditors that
30 the licensee in good faith reasonably expects to

1 participate in the licensee's management of the
2 consumer's debt, including the amount owed to each
3 creditor and the schedule of payments to be made to each
4 creditor. The schedule of payments shall include the
5 amount of each payment and the date on which it will be
6 made.

7 (vii) A list of each of the consumer's creditors
8 that the licensee in good faith reasonably expects not to
9 participate in the licensee's management of the
10 consumer's debt.

11 (viii) A schedule of the payments that the consumer
12 must make to the licensee, including the amount of each
13 payment, the date it is due and the form in which it must
14 be made.

15 (ix) Disclosure of any fees that either the consumer
16 must make to the licensee or that the licensee will
17 retain from each of the consumer's payments to the
18 licensee.

19 (x) A notice, in bold print, that the consumer's
20 participation in the debt management services agreement
21 may negatively impact the consumer's credit rating or
22 credit score.

23 (xi) Disclosure that the licensee may receive
24 compensation from the consumer's creditors for providing
25 debt management services to the consumer.

26 (xii) Notice that either party may terminate the
27 debt management services agreement upon ten days' written
28 notice to the other party.

29 (xiii) Notice that if the debt management services
30 agreement is terminated, the consumer is entitled to a

1 prompt refund of any payments made that have not yet been
2 disbursed to the consumer's creditors.

3 (xiv) An explanation of the way in which disputes
4 that arise under the debt management services agreement
5 will be resolved.

6 (xv) An explanation of applicable privacy laws.

7 (4) The licensee shall provide each consumer
8 participating in a debt management services agreement with
9 quarterly statements setting forth the payments received from
10 the consumer and the disbursements made to the consumer's
11 creditors.

12 (5) The licensee shall deposit a consumer's payment
13 under a debt management services agreement into the
14 licensee's trust account within two business days of
15 receiving the payment.

16 (6) The licensee shall disburse a consumer's funds to
17 the consumer's creditors in a timely manner pursuant to the
18 consumer's debt management services agreement.

19 (7) The licensee shall not purchase any debt or
20 obligation of a consumer.

21 (8) The licensee shall not lend money or provide credit
22 to a consumer.

23 (9) The licensee shall not offer or provide credit
24 insurance to a consumer.

25 (10) The licensee shall not obtain a mortgage or other
26 security interest in the property of a consumer.

27 (11) The licensee shall not operate as a collection
28 agency or debt collector.

29 (12) The licensee shall not structure a consumer's debt
30 management services agreement in a way that results in the

1 negative amortization of any of the consumer's debts.

2 (13) The licensee shall not compromise any debt of a
3 consumer unless the compromise benefits the consumer and the
4 consumer has approved the proposed compromise in writing.

5 (14) The licensee shall have written policies describing
6 its safeguards against conflicts of interest in the
7 conducting of its business.

8 (15) The licensee shall not disseminate information,
9 including by advertising, regarding its debt management
10 services in any way that is false, misleading or deceptive.

11 (16) THE LICENSEE SHALL NOT OFFER, PAY OR GIVE A GIFT, <—
12 BONUS, PREMIUM, REWARD OR ANY OTHER COMPENSATION TO A PERSON
13 FOR REFERRING A CONSUMER TO THE LICENSEE.

14 (17) THE LICENSEE SHALL NOT ACCEPT ANY GIFT, BONUS,
15 PREMIUM, REWARD OR ANY OTHER COMPENSATION FOR REFERRING A
16 CONSUMER TO ANOTHER AGENCY OR BUSINESS OR PERSON.

17 (18) THE LICENSEE SHALL NOT OFFER OR PAY AN INCENTIVE,
18 INCLUDING A GIFT, BONUS, PREMIUM, REWARD OR ANY OTHER
19 COMPENSATION, TO A CONSUMER FOR EXECUTING A DEBT MANAGEMENT
20 SERVICES AGREEMENT WITH THE LICENSEE.

21 (19) THE LICENSEE SHALL NOT PROVIDE DEBT SETTLEMENT
22 SERVICES EXCEPT AS PROVIDED BY THE DEPARTMENT BY REGULATION.
23 FOR THE PURPOSE OF THIS PARAGRAPH, "DEBT SETTLEMENT SERVICES"
24 MEANS AN ACTION OR NEGOTIATION MADE ON BEHALF OF A CONSUMER
25 WITH THAT CONSUMER'S CREDITORS FOR THE PURPOSE OF THE
26 CREDITOR FORGIVING PART OF THE DEBT INCURRED OR CREDIT
27 EXTENDED TO THAT CONSUMER.

28 (20) THE LICENSEE SHALL NOT DISCLOSE THE IDENTITY OR
29 IDENTIFYING INFORMATION OF A CONSUMER OR THE IDENTITY OF THE
30 CONSUMER'S CREDITORS EXCEPT AS PERMITTED BY FEDERAL LAW.

DISCLOSURE MAY BE MADE:

(I) TO THE DEPARTMENT;

(II) TO A CREDITOR OF THE CONSUMER, TO THE EXTENT
NECESSARY TO SECURE THE COOPERATION OF THE CREDITOR IN
THE DEBT MANAGEMENT SERVICES AGREEMENT; OR

(III) AS IS NECESSARY TO ADMINISTER THE DEBT
MANAGEMENT SERVICES AGREEMENT.

(21) THE LICENSEE THAT PRIMARILY COMMUNICATES WITH A
CONSUMER IN A LANGUAGE OTHER THAN ENGLISH SHALL PROVIDE THE
DEBT MANAGEMENT SERVICES AGREEMENT AND ANY OTHER DOCUMENTS OR
DISCLOSURES REQUIRED BY THIS ACT TO THE CONSUMER IN THAT
OTHER LANGUAGE.

(22) THE LICENSEE SHALL NOT DELEGATE ANY OF ITS DUTIES
OR OBLIGATIONS UNDER THIS ACT OR A DEBT MANAGEMENT SERVICES
AGREEMENT TO AN INDEPENDENT CONTRACTOR.

(23) THE LICENSEE SHALL HAVE A TOLL-FREE TELEPHONE
NUMBER THAT SHALL BE PROMINENTLY DISPLAYED ON THE LICENSEE'S
LITERATURE AND ADVERTISING.

(24) THE LICENSEE SHALL NOT COMPENSATE ITS EMPLOYEES ON
THE BASIS OF A FORMULA THAT INCORPORATES THE NUMBER OF
CONSUMERS THE EMPLOYEE INDUCES TO ENTER INTO DEBT MANAGEMENT
SERVICES AGREEMENTS.

Section ~~12~~ 14. Fees.

(a) Limitation.--A licensee may charge a fee of not more
than \$50 for an initial consultation with a consumer.

(b) Monthly maintenance fee.--When a consumer and a licensee
have entered into a debt management services agreement, the
licensee may charge the consumer a monthly maintenance fee not
to exceed \$10 times the number of ~~creditors~~ ACCOUNTS remaining
under the agreement for that month, provided that the total

1 monthly fee may not exceed \$50.

2 (c) Insufficient funds fee.--A licensee may charge a
3 consumer a reasonable fee for any payment made by the consumer
4 to the licensee that is dishonored for insufficient funds.

5 (d) Voluntary contributions prohibited.--A licensee shall
6 not require or accept a voluntary contribution from a consumer
7 FOR ANY SERVICE PROVIDED TO THE CONSUMER BY THE LICENSEE. <—

8 (E) CONSUMER EDUCATION PROGRAM FEE.--IF A LICENSEE PROVIDES
9 A CONSUMER EDUCATION PROGRAM TO A CONSUMER WHO IS NOT RECEIVING
10 DEBT MANAGEMENT SERVICES, THE LICENSEE MAY CHARGE THE CONSUMER A
11 FEE OF NOT MORE THAN \$50.

12 ~~(e)~~ (F) No other fees permitted.--A licensee shall not <—
13 charge a consumer any fees other than those described in
14 ~~subsections (a), (b) or (c).~~ SUBSECTION (A), (B), (C) OR (E). <—

15 ~~(f)~~ (G) Actual costs.--A licensee may charge a consumer for <—
16 its actual cost in requesting the consumer's credit report.

17 ~~Section 13. Violations.~~ <—

18 ~~The department may impose a civil penalty up to \$1,000 for~~
19 ~~each violation of this act.~~

20 SECTION 15. VIOLATIONS. <—

21 (A) GENERAL RULE.--THE DEPARTMENT MAY IMPOSE A CIVIL PENALTY
22 UP TO \$10,000 FOR EACH VIOLATION OF THIS ACT.

23 (B) CRIMINAL LIABILITY.--A LICENSEE WHO ACTS IN ACCORDANCE
24 WITH THE PROVISIONS OF THIS ACT DOES NOT ENGAGE IN "DEBT
25 POOLING" FOR PURPOSES OF 18 PA.C.S. § 7312 (RELATING TO DEBT
26 POOLING) AND SHALL NOT BE SUBJECT TO CRIMINAL LIABILITY UNDER 18
27 PA.C.S. § 7312 UNLESS THE LICENSE IS DENIED, SUSPENDED OR
28 REVOKED OR ITS RENEWAL IS REFUSED.

29 ~~Section 14~~ 16. Powers and duties of department. <—

30 The department shall:

1 (1) Examine any document, account, book or record of a
2 licensee or investigate as necessary to determine that the
3 licensee is in compliance with this act. The examination may
4 include documents, accounts, books or records that relate to
5 the operation of the licensee that are in the possession of
6 an affiliate, subsidiary or other business entity. The
7 examination may be conducted without prior notice to the
8 licensee and the costs of the examination shall be paid by
9 the licensee.

10 (2) Conduct administrative hearings on any matter
11 pertaining to this act, issue subpoenas to compel the
12 attendance of witnesses or the production of documents,
13 accounts, books or records at a hearing. A document, account,
14 book or record subject to subpoena may be retained by the
15 department until the proceeding in connection with which it
16 was subpoenaed is completed. A department official may
17 administer oaths or affirmations to a person whose testimony
18 is required.

19 (3) Request ~~information~~ AND RECEIVE INFORMATION OR <—
20 RECORDS OF ANY KIND, INCLUDING REPORTS OF CRIMINAL HISTORY
21 RECORD INFORMATION, from any Federal, State, local or foreign
22 government entity regarding an applicant, a licensee or a
23 person related to the business of debt management services.
24 The cost associated with the request shall be paid by the
25 applicant or licensee.

26 (4) Promulgate regulations or issue statements of policy
27 or orders to ensure the proper administration or enforcement
28 of this act.

29 (5) Prohibit a person who violates this act from working
30 in any capacity related to activities regulated by the

department.

(6) Order a person to make restitution for actual damages to consumers caused by a violation of this act.

(7) Issue a cease and desist order that takes effect immediately, but that is subject to a hearing within 14 days of the issuance of the order.

(8) Impose other conditions or take other actions as the department deems appropriate to administer or enforce this act.

Section ~~15~~ 17. Administrative proceedings. <—

(a) Hearings.--A person aggrieved by a decision of the department may appeal the decision to the secretary. The appeal shall be conducted under 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies).

(b) Injunctions.--The department may maintain an action for an injunction or other process against a person to restrain or prevent the person from violating this act.

~~(c) Final orders.--A decision of the secretary shall be a~~ <—

(C) FINAL ORDERS.-- <—

(1) A DECISION OF THE SECRETARY SHALL BE A final order of the department and shall be enforceable in a court of competent jurisdiction.

(2) THE DEPARTMENT MAY PUBLISH FINAL ADJUDICATIONS ISSUED UNDER THIS SECTION, SUBJECT TO REDACTION OR MODIFICATION TO PRESERVE CONFIDENTIALITY. <—

(d) Appeals.--A person aggrieved by a decision of the secretary may appeal the decision under 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

Section ~~16~~ 18. Banking Department Fund. <—

All fees or penalties collected by the department under this

1 act shall be deposited into the Banking Department Fund.

2 Section ~~17~~ 19. Transition. <—

3 A person who provides debt management services before the
4 effective date of this section and seeks to continue providing
5 such services must submit an application for a license under
6 this act within 45 days of the effective date of this section.
7 The applicant may continue to provide debt management services
8 provisionally, according to the requirements of this act, while
9 the department processes the application for licensure.

10 SECTION 49. REPEAL. <—

11 THE ACT OF DECEMBER 16, 1992 (P.L.1144, NO.150), KNOWN AS THE
12 CREDIT SERVICES ACT, IS REPEALED INsofar AS IT IS INCONSISTENT
13 WITH THIS ACT.

14 Section ~~18~~ 50. Effective date. <—

15 This act shall take effect in 60 days.