

## THE GENERAL ASSEMBLY OF PENNSYLVANIA

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# HOUSE BILL

## No. 2294

Session of  
2008

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INTRODUCED BY D. EVANS, DALEY, BLACKWELL, DeLUCA, GEORGE,  
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BELFANTI AND CALTAGIRONE, MARCH 5, 2008

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AS AMENDED ON SECOND CONSIDERATION, HOUSE OF REPRESENTATIVES,  
JUNE 25, 2008

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## 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) State-chartered banks, bank and trust companies,  
27 savings banks, private banks, national banks, federally  
28 chartered or State-chartered savings associations, credit  
29 unions or an operating subsidiary of any of these entities.

30 (4) Title insurance companies licensed under the act of

1 May 17, 1921 (P.L.682, No.284), known as The Insurance  
2 Company Law of 1921, or their agents.

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

5 (6) Licenses under the act of December 22, 1989  
6 (P.L.687, No.90), known as the Mortgage Bankers and Brokers  
7 and Consumer Equity Protection Act.

8 Section 5. Application for licensure.

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

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

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

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

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

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

26 (6) A list of other states in which the applicant  
27 engages in the business of providing debt management  
28 services, including any relevant license or registration  
29 number and information regarding whether a license or  
30 registration in another state has ever been suspended or

1       revoked.

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

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

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

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

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

22          (12) Evidence that the applicant is accredited by an  
23 independent accrediting organization acceptable to the  
24 department.

25          (13) A penal bond meeting the requirements of section 6  
26 7. <—

27          (14) A nonrefundable fee of \$2,000.

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

29 SECTION 6. LICENSE FEES FOR CERTAIN ENTITIES. <—

30 NOTWITHSTANDING ANY OTHER PROVISION OF THIS ACT, A DOMESTIC

1 OR FOREIGN NOT-FOR-PROFIT CORPORATION OR ASSOCIATION REGISTERED  
2 AS SUCH UNDER 15 PA.C.S. PT. II SUBPT. C (RELATING TO NONPROFIT  
3 CORPORATIONS) WITH THE SECRETARY OF THE COMMONWEALTH WHICH HAS  
4 ANNUAL GROSS REVENUES FROM DEBT MANAGEMENT SERVICE FEES AND  
5 CHARGES OF LESS THAN \$3,000,000 ANNUALLY SHALL ONLY BE REQUIRED  
6 TO PAY AN INITIAL REGISTRATION FEE OF \$500 AND AN ANNUAL RENEWAL  
7 FEE OF \$350.

8 Section ~~6~~ 7. Penal bond.

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9 (a) General rule.--The department shall issue a license  
10 under this act if the applicant obtains and maintains a bond in  
11 the amount of \$100,000, in a form acceptable to the department,  
12 prior to the issuance of the license, from a surety company  
13 authorized to do business in this Commonwealth. The bond shall  
14 be a penal bond conditioned on compliance with this act and  
15 subject to forfeiture by the department and shall run to the  
16 Commonwealth for its use. The bond shall also be for the use of  
17 any person against the licensee for the benefit of any consumer  
18 who is injured by a violation of this act or regulation  
19 promulgated under this act.

20 (b) Rights of aggrieved persons.--

21 (1) If the person is aggrieved, the person may, with the  
22 written consent of the department, recover fees and costs  
23 from the bond by filing a claim with the surety company or  
24 maintaining an action on the bond.

25 (2) In the alternative, an aggrieved person may recover  
26 fees and costs by filing a formal complaint against the  
27 licensee with the department which shall adjudicate the  
28 matter. The adjudication shall be binding upon the surety  
29 company and enforceable by the department in Commonwealth  
30 Court and by an aggrieved person in any court.

1           (3) Any aggrieved person seeking to recover from a bond  
2           that has already been forfeited by the department or which  
3           the department is in the process of forfeiting may recover  
4           payment on the bond if, after filing a petition with the  
5           department, the department consents to the aggrieved person's  
6           requested payment or portion thereof. The department may pay  
7           the aggrieved person from the bond proceeds it recovers.

8           (c) Other relief.--

9           (1) Nothing in this section shall be construed to limit  
10          the ability of any court or magisterial district judge to  
11          award to any aggrieved person other damages, court costs and  
12          attorney fees as permitted by law, but those claims that are  
13          not advance fees or related costs may not be recovered from  
14          the bond.

15          (2) The department, in its discretion, may consent to or  
16          order pro rata or other recovery on the bond for any  
17          aggrieved person if claims against the bond may or do exceed  
18          its full monetary amount.

19          (d) Cancellation of bonds.--No bond shall comply with the  
20          requirements of this section unless it contains a provision that  
21          it shall not be canceled for any cause unless notice of  
22          intention to cancel is given to the department at least 30 days  
23          before the day upon which cancellation shall take effect.  
24          Cancellation of the bond shall not invalidate the bond regarding  
25          the period of time it was in effect.

26          Section 7 8. Issuance of license.

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27          (a) Time for issuance.--The department shall decide whether  
28          to issue a license to an applicant within 60 days of receiving  
29          the applicant's completed application. If the department needs  
30          longer than 60 days to make a decision, it may extend the time

1 period for 30 days. The department shall notify the applicant of  
2 the extended time period, including a final decision date, in  
3 writing.

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

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

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

15 (e) Contents.--The license shall be on a form determined by  
16 the department and shall contain, at a minimum, the name of the  
17 licensee, the address at which the licensee is conducting  
18 business and a license number.

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

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

23 Section 9. Renewal of license.

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24 (a) General rule.--An application for renewal of a license  
25 shall be submitted to the department on the form determined by  
26 the department and in the time period determined by the  
27 department. Each application for renewal shall be accompanied by  
28 a fee of \$1,250.

29 (b) Required condition.--The department shall determine the  
30 information and documentation that shall be provided in the

1 application for renewal of a license sufficient to establish  
2 that the licensee continues to conduct its business in  
3 accordance with this act.

4 (c) Continuing education.--In order to maintain its license,  
5 a licensee shall demonstrate to the satisfaction of the  
6 department that its credit counselors, supervisors and managers  
7 participate in continuing education as required by the  
8 department by regulation.

9 Section 9 10. Reasons for denial, suspension, revocation or <—  
10 refusal.

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

14 (1) Made a material misstatement in the license  
15 application or any other submission required by this act or  
16 the department.

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

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

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

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

30 (6) Been enjoined by a court of competent jurisdiction



1 from engaging in the business of debt management services.

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

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

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

9 (10) Has an outstanding debt to the Commonwealth or any  
10 Commonwealth agency.

11 Section ~~10~~ 11. Reinstatement. <—

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

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

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

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

21 Section ~~11~~ 12. Limitations on license. <—

22 (a) Name or address.--A licensee shall not conduct business  
23 under this act under a name or at an address different from that  
24 contained on the licensee's license. When a licensee changes its  
25 name or its business address, it shall notify the department  
26 within ten days of the change and the department may issue a new  
27 license specifying the licensee's new name or address.

28 (b) Other businesses.--A licensee shall not conduct a  
29 business other than the debt management service business  
30 licensed by the department under this act unless it notifies the

1 department in writing at least 30 days before beginning to  
2 conduct that business.

3 Section ~~12~~ 13. Annual report. <—

4 (a) Duty to file.--A licensee shall file an annual report  
5 with the department on a date determined by the department  
6 setting forth such information as the department shall require  
7 concerning the debt management services business conducted by  
8 the licensee during the preceding calendar year. The report  
9 shall be on a form provided by the department.

10 (b) Penalty for noncompliance.--A licensee who fails to file  
11 its annual report on the required date may be subject to a  
12 penalty of \$100 for each day after the due date until the report  
13 is filed.

14 Section ~~13~~ 14. Requirements for providing debt management <—  
15 services.

16 A licensee shall provide debt management services in  
17 accordance with the following requirements:

18 (1) The licensee shall provide each consumer for whom it  
19 provides debt management services with a consumer education  
20 program at no cost to a consumer who enters into a debt  
21 management services agreement.

22 (2) (i) Before the licensee and consumer enter into a  
23 debt management services agreement, the licensee shall  
24 prepare an analysis of the consumer's financial situation  
25 and a budget for the consumer. The analysis shall include  
26 a determination that the consumer will benefit from debt  
27 management services and an explanation of that benefit.

28 (ii) The licensee may communicate with the consumer  
29 by electronic mail or the Internet, but shall not enter  
30 into a debt management services agreement unless the

1        licensee and the consumer have orally reviewed the  
2        analysis, the budget and the debt management services  
3        agreement through a person-to-person discussion. The  
4        licensee shall provide copies of the analysis, budget and  
5        debt management services agreement to the consumer.

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

10        (i) The name, address and telephone number of the  
11        consumer and of the licensee.

12        (ii) The license number of the licensee.

13        (iii) A description of the debt management services  
14        to be provided to the consumer.

15        (iv) A description of the fees that will be charged  
16        to the consumer.

17        (v) The name and address of the depository  
18        institution where the trust account into which the  
19        consumer's funds, paid to the licensee for disbursement  
20        to the consumer's creditors, is located.

21        (vi) A list of each of the consumer's creditors that  
22        the licensee in good faith reasonably expects to  
23        participate in the licensee's management of the  
24        consumer's debt, including the amount owed to each  
25        creditor and the schedule of payments to be made to each  
26        creditor. The schedule of payments shall include the  
27        amount of each payment and the date on which it will be  
28        made.

29        (vii) A list of each of the consumer's creditors  
30        that the licensee in good faith reasonably expects not to

1 participate in the licensee's management of the  
2 consumer's debt.

3 (viii) A schedule of the payments that the consumer  
4 must make to the licensee, including the amount of each  
5 payment, the date it is due and the form in which it must  
6 be made.

7 (ix) Disclosure of any fees that either the consumer  
8 must make to the licensee or that the licensee will  
9 retain from each of the consumer's payments to the  
10 licensee.

11 (x) A notice, in bold print, that the consumer's  
12 participation in the debt management services agreement  
13 may negatively impact the consumer's credit rating or  
14 credit score.

15 (xi) Disclosure that the licensee may receive  
16 compensation from the consumer's creditors for providing  
17 debt management services to the consumer.

18 (xii) Notice that either party may terminate the  
19 debt management services agreement upon ten days' written  
20 notice to the other party.

21 (xiii) Notice that if the debt management services  
22 agreement is terminated, the consumer is entitled to a  
23 prompt refund of any payments made that have not yet been  
24 disbursed to the consumer's creditors.

25 (xiv) An explanation of the way in which disputes  
26 that arise under the debt management services agreement  
27 will be resolved.

28 (xv) An explanation of applicable privacy laws.

29 (4) The licensee shall provide each consumer  
30 participating in a debt management services agreement with

1       quarterly statements setting forth the payments received from  
2       the consumer and the disbursements made to the consumer's  
3       creditors.

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

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

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

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

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

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

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

21      (12) The licensee shall not structure a consumer's debt  
22      management services agreement in a way that results in the  
23      negative amortization of any of the consumer's debts.

24      (13) The licensee shall not compromise any debt of a  
25      consumer unless the compromise benefits the consumer and the  
26      consumer has approved the proposed compromise in writing.

27      (14) The licensee shall have written policies describing  
28      its safeguards against conflicts of interest in the  
29      conducting of its business.

30      (15) The licensee shall not disseminate information,

1 including by advertising, regarding its debt management  
2 services in any way that is false, misleading or deceptive.

3 (16) The licensee shall not offer, pay or give a gift,  
4 bonus, premium, reward or any other compensation to a person  
5 for referring a consumer to the licensee.

6 (17) The licensee shall not accept any gift, bonus,  
7 premium, reward or any other compensation for referring a  
8 consumer to another agency or business or person.

9 (18) The licensee shall not offer or pay an incentive,  
10 including a gift, bonus, premium, reward or any other  
11 compensation, to a consumer for executing a debt management  
12 services agreement with the licensee.

13 (19) The licensee shall not provide debt settlement  
14 services except as provided by the department by regulation.  
15 For the purpose of this paragraph, "debt settlement services"  
16 means an action or negotiation made on behalf of a consumer  
17 with that consumer's creditors for the purpose of the  
18 creditor forgiving part of the debt incurred or credit  
19 extended to that consumer.

20 (20) The licensee shall not disclose the identity or  
21 identifying information of a consumer or the identity of the  
22 consumer's creditors except as permitted by Federal law.

23 Disclosure may be made:

24 (i) to the department;

25 (ii) to a creditor of the consumer, to the extent  
26 necessary to secure the cooperation of the creditor in  
27 the debt management services agreement; or

28 (iii) as is necessary to administer the debt  
29 management services agreement.

30 (21) The licensee that primarily communicates with a

1 consumer in a language other than English shall provide the  
2 debt management services agreement and any other documents or  
3 disclosures required by this act to the consumer in that  
4 other language.

5 (22) The licensee shall not delegate any of its duties  
6 or obligations under this act or a debt management services  
7 agreement to an independent contractor.

8 (23) The licensee shall have a toll-free telephone  
9 number that shall be prominently displayed on the licensee's  
10 literature and advertising.

11 (24) The licensee shall not compensate its employees on  
12 the basis of a formula that incorporates the number of  
13 consumers the employee induces to enter into debt management  
14 services agreements.

15 Section ~~14~~ 15. Fees. <—

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

18 (b) Monthly maintenance fee.--When a consumer and a licensee  
19 have entered into a debt management services agreement, the  
20 licensee may charge the consumer a monthly maintenance fee not  
21 to exceed \$10 times the number of accounts remaining under the  
22 agreement for that month, provided that the total monthly fee  
23 may not exceed \$50.

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

27 (d) Voluntary contributions prohibited.--A licensee shall  
28 not require or accept a voluntary contribution from a consumer  
29 for any service provided to the consumer by the licensee.

30 (e) Consumer education program fee.--If a licensee provides

1 a consumer education program to a consumer who is not receiving  
2 debt management services, the licensee may charge the consumer a  
3 fee of not more than \$50.

4 (f) No other fees permitted.--A licensee shall not charge a  
5 consumer any fees other than those described in subsection (a),  
6 (b), (c) or (e).

7 (g) Actual costs.--A licensee may charge a consumer for its  
8 actual cost in requesting the consumer's credit report.

9 Section ~~15~~ 16. Violations. <—

10 (a) General rule.--The department may impose a civil penalty  
11 up to \$10,000 for each violation of this act.

12 (b) Criminal liability.--A licensee who acts in accordance  
13 with the provisions of this act does not engage in "debt  
14 pooling" for purposes of 18 Pa.C.S. § 7312 (relating to debt  
15 pooling) and shall not be subject to criminal liability under 18  
16 Pa.C.S. § 7312 unless the license is denied, suspended or  
17 revoked or its renewal is refused.

18 Section ~~16~~ 17. Powers and duties of department. <—

19 The department shall:

20 (1) Examine any document, account, book or record of a  
21 licensee or investigate as necessary to determine that the  
22 licensee is in compliance with this act. The examination may  
23 include documents, accounts, books or records that relate to  
24 the operation of the licensee that are in the possession of  
25 an affiliate, subsidiary or other business entity. The  
26 examination may be conducted without prior notice to the  
27 licensee and the costs of the examination shall be paid by  
28 the licensee.

29 (2) Conduct administrative hearings on any matter  
30 pertaining to this act, issue subpoenas to compel the



1 attendance of witnesses or the production of documents,  
2 accounts, books or records at a hearing. A document, account,  
3 book or record subject to subpoena may be retained by the  
4 department until the proceeding in connection with which it  
5 was subpoenaed is completed. A department official may  
6 administer oaths or affirmations to a person whose testimony  
7 is required.

8 (3) Request and receive information or records of any  
9 kind, including reports of criminal history record  
10 information, from any Federal, State, local or foreign  
11 government entity regarding an applicant, a licensee or a  
12 person related to the business of debt management services.  
13 The cost associated with the request shall be paid by the  
14 applicant or licensee.

15 (4) Promulgate regulations or issue statements of policy  
16 or orders to ensure the proper administration or enforcement  
17 of this act.

18 (5) Prohibit a person who violates this act from working  
19 in any capacity related to activities regulated by the  
20 department.

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

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

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

29 Section ~~17~~ 18. Administrative proceedings.

30 (a) Hearings.--A person aggrieved by a decision of the

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1 department may appeal the decision to the secretary. The appeal  
2 shall be conducted under 2 Pa.C.S. Ch. 5 Subch. A (relating to  
3 practice and procedure of Commonwealth agencies).

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

7 (c) Final orders.--

8 (1) A decision of the secretary shall be a final order  
9 of the department and shall be enforceable in a court of  
10 competent jurisdiction.

11 (2) The department may publish final adjudications  
12 issued under this section, subject to redaction or  
13 modification to preserve confidentiality.

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

17 Section ~~18~~ 19. Banking Department Fund.

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18 All fees or penalties collected by the department under this  
19 act shall be deposited into the Banking Department Fund.

20 Section ~~19~~ 20. Transition.

<—

21 A person who provides debt management services before the  
22 effective date of this section and seeks to continue providing  
23 such services must submit an application for a license under  
24 this act within 45 days of the effective date of this section.  
25 The applicant may continue to provide debt management services  
26 provisionally, according to the requirements of this act, while  
27 the department processes the application for licensure.

28 Section 49. Repeal.

29 The act of December 16, 1992 (P.L.1144, No.150), known as the  
30 Credit Services Act, is repealed insofar as it is inconsistent

1 with this act.

2 Section 50. Effective date.

3 This act shall take effect in 60 days.