
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 AMENDED ON THIRD CONSIDERATION, IN SENATE, OCTOBER 7, 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 "APPLICANT." A PERSON WHO APPLIES FOR A LICENSE UNDER THIS
16 ACT. <—

17 "BANKING INSTITUTION." A STATE-CHARTERED BANK, BANK AND
18 TRUST COMPANY, SAVINGS BANK OR PRIVATE BANK, A NATIONAL BANK, A

1 FEDERALLY CHARTERED OR STATE-CHARTERED SAVINGS ASSOCIATION OR A
2 SUBSIDIARY OF ANY OF THE FOREGOING.

3 "Consumer." An individual who owes money for personal,
4 family or household expenses to at least one creditor. The term <—
5 ~~does not include an individual who owes money for business debt.~~

6 ~~"Consumer education program." A program designed to improve~~
7 ~~a consumer's ability to manage the consumer's personal finances~~
8 ~~and that includes the following: budgeting, saving, investing,~~
9 ~~managing debt and maintaining creditworthiness.~~

10 "CONSUMER EDUCATION PROGRAM." A DETAILED AND CUSTOMIZED <—
11 EDUCATION PROGRAM THAT:

12 (1) IS PROVIDED TO A CONSUMER PRIOR TO OFFERING A
13 CONSUMER A DEBT MANAGEMENT SERVICES AGREEMENT.

14 (2) IS DESIGNED TO IMPROVE A CONSUMER'S ABILITY TO
15 MANAGE THE CONSUMER'S PERSONAL AND HOUSEHOLD FINANCES AND TO
16 OTHERWISE IMPROVE THE FINANCIAL LITERACY OF THE CONSUMER.

17 (3) INCLUDES THE FOLLOWING, TAILORED TO THE NEEDS OF THE
18 CONSUMER: BUDGETING, SAVING, INVESTING, MANAGING DEBT AND
19 MAINTAINING CREDITWORTHINESS.

20 (4) IS NOT LIMITED TO DETERMINING WHETHER A CONSUMER
21 WILL BENEFIT FROM DEBT MANAGEMENT SERVICES, BUT INCLUDES
22 VARIOUS OPTIONS AND STRATEGIES FOR ADDRESSING THE CONSUMER'S
23 DEBT PROBLEMS AND MAY INCLUDE THE PROVISION OF SERVICES FOR
24 THE PURPOSE OF IMPROVING A CONSUMER'S CREDIT RECORD, CREDIT
25 HISTORY OR CREDIT RATING, BUT ONLY TO THE EXTENT THAT SUCH
26 SERVICES ARE INCIDENTAL TO PROVIDING THE OTHER ELEMENTS OF
27 THE CONSUMER EDUCATION PROGRAM.

28 "CREDIT COUNSELING AGENCY." A PERSON THAT PROVIDES DEBT
29 MANAGEMENT PLAN SERVICES TO CONSUMERS, FOR A FEE, CONTRIBUTION
30 OR OTHER CONSIDERATION.

1 "Debt management services." The service of receiving funds
2 periodically from a consumer ~~under a debt management services~~ <—
3 ~~agreement~~ and then distributing those funds to creditors of the
4 consumer in partial or full payment of the consumer's PERSONAL <—
5 debts.

6 ~~"Department." The Department of Banking of the Commonwealth.~~ <—

7 "DEBT SETTLEMENT SERVICES." AN ACTION OR NEGOTIATION MADE ON <—
8 BEHALF OF A CONSUMER WITH THAT CONSUMER'S CREDITORS FOR THE
9 PURPOSE OF THE CREDITOR FORGIVING PART OR ALL OF THE PRINCIPAL
10 OF THE DEBT INCURRED OR CREDIT EXTENDED TO THAT CONSUMER. THE
11 TERM SHALL NOT INCLUDE ANY ACTION TAKEN TO CONVINCE A CREDITOR
12 TO WAIVE ANY FEES OR CHARGES.

13 "DEPARTMENT." THE DEPARTMENT OF BANKING OF THE COMMONWEALTH.

14 "LICENSEE." A PERSON LICENSED UNDER THE PROVISIONS OF THIS
15 ACT.

16 "PAYDAY LOAN." A SHORT-TERM CASH ADVANCE OF \$3,000 OR LESS
17 THAT IS SECURED OR FACILITATED BY A CONSUMER'S PERSONAL CHECK
18 THAT IS HELD FOR FUTURE DEPOSIT OR BY ELECTRONIC ACCESS TO THE
19 CONSUMER'S BANK ACCOUNT. THE TERM INCLUDES ANY FORM OF THIS
20 LENDING, NOTWITHSTANDING THE PRESENCE OF SOME OTHER ELEMENT
21 INTRODUCED TO DISGUISE THE TRUE NATURE OF THE TRANSACTION, SUCH
22 AS THE SALE OR PROVISION OF A GOOD, SERVICE OR COMMODITY
23 INCIDENTAL TO THE ADVANCE OF FUNDS AND NOTWITHSTANDING THE FACT
24 THAT THE TRANSACTION IS CONDUCTED IN PERSON, BY MAIL, INTERNET
25 OR TELEPHONE, OR THROUGH ANY OTHER MEANS.

26 "Person." An individual, corporation, partnership or other
27 entity legally recognized by the Commonwealth for business
28 purposes ~~that provides debt management services.~~ <—

29 "Secretary." The Secretary of Banking of the Commonwealth.
30 Section 3. License required.

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

(A) DEBT MANAGEMENT SERVICES.--NO PERSON MAY ADVERTISE,
SOLICIT, STATE OR REPRESENT THAT IT CAN OFFER, OBTAIN OR PROCURE
DEBT MANAGEMENT SERVICES TO OR FOR A CONSUMER OR PROVIDE DEBT
MANAGEMENT SERVICES TO A CONSUMER UNLESS THE PERSON IS LICENSED
BY THE DEPARTMENT UNDER THIS ACT.

(B) DEBT SETTLEMENT SERVICES.--NO PERSON MAY ADVERTISE,
SOLICIT, STATE OR REPRESENT THAT IT CAN OFFER, OBTAIN OR PROCURE
DEBT SETTLEMENT SERVICES TO OR FOR A CONSUMER OR PROVIDE DEBT
SETTLEMENT SERVICES TO A CONSUMER FOR A FEE UNLESS THE PERSON IS
LICENSED BY THE DEPARTMENT UNDER THIS ACT AND IS OPERATING IN
ACCORDANCE WITH REGULATIONS PROMULGATED BY THE DEPARTMENT
REGARDING THE CONDUCT OF DEBT SETTLEMENT SERVICES.

Section 4. Nonapplicability.

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

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

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

~~(3) State chartered banks, bank and trust companies,
savings banks, private banks, national banks, federally
chartered or State chartered savings associations, credit
unions or an operating subsidiary of any of these entities.~~

~~(4) Title insurance companies licensed under the act of
May 17, 1921 (P.L.682, No.284), known as The Insurance~~

~~Company Law of 1921, or their agents.~~

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

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

(A) EXEMPTION FROM ACT.--THIS ACT DOES NOT APPLY TO THE
FOLLOWING PERSONS:

(1) A BANKING INSTITUTION OR A FEDERALLY CHARTERED OR STATE-CHARTERED CREDIT UNION, IF THE PRIMARY REGULATOR OF THE BANKING INSTITUTION OF FEDERALLY CHARTERED OR STATE-CHARTERED CREDIT UNION SUPERVISES THE BANKING INSTITUTION OR FEDERALLY CHARTERED OR STATE-CHARTERED CREDIT UNION.

(2) JUDICIAL OFFICERS OR PERSONS ACTING UNDER COURT ORDER.

(3) AGENCIES OR INSTRUMENTALITIES OF FEDERAL, STATE OR LOCAL GOVERNMENT.

(4) EMPLOYEES OF LICENSEES OR EXEMPT PERSONS UNDER THIS ACT.

(5) ATTORNEYS WHO ARE ADMITTED TO THE BAR OF THIS COMMONWEALTH AND PROVIDE LEGAL SERVICES WITHIN AN ATTORNEY-CLIENT RELATIONSHIP WHO ENGAGE IN DEBT MANAGEMENT SERVICES OR DEBT SETTLEMENT SERVICES WITHIN THE NORMAL COURSE OF LEGAL PRACTICE.

(B) EXEMPTION FROM LICENSING.--THE FOLLOWING PERSONS ARE NOT REQUIRED TO BE LICENSED UNDER THIS ACT, BUT MUST COMPLY WITH THE PROVISIONS OF THIS ACT IF THEY OFFER, OBTAIN OR PROVIDE DEBT MANAGEMENT SERVICES OR DEBT SETTLEMENT SERVICES:

(1) CERTIFIED PUBLIC ACCOUNTANTS WHO ARE LICENSED BY THE COMMONWEALTH AND PROVIDE ACCOUNTING SERVICES WITHIN AN

ACCOUNTANT-CLIENT RELATIONSHIP.

(2) TITLE INSURANCE COMPANIES LICENSED UNDER THE ACT OF MAY 17, 1921 (P.L.682, NO.284), KNOWN AS THE INSURANCE COMPANY LAW OF 1921, OR THEIR AGENTS.

(3) MORTGAGE LENDERS, MORTGAGE BROKERS AND MORTGAGE LOAN CORRESPONDENTS LICENSED UNDER THE PROVISIONS OF 7 PA.C.S. CH. 61 (RELATING TO MORTGAGE LOAN INDUSTRY LICENSING AND CONSUMER PROTECTION).

Section 5. Application for licensure.

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

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

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

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

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

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

(6) A list of other states in which the applicant engages in the business of providing debt management services, including any relevant license or registration number and information regarding whether a license or

1 registration in another state has ever been suspended or
2 revoked.

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

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

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

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

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

23 (11) INFORMATION REGARDING THE NUMBER OF THE APPLICANT'S <—
24 CREDIT COUNSELORS AND SUPERVISORS OR MANAGERS WITH DIRECT
25 SUPERVISORY DUTIES OF CREDIT COUNSELORS WHO PERFORM THE
26 CONSUMER EDUCATION PROGRAM WHO ARE CERTIFIED BY AN
27 INDEPENDENT CERTIFYING ORGANIZATION ACCEPTABLE TO THE
28 DEPARTMENT AND A PLAN TO ENSURE THAT ANY OF THE CREDIT
29 COUNSELORS AND SUPERVISORS OR MANAGERS WITH DIRECT
30 SUPERVISORY DUTIES OF CREDIT COUNSELORS WHO PERFORM THE

1 CONSUMER EDUCATION PROGRAM WHO ARE NOT CERTIFIED BECOME
2 CERTIFIED WITHIN SIX MONTHS OF THE ISSUANCE DATE OF THE
3 LICENSE. A LICENSEE SHALL NOTIFY THE DEPARTMENT OF ANY CHANGE
4 IN STATUS REGARDING THE LICENSEE'S CERTIFIED CREDIT
5 COUNSELORS, SUPERVISOR OR MANAGERS WITH DIRECT SUPERVISORY
6 DUTIES OF CREDIT COUNSELORS WITHIN TEN DAYS OF THE CHANGE.

7 (12) Evidence that the applicant is accredited by an
8 independent accrediting organization acceptable to the
9 department.

10 (13) A penal bond meeting the requirements of section 7.

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

12 ~~(15) Any other information that the department requires.~~ <—

13 (15) A DESCRIPTION OF THE CONSUMER EDUCATION PROGRAM <—
14 THAT THE APPLICANT PROVIDES OR INTENDS TO PROVIDE TO
15 CONSUMERS ALONG WITH COPIES OF ANY WRITTEN MATERIALS USED OR
16 TO BE USED IN THE PROGRAM.

17 (16) ANY OTHER INFORMATION THAT THE DEPARTMENT REQUIRES.

18 Section 6. License fees for certain entities.

19 Notwithstanding any other provision of this act, a domestic
20 or foreign not-for-profit corporation or association registered
21 as such under 15 Pa.C.S. Pt. II Subpt. C (relating to nonprofit
22 corporations) with the Secretary of the Commonwealth which has
23 annual gross revenues from debt management service fees and
24 charges of less than \$3,000,000 annually shall only be required
25 to pay an initial ~~registration~~ LICENSE fee of \$500 and an annual <—
26 renewal fee of \$350.

27 Section 7. Penal bond.

28 (a) General rule.--The department shall issue a license
29 under this act if the applicant obtains and maintains a bond in
30 ~~the amount of \$100,000~~ AN AMOUNT GREATER THAN THE TOTAL AMOUNT <—

1 OF PENNSYLVANIA CONSUMER FUNDS THAT THE LICENSEE WILL HOLD
2 DIRECTLY OR IN TRUST AT ANY TIME, in a form acceptable to the
3 department, prior to the issuance of the license, from a surety
4 company authorized to do business in this Commonwealth. The bond
5 shall be a penal bond conditioned on compliance with this act
6 and subject to forfeiture by the department and shall run to the
7 Commonwealth for its use. The bond shall also be for the use of
8 any person against the licensee for the benefit of any consumer
9 who is injured by a violation of this act or regulation
10 promulgated under this act.

11 (b) Rights of aggrieved persons.--

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

16 (2) In the alternative, an aggrieved person may recover
17 fees and costs by filing a formal complaint against the
18 licensee with the department which shall adjudicate the
19 matter. The adjudication shall be binding upon the surety
20 company and enforceable by the department in Commonwealth
21 Court and by an aggrieved person in any court.

22 (3) Any aggrieved person seeking to recover from a bond
23 that has already been forfeited by the department or which
24 the department is in the process of forfeiting may recover
25 payment on the bond if, after filing a petition with the
26 department, the department consents to the aggrieved person's
27 requested payment or portion thereof. The department may pay
28 the aggrieved person from the bond proceeds it recovers.

29 (c) Other relief.--

30 (1) Nothing in this section shall be construed to limit

1 the ability of any court or magisterial district judge to
2 award to any aggrieved person other damages, court costs and
3 attorney fees as permitted by law, but those claims that are
4 not ~~advance~~ fees or related costs may not be recovered from <—
5 the bond.

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

10 (d) Cancellation of bonds.--No bond shall comply with the
11 requirements of this section unless it contains a provision that
12 it shall not be canceled for any cause unless notice of
13 intention to cancel is given to the department at least 30 days
14 before the day upon which cancellation shall take effect.
15 Cancellation of the bond shall not invalidate the bond regarding
16 the period of time it was in effect.

17 Section 8. Issuance of license.

18 (a) Time for issuance.--The department shall decide whether
19 to issue a license to an applicant within 60 days of receiving
20 the applicant's completed application. If the department needs
21 longer than 60 days to make a decision, it may extend the time
22 period for 30 days. The department shall notify the applicant of
23 the extended time period, including a final decision date, in
24 writing.

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

29 (c) Appeal of denial.--If the department refuses to issue a
30 license, it shall notify the applicant in writing that the

1 license has been denied, including the reason for the denial and
2 that the applicant has the right to appeal the denial to the
3 secretary within 30 days.

4 (d) Duration.--A license shall be issued for a period of one
5 year ON A SCHEDULE DETERMINED BY THE DEPARTMENT, PROVIDED THAT <—
6 IF A LICENSE IS ISSUED PRIOR TO THE BEGINNING OF A LICENSING
7 YEAR, THE LICENSE SHALL ONLY BE VALID UNTIL THE END OF THAT
8 LICENSING YEAR, AT WHICH TIME IT MAY BE RENEWED SUBJECT TO THE
9 PROVISIONS OF THIS ACT. IN THE EVENT THAT A LICENSE IS DENIED,
10 CANCELED, SURRENDERED, REVOKED OR SUSPENDED, NO PART OF THE
11 LICENSE FEE OR LICENSE RENEWAL FEE IS SUBJECT TO REBATE.

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

16 (f) Display.--The license shall be displayed prominently at
17 the licensee's business ~~location~~ LOCATIONS. <—

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

20 (H) CONDITIONAL LICENSES.--THE DEPARTMENT MAY IMPOSE <—
21 CONDITIONS ON THE ISSUANCE OF ANY LICENSE UNDER THIS ACT. IF THE
22 DEPARTMENT DETERMINES THAT CONDITIONS IMPOSED UPON A LICENSE
23 HAVE NOT BEEN FULFILLED, THE DEPARTMENT MAY TAKE ANY ACTION
24 AUTHORIZED UNDER THIS ACT AGAINST THE LICENSEE THAT THE
25 DEPARTMENT DEEMS NECESSARY. IN THE CASE OF APPLICANTS, THE
26 DEPARTMENT MAY ISSUE LICENSES EFFECTIVE IMMEDIATELY UPON RECEIPT
27 OF AN APPLICATION, WHICH LICENSES SHALL BE CONDITIONAL LICENSES
28 ISSUED UNDER THIS SUBSECTION.

29 Section 9. Renewal of license.

30 (a) General rule.--An application for renewal of a license

1 shall be submitted to the department on the form determined by
2 the department and in the time period determined by the
3 department. Each application for renewal shall be accompanied by
4 a fee of \$1,250.

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

10 (c) Continuing education.--In order to maintain its license,
11 a licensee shall demonstrate to the satisfaction of the
12 department that its credit counselors, supervisors and managers
13 participate in continuing education as required by the
14 department by regulation. THE DEPARTMENT SHALL DELINEATE THE
15 REQUIREMENTS FOR SUCH CONTINUING EDUCATION BY REGULATION WITHIN
16 THREE YEARS AFTER THE EFFECTIVE DATE OF THIS ACT. <—

17 Section 10. Reasons for denial, suspension, revocation or
18 refusal.

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

22 (1) Made a material misstatement in the license
23 application or any other submission required by this act or
24 the department.

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

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

30 (4) Does not possess the financial responsibility,

1 character, reputation, integrity and general fitness
2 sufficient to warrant the belief that the debt management
3 services business will be conducted lawfully, honestly and in
4 the public interest.

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

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

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

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

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

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

19 (11) HAS FAILED TO MAINTAIN THE BOND REQUIRED UNDER
20 SECTION 7. <—

21 (12) BECOMES INSOLVENT, MEANING THAT THE LIABILITIES OF
22 THE APPLICANT OR LICENSEE EXCEED THE ASSETS OF THE APPLICANT
23 OR LICENSEE OR THAT THE APPLICANT OR LICENSEE CANNOT MEET THE
24 OBLIGATIONS OF THE APPLICANT OR LICENSEE AS THEY MATURE OR IS
25 IN SUCH FINANCIAL CONDITION THAT THE APPLICANT OR LICENSEE
26 CANNOT CONTINUE IN BUSINESS WITH SAFETY TO THE CUSTOMERS OF
27 THE APPLICANT OR LICENSEE.

28 (13) HAS FAILED TO DISBURSE A CONSUMER'S PAYMENTS TO
29 CREDITORS IN A TIMELY MANNER AS AGREED TO UNDER A DEBT
30 MANAGEMENT SERVICES AGREEMENT FOR ANY REASON OTHER THAN THE

1 CONSUMER'S FAILURE TO MAKE THE AGREED-TO PAYMENTS TO THE
2 LICENSEE OR BECAUSE SUCH DISBURSEMENT WOULD CONSTITUTE A
3 VIOLATION OF APPLICABLE LAW OR AN ORDER ISSUED BY A COURT OR
4 ADMINISTRATIVE BODY OF COMPETENT JURISDICTION.

5 SECTION 10.1. PAYDAY LOANS.

6 THE DEPARTMENT SHALL DENY A LICENSE UNDER THIS ACT TO AN
7 APPLICANT THAT OFFERS PAYDAY LOANS.

8 Section 11. Reinstatement.

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

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

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

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

18 Section 12. Limitations on license.

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

25 (b) Other businesses.--A licensee shall not conduct a
26 business other than the debt management service business
27 licensed by the department under this act unless it notifies the
28 department in writing at least 30 days before beginning to
29 conduct that business.

30 (C) CONSUMER FUNDS.--A LICENSEE MAY NOT HOLD MONEY FROM

<—

PENNSYLVANIA CONSUMERS, EITHER DIRECTLY OR IN ANY TRUST, IN AN
AMOUNT IN EXCESS OF THE BOND REQUIRED UNDER SECTION 7.

~~Section 13. Annual report.~~

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

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

SECTION 13. REPORTS TO DEPARTMENT.

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

(B) REPORT OF ENFORCEMENT ACTION.--A LICENSEE SHALL REPORT
TO THE DEPARTMENT ANY ENFORCEMENT ACTION TAKEN AGAINST THE
LICENSEE BY ANY FEDERAL OR STATE AGENCY. THE REPORT SHALL BE
FILED NO LATER THAN SEVEN DAYS AFTER THE LICENSEE BECOMES AWARE
OF THE ENFORCEMENT ACTION. THE LICENSEE SHALL PROVIDE UPDATES TO
THE DEPARTMENT AS TO THE STATUS OF ANY ENFORCEMENT ACTION AS
REQUIRED BY THE DEPARTMENT.

(C) REPORT OF FAILURE TO REMIT PAYMENTS.--IN THE EVENT THAT
A LICENSEE BELIEVES THAT IT MAY NOT BE ABLE TO REMIT A
CONSUMER'S PAYMENT TO A CREDITOR FOR ANY REASON OTHER THAN THE

1 CONSUMER'S FAILURE TO PROVIDE FUNDS TO THE LICENSEE, THE
2 LICENSEE SHALL NOTIFY THE DEPARTMENT. THE NOTIFICATION SHALL BE
3 FILED WITHIN ONE BUSINESS DAY OF THE LICENSEE BECOMING AWARE OF
4 ITS INABILITY TO MAKE THE PAYMENT. THE NOTIFICATION SHALL
5 CONTAIN ANY PERTINENT FACTS INCLUDING THE REASON THE LICENSEE
6 BELIEVES IT MAY NOT BE ABLE TO MAKE THE PAYMENT AND WHAT STEPS
7 THE LICENSEE WILL TAKE TO RESOLVE THE SITUATION. THE LICENSEE
8 SHALL PROVIDE UPDATES TO THE DEPARTMENT AS TO THE STATUS OF THE
9 REPORTED MATTER AS REQUIRED BY THE DEPARTMENT.

10 (D) PENALTY FOR NONCOMPLIANCE.--A LICENSEE WHO FAILS TO FILE
11 AN ANNUAL REPORT WITH THE DEPARTMENT AS REQUIRED BY SUBSECTION
12 (A) MAY BE SUBJECT TO A PENALTY OF \$100 FOR EACH DAY AFTER THE
13 DATE THAT THE ANNUAL REPORT WAS REQUIRED TO BE FILED.

14 Section 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~~ THE CONSUMER. <—

22 (2) (i) A LICENSEE MAY ONLY PROVIDE DEBT MANAGEMENT <—
23 SERVICES IN ACCORDANCE WITH A WRITTEN DEBT MANAGEMENT
24 SERVICES AGREEMENT ENTERED INTO BETWEEN THE LICENSEE AND
25 THE CONSUMER. Before the licensee and consumer enter into
26 a debt management services agreement, the licensee shall
27 prepare an analysis of the consumer's financial situation
28 and a budget for the consumer. The analysis shall include
29 ~~a determination that the consumer will benefit from debt~~ <—
30 ~~management services and an explanation of that benefit.~~ A <—

1 GOOD FAITH DETERMINATION WHETHER THE CONSUMER WILL
2 BENEFIT FROM DEBT MANAGEMENT SERVICES AND AN EXPLANATION
3 OF THAT BENEFIT. IF THE ANALYSIS DETERMINES THAT THE
4 CONSUMER WILL NOT BENEFIT FROM DEBT MANAGEMENT SERVICES,
5 THE LICENSEE SHALL NOT OFFER DEBT MANAGEMENT SERVICES TO
6 THE CONSUMER.

7 (ii) The licensee may communicate with the consumer
8 by electronic mail or the Internet, but shall not enter
9 into a debt management services agreement unless A <—
10 CERTIFIED CREDIT COUNSELOR EMPLOYED BY the licensee and
11 the consumer have orally reviewed the analysis, the
12 budget and the debt management services agreement through
13 a person-to-person discussion. The licensee shall provide
14 copies of the analysis, budget and debt management
15 services agreement to the consumer.

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

20 (i) The name, address and telephone number of the
21 consumer and of the licensee.

22 (ii) The license number of the licensee.

23 (iii) A description of the debt management services
24 to be provided to the consumer.

25 (iv) A description of the fees that will be charged
26 to the consumer.

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

1 (vi) A list of each of the consumer's creditors that
2 the licensee in good faith reasonably expects to
3 participate in the licensee's management of the
4 consumer's debt, including the amount owed to each
5 creditor and the schedule of payments to be made to each
6 creditor. ~~The schedule of payments shall include the~~ <—
7 ~~amount of each payment and the date on which it will be~~
8 ~~made.~~

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

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

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

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

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

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

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

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

(xv) An explanation of applicable privacy laws.

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

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

(5) WITHIN TWO BUSINESS DAYS OF RECEIVING ANY PAYMENT, THE LICENSEE SHALL DEPOSIT ALL PAYMENTS RECEIVED FROM CONSUMERS UNDER DEBT MANAGEMENT SERVICES AGREEMENTS INTO A TRUST ACCOUNT ESTABLISHED FOR THE BENEFIT OF THE CONSUMERS TO WHOM THE LICENSEE IS FURNISHING DEBT MANAGEMENT SERVICES. ALL MONEY PAID TO A LICENSEE BY OR ON BEHALF OF A CONSUMER FOR DISTRIBUTION TO CREDITORS PURSUANT TO A DEBT MANAGEMENT SERVICES AGREEMENT IS HELD IN TRUST. ANY INTEREST EARNED FROM MONEY HELD IN TRUST ON BEHALF OF A CONSUMER SHALL BE USED FOR THE BENEFIT OF THE CONSUMER. THE TRUST ACCOUNT SHALL BE IN A FEDERALLY INSURED DEPOSITORY INSTITUTION AND IS SUBJECT TO THE FOLLOWING:

(I) EXCEPT AS PROVIDED IN SUBPARAGRAPH (III), MONEY

1 HELD IN TRUST BY A LICENSEE IS NOT PROPERTY OF THE
2 LICENSEE OR ANY DESIGNEE. THE MONEY SHALL NOT BE
3 AVAILABLE TO CREDITORS OF THE LICENSEE, EXCEPT FOR A
4 CONSUMER FROM WHOM OR ON WHOSE BEHALF THE LICENSEE
5 RECEIVED THE MONEY, TO THE EXTENT THE MONEY HAS NOT BEEN
6 DISBURSED TO CREDITORS ON BEHALF OF THE CONSUMER.

7 (II) IN CONNECTION WITH THE TRUST ACCOUNT, A
8 LICENSEE SHALL:

9 (A) MAINTAIN SEPARATE RECORDS OF ACCOUNT FOR
10 EACH INDIVIDUAL TO WHOM THE PROVIDER IS FURNISHING
11 DEBT MANAGEMENT SERVICES; AND

12 (B) DISBURSE MONEY PAID BY OR ON BEHALF OF THE
13 INDIVIDUAL TO CREDITORS OF THE INDIVIDUAL AS
14 DISCLOSED IN THE DEBT MANAGEMENT SERVICES AGREEMENT,
15 EXCEPT THAT:

16 (I) THE LICENSEE MAY DELAY PAYMENT TO THE
17 EXTENT THAT A PAYMENT BY THE CONSUMER DOES NOT
18 COMPLY WITH THE TERMS OF THE DEBT MANAGEMENT
19 SERVICES AGREEMENT BECAUSE IT IS NOT SUFFICIENT
20 TO PAY DESIGNATED CREDITORS.

21 (II) IF THE DEBT MANAGEMENT SERVICES
22 AGREEMENT PROVIDES FOR REGULAR PERIODIC PAYMENTS
23 TO CREDITORS, THE LICENSEE SHALL MAKE PAYMENTS TO
24 COMPLY WITH THE DUE DATES ESTABLISHED BY EACH
25 CREDITOR.

26 (III) THE LICENSEE MAY PROMPTLY CORRECT ANY
27 PAYMENTS THAT ARE NOT MADE OR THAT ARE
28 MISDIRECTED AS RESULT OF AN ERROR BY THE LICENSEE
29 OR ANY PERSON IN CONTROL OF THE TRUST ACCOUNT AND
30 REIMBURSE THE CONSUMER FOR ANY COSTS OR FEES

1 IMPOSED BY A CREDITOR AS A RESULT OF THE
2 LICENSEE'S FAILURE TO PAY A CREDITOR IN A TIMELY
3 MANNER.

4 (III) A LICENSEE MAY COMMINGLE MONEY IN A TRUST
5 ACCOUNT ESTABLISHED FOR THE BENEFIT OF THE CONSUMERS WHO
6 HAVE A DEBT MANAGEMENT SERVICES AGREEMENT OR DEBT
7 SETTLEMENT SERVICES AGREEMENT WITH THE LICENSEE AND TO
8 WHOM THE LICENSEE IS FURNISHING DEBT MANAGEMENT SERVICES
9 OR DEBT SETTLEMENT SERVICES. IN THE EVENT A LICENSEE
10 DEPOSITS A CONSUMER'S ENTIRE PAYMENT TO THE LICENSEE,
11 INCLUDING BOTH MONEY FOR DISBURSEMENT TO CREDITORS AND
12 FEES OWED TO THE LICENSEE, THE LICENSEE MAY ACCEPT
13 PAYMENT OF FEES OWED TO IT FROM THE TRUST. ALL MONEY IN
14 THE TRUST ACCOUNT ESTABLISHED FOR THE BENEFIT OF
15 CONSUMERS HOWEVER, SHALL BE ACCOUNTED FOR SEPARATELY
16 INCLUDING AN ACCOUNTING FOR FEES OWED TO THE LICENSEE. NO
17 OTHER MONEY SHALL BE DEPOSITED INTO THE TRUST ACCOUNT AND
18 THE MONEY IN THE ACCOUNT MAY ONLY BE USED FOR THE
19 PURPOSES EXPRESSED IN THIS SUBPARAGRAPH.

20 (IV) A TRUST ACCOUNT SHALL AT ALL TIMES HAVE A CASH
21 BALANCE EQUAL TO THE TOTAL AMOUNT HELD IN ALL CONSUMER
22 ACCOUNTS.

23 (V) THE LICENSEE SHALL RECONCILE THE TRUST ACCOUNT
24 AT LEAST ONCE A MONTH, WHICH SHALL INCLUDE RECONCILING
25 THE CASH BALANCE IN THE TRUST ACCOUNT WITH THE SUM OF THE
26 BALANCES IN EACH CONSUMER ACCOUNT. IF THE LICENSEE HAS
27 MORE THAN ONE TRUST ACCOUNT, EACH TRUST ACCOUNT MUST BE
28 INDIVIDUALLY RECONCILED.

29 (VI) IF A LICENSEE DISCOVERS, OR HAS REASONABLE
30 SUSPICION OF, EMBEZZLEMENT OR OTHER UNLAWFUL

1 APPROPRIATION OF MONEY HELD IN TRUST, THE LICENSEE SHALL
2 IMMEDIATELY NOTIFY THE DEPARTMENT.

3 (VII) IF A CONSUMER TERMINATES A DEBT MANAGEMENT
4 SERVICES AGREEMENT WITH A LICENSEE, THE LICENSEE SHALL
5 PROMPTLY REFUND TO THE CONSUMER ALL MONEY PAID BY OR ON
6 BEHALF OF THE CONSUMER WHICH HAS NOT BEEN PAID TO
7 CREDITORS AND INTEREST ACCRUED THEREON, LESS FEES THAT
8 ARE PAYABLE TO THE LICENSEE AS AUTHORIZED BY THIS ACT.

9 (6) The licensee shall disburse a consumer's funds to
10 the consumer's creditors in a timely manner BASED ON THE <—
11 AVAILABILITY OF THE FUNDS pursuant to the consumer's debt
12 management services agreement. IN THE EVENT THAT A CONSUMER <—
13 MAKES ONLY A PARTIAL PAYMENT AS REQUIRED BY A DEBT MANAGEMENT
14 SERVICES AGREEMENT, THE LICENSEE SHALL DISBURSE THE AVAILABLE
15 FUNDS TO CREDITORS PRIOR TO THE LICENSEE COLLECTING ITS OWN
16 FEES FROM THE CONSUMER'S PARTIAL PAYMENT. IN THE EVENT THAT A
17 CONSUMER FAILS TO RESOLVE ANY SCHEDULED PAYMENT DEFICIENCY
18 WITHIN 45 DAYS OF THE DEFICIENCY OCCURRING, A LICENSEE MAY
19 TERMINATE THE DEBT MANAGEMENT SERVICES AGREEMENT IN
20 ACCORDANCE WITH THE AGREEMENT.

21 ~~(7) The licensee shall not purchase any debt or~~ <—
22 ~~obligation of a consumer.~~

23 ~~(8) The licensee shall not lend money or provide credit~~
24 ~~to a consumer.~~

25 ~~(9) The licensee shall not offer or provide credit~~
26 ~~insurance to a consumer.~~

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

29 (7) THE LICENSEE OR ANY BUSINESS ENTITY IN WHICH ANY <—
30 DIRECTOR, OWNER, OFFICER, EMPLOYEE OR PRINCIPAL OF THE

1 LICENSEE, OR ANY MEMBER OF SUCH PERSON'S IMMEDIATE FAMILY AS
2 DEFINED IN 65 PA.C.S. § 1102 (RELATING TO DEFINITIONS), HAS
3 AN EQUITABLE, BENEFICIAL OR OTHER OWNERSHIP INTEREST SHALL
4 NOT PURCHASE ANY DEBT OR OBLIGATION OF A CONSUMER.

5 (8) THE LICENSEE OR ANY BUSINESS ENTITY IN WHICH ANY
6 DIRECTOR, OWNER, OFFICER, EMPLOYEE OR PRINCIPAL OF THE
7 LICENSEE, OR ANY MEMBER OF SUCH PERSON'S IMMEDIATE FAMILY AS
8 DEFINED IN 65 PA.C.S. § 1102, HAS AN EQUITABLE, BENEFICIAL OR
9 OTHER OWNERSHIP INTEREST SHALL NOT LEND MONEY OR PROVIDE
10 CREDIT TO A CONSUMER.

11 (9) THE LICENSEE OR ANY BUSINESS ENTITY IN WHICH ANY
12 DIRECTOR, OWNER, OFFICER, EMPLOYEE OR PRINCIPAL OF THE
13 LICENSEE, OR ANY MEMBER OF SUCH PERSON'S IMMEDIATE FAMILY AS
14 DEFINED IN 65 PA.C.S. § 1102, HAS AN EQUITABLE, BENEFICIAL OR
15 OTHER OWNERSHIP INTEREST SHALL NOT OFFER OR PROVIDE CREDIT
16 INSURANCE TO A CONSUMER.

17 (10) THE LICENSEE OR ANY BUSINESS ENTITY IN WHICH ANY
18 DIRECTOR, OWNER, OFFICER, EMPLOYEE OR PRINCIPAL OF THE
19 LICENSEE, OR ANY MEMBER OF SUCH PERSON'S IMMEDIATE FAMILY AS
20 THAT TERM IS DEFINED IN 65 PA.C.S. § 1102, HAS AN EQUITABLE,
21 BENEFICIAL OR OTHER OWNERSHIP INTEREST SHALL NOT OBTAIN A
22 MORTGAGE OR OTHER SECURITY INTEREST IN THE PROPERTY OF A
23 CONSUMER.

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

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

29 (13) The licensee shall not compromise any debt of a
30 consumer unless the compromise benefits the consumer and the

1 consumer has approved the proposed compromise in writing.

2 (14) The licensee shall have written policies describing
3 its safeguards against conflicts of interest in the
4 conducting of its business.

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

8 (16) The licensee OR ANY BUSINESS ENTITY IN WHICH ANY <—
9 DIRECTOR, OWNER, OFFICER, EMPLOYEE OR PRINCIPAL OF THE
10 LICENSEE, OR ANY MEMBER OF SUCH PERSON'S IMMEDIATE FAMILY AS
11 DEFINED IN 65 PA.C.S. § 1102, HAS AN EQUITABLE, BENEFICIAL OR
12 OTHER OWNERSHIP INTEREST, shall not offer, pay or give a
13 gift, bonus, premium, reward or any other compensation to a
14 person for referring a consumer to the licensee.

15 ~~(17) The licensee shall not accept any gift, bonus, <—~~
16 ~~premium, reward or any other compensation for referring a~~
17 ~~consumer to another agency or business or person.~~

18 (17) THE LICENSEE SHALL NOT DIRECTLY OR INDIRECTLY <—
19 ACCEPT, OFFER, PAY, PROVIDE, GIVE OR RECEIVE ANY GIFT, BONUS,
20 PREMIUM, REWARD OR ANY OTHER COMPENSATION TO OR FROM ANY
21 PERSON, INCLUDING, BUT NOT LIMITED TO, ANY FOR-PROFIT PARENT,
22 SUBSIDIARY OR THE AFFILIATE OF ANY LICENSEE AND ANY ENTITY
23 WHETHER OR NOT LEGALLY RECOGNIZED BY THE COMMONWEALTH FOR
24 BUSINESS PURPOSES THAT PROVIDE DEBT MANAGEMENT SERVICES FOR
25 REFERRING A CONSUMER TO THE LICENSEE OR TO ANOTHER LICENSEE
26 OR PERSON.

27 (18) The licensee, OR ANY BUSINESS ENTITY IN WHICH ANY <—
28 DIRECTOR, OWNER, OFFICER, EMPLOYEE OR PRINCIPAL OF THE
29 LICENSEE, OR ANY MEMBER OF SUCH PERSON'S IMMEDIATE FAMILY AS
30 THAT TERM IS DEFINED IN 65 PA.C.S. § 1102, HAS AN EQUITABLE,

1 BENEFICIAL OR OTHER OWNERSHIP INTEREST, shall not offer or
2 pay an incentive, including a gift, bonus, premium, reward or
3 any other compensation, to a consumer for executing a debt
4 management services agreement with the licensee.

5 ~~(19) The licensee shall not provide debt settlement~~ <—
6 ~~services except as provided by the department by regulation.~~
7 ~~For the purpose of this paragraph, "debt settlement services"~~
8 ~~means an action or negotiation made on behalf of a consumer~~
9 ~~with that consumer's creditors for the purpose of the~~
10 ~~creditor forgiving part of the debt incurred or credit~~
11 ~~extended to that consumer.~~

12 (19) A LICENSEE SHALL NOT, EXCEPT AS PROVIDED IN THIS <—
13 SECTION, INITIATE A TRANSFER TO OR FROM AN INDIVIDUAL'S
14 ACCOUNT AT A FINANCIAL INSTITUTION OR WITH ANOTHER PERSON
15 UNLESS THE TRANSFER IS ONE OF THE FOLLOWING:

16 (I) A RETURN OF MONEY TO THE INDIVIDUAL'S ACCOUNT;

17 OR

18 (II) BEFORE TERMINATION OF DEBT MANAGEMENT SERVICES,
19 PROPERLY AUTHORIZED BY THE DEBT MANAGEMENT SERVICES
20 AGREEMENT AND THIS SECTION AND FOR EITHER OF THE
21 FOLLOWING:

22 (A) PAYMENT TO ONE OR MORE CREDITORS PURSUANT TO
23 A DEBT MANAGEMENT SERVICES AGREEMENT; OR

24 (B) PAYMENT OF A FEE PERMITTED BY THIS ACT AND
25 AS PART OF A DEBT MANAGEMENT SERVICES AGREEMENT.

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

29 Disclosure may be made:

30 (i) to the department;

1 (ii) to a creditor of the consumer, to the extent
2 necessary to secure the cooperation of the creditor in
3 the debt management services agreement; or

4 (iii) as is necessary to administer the debt
5 management services agreement.

6 (21) The licensee that primarily communicates with a
7 consumer in a language other than English shall provide the
8 debt management services agreement and any other documents or
9 disclosures required by this act to the consumer in that
10 other language.

11 (22) The licensee shall not delegate any of its duties
12 or obligations under this act or a debt management services
13 agreement to ~~an independent contractor~~ ANY PERSON WHO IS NOT <—
14 LICENSED PURSUANT TO THIS ACT AND TO WHOM THIS ACT IS
15 APPLICABLE.

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

19 (24) The licensee shall not compensate its employees on
20 the basis of a formula that incorporates the number of
21 consumers the employee induces to enter into debt management
22 services agreements OR THE AMOUNT OF DEBT INCLUDED IN A DEBT <—
23 MANAGEMENT SERVICES AGREEMENT.

24 (25) A LICENSEE SHALL MAINTAIN A COMMUNICATIONS SYSTEM,
25 STAFFED AT A LEVEL THAT REASONABLY PERMITS INQUIRING PERSONS
26 AND CLIENTS TO INDIVIDUALLY SPEAK AND DISCUSS WITH COUNSELORS
27 OR A CUSTOMER SERVICES REPRESENTATIVE OF THE LICENSEE DURING
28 REGULAR BUSINESS HOURS.

29 Section 15. Fees.

30 (a) Limitation.--A licensee may charge a fee of not more

1 than \$50 for an initial consultation with a consumer, PROVIDED <—
2 THAT THE CONSULTATION INCLUDES A CONSUMER EDUCATION PROGRAM.

3 (b) Monthly maintenance fee.--When a consumer and a licensee
4 have entered into a debt management services agreement, the
5 licensee may charge the consumer a monthly maintenance fee not
6 to exceed \$10 times the number of accounts ~~remaining~~ INITIALLY <—
7 INCLUDED under the agreement ~~for that month~~, provided that the <—
8 total monthly fee may not exceed \$50.

9 ~~(c) Insufficient funds fee. A licensee may charge a~~ <—
10 ~~consumer a reasonable fee for any payment made by the consumer~~
11 ~~to the licensee that is dishonored for insufficient funds.~~

12 ~~(d) Voluntary contributions prohibited. A licensee shall~~
13 ~~not require or accept a voluntary contribution from a consumer~~
14 ~~for any service provided to the consumer by the licensee.~~

15 ~~(e) Consumer education program fee. If a licensee provides~~
16 ~~a consumer education program to a consumer who is not receiving~~
17 ~~debt management services, the licensee may charge the consumer a~~
18 ~~fee of not more than \$50.~~

19 ~~(f) No other fees permitted. A licensee shall not charge a~~
20 ~~consumer any fees other than those described in subsection (a),~~
21 ~~(b), (c) or (e).~~

22 ~~(g) Actual costs. A licensee may charge a consumer for its~~
23 ~~actual cost in requesting the consumer's credit report.~~

24 (C) INSUFFICIENT FUNDS FEE.--A LICENSEE MAY COLLECT A FEE <—
25 FOR A SUBSEQUENT DISHONORED CHECK OR INSTRUMENT TAKEN IN
26 PAYMENT, NOT TO EXCEED THE SERVICE CHARGE PERMITTED TO BE
27 IMPOSED UNDER 18 PA.C.S. § 4105 (RELATING TO BAD CHECKS).

28 (D) ACTUAL COSTS.--A LICENSEE MAY CHARGE A CONSUMER FOR THE
29 ACTUAL COST IN REQUESTING THE CONSUMER'S CREDIT REPORT.

30 (E) CONTRIBUTIONS PROHIBITED.--A LICENSEE SHALL NOT REQUIRE

1 OR ACCEPT ANY CONTRIBUTION FROM A CONSUMER ON A DEBT MANAGEMENT
2 PLAN FOR SERVICES REGULATED PURSUANT TO THIS ACT UNLESS
3 OTHERWISE RESTRICTED BY REGULATIONS PROMULGATED BY THE
4 DEPARTMENT PURSUANT TO THIS ACT.

5 (F) EDUCATION OR COUNSELING FEE.--A LICENSEE MAY NOT CHARGE
6 A CONSUMER WHO ENTERS INTO A DEBT MANAGEMENT SERVICES AGREEMENT
7 ANY FEE FOR PROVIDING EDUCATION OR COUNSELING. IN THE EVENT THAT
8 A CONSUMER RECEIVES EDUCATION OR COUNSELING FROM A LICENSEE
9 SUBJECT TO A FEE OR CHARGE WITHOUT ENTERING INTO A DEBT
10 MANAGEMENT SERVICES AGREEMENT AND SUBSEQUENTLY ENTERS INTO A
11 DEBT MANAGEMENT SERVICES AGREEMENT WITH THE LICENSEE WITHIN FOUR
12 MONTHS OF BEGINNING THE EDUCATION OR COUNSELING, THE LICENSEE
13 SHALL REFUND THE FEE CHARGED FOR THE EDUCATION OR COUNSELING.

14 (G) FEES SUBJECT TO DEBT MANAGEMENT PLAN AGREEMENT.--A
15 LICENSEE MAY NOT IMPOSE CHARGES OR RECEIVE PAYMENT FOR DEBT
16 MANAGEMENT SERVICES UNTIL THE LICENSEE AND THE CONSUMER HAVE
17 SIGNED A DEBT MANAGEMENT SERVICES AGREEMENT.

18 (H) NO OTHER FEES PERMITTED.--A LICENSEE SHALL NOT CHARGE A
19 CONSUMER ANY FEES OTHER THAN THOSE DESCRIBED IN THIS SECTION OR
20 BY REGULATION PROMULGATED BY THE DEPARTMENT FOR SERVICES
21 REGULATED PURSUANT TO THIS ACT.

22 (I) FEE LIMITS.--FOR THE 12-MONTH PERIOD BEGINNING WITH THE
23 EFFECTIVE DATE OF THIS ACT, AND ANNUALLY THEREAFTER, THE FEE
24 LIMITS PROVIDED IN THIS SECTION SHALL BE INCREASED BY THE
25 PERCENTAGE OF CHANGE, IF ANY, IN THE CONSUMER PRICE INDEX FOR
26 ALL URBAN CONSUMERS FOR THE PENNSYLVANIA, NEW JERSEY, DELAWARE
27 AND MARYLAND AREA FOR THE MOST RECENT 12-MONTH PERIOD FOR WHICH
28 FIGURES ARE OFFICIALLY REPORTED BY THE UNITED STATES DEPARTMENT
29 OF LABOR, BUREAU OF LABOR STATISTICS, IMMEDIATELY PRIOR TO THE
30 DATE THE ADJUSTMENT IS DUE TO TAKE EFFECT, BUT IN NO EVENT SHALL

1 DEFLATION RESULT IN A NEGATIVE COST-OF-LIVING ADJUSTMENT.

2 Section 16. Violations.

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

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

11 (C) UNFAIR TRADE PRACTICES.--A PERSON WHO ENGAGES IN THE <—
12 BUSINESS OF OFFERING, SOLICITING OR PROVIDING DEBT MANAGEMENT
13 SERVICES OR DEBT SETTLEMENT SERVICES WITHOUT BEING LICENSED
14 UNDER OR EXEMPT FROM THE LICENSING PROVISIONS OF THIS ACT, OR IS
15 OTHERWISE IN VIOLATION OF THIS ACT IN ANY WAY, SHALL BE IN
16 VIOLATION OF THE ACT OF DECEMBER 17, 1968 (P.L.1224, NO.387),
17 KNOWN AS THE UNFAIR TRADE PRACTICES AND CONSUMER PROTECTION LAW.

18 Section 17. Powers and duties of department.

19 The department shall HAVE THE AUTHORITY TO: <—

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 (1) EXAMINE ANY INSTRUMENT, DOCUMENT, ACCOUNT, BOOK, <—
30 RECORD OR FILE OF A LICENSEE OR ANY PERSON HAVING A

1 CONNECTION TO THE LICENSEE OR MAKE OTHER INVESTIGATION AS MAY
2 BE NECESSARY TO ADMINISTER THE PROVISIONS OF THIS ACT. THE
3 EXAMINATION MAY INCLUDE DOCUMENTS, ACCOUNTS, BOOKS OR RECORDS
4 THAT RELATE TO THE OPERATION OF THE LICENSEE THAT ARE IN THE
5 POSSESSION OF AN AFFILIATE, SUBSIDIARY OR OTHER BUSINESS
6 ENTITY. PURSUANT TO THIS AUTHORITY, THE DEPARTMENT MAY REMOVE
7 ANY INSTRUMENT, DOCUMENT, ACCOUNT, BOOK, RECORD OR FILE OF A
8 LICENSEE OR PERSON TO A LOCATION OUTSIDE OF THE LICENSEE'S OR
9 PERSON'S OFFICE LOCATION. THE EXAMINATION MAY BE CONDUCTED
10 WITHOUT PRIOR NOTICE TO THE LICENSEE OR PERSON AND THE COSTS
11 OF THE EXAMINATION SHALL BE BORNE BY THE LICENSEE OR PERSON
12 SUBJECT TO THE EXAMINATION.

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

22 (3) Request and receive information or records of any
23 kind, including reports of criminal history record
24 information, from any Federal, State, local or foreign
25 government entity regarding an applicant, a licensee or a
26 person related to the business of debt management services.
27 The cost associated with the request shall be paid by the
28 applicant or licensee.

29 (4) Promulgate regulations or issue statements of policy
30 or orders to ensure the proper administration or enforcement

1 of this act AND THE PROPER CONDUCT OF LICENSEES UNDER THIS <—
2 ACT.

3 (5) Prohibit a person OR LICENSEE who violates this act <—
4 from working in any capacity related to activities regulated
5 by the department.

6 (6) Order a person OR LICENSEE to make restitution for <—
7 actual damages to consumers caused by a violation of this act
8 OR TO REFUND FEES COLLECTED IN VIOLATION OF THIS ACT. <—

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

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

15 (9) PROVIDE THE FOLLOWING ON ITS INTERNET WEBSITE: <—

16 (I) INFORMATION FOR LICENSEES ON THE PROVISIONS OF
17 THIS ACT.

18 (II) INFORMATION FOR CONSUMERS REGARDING THE
19 PROTECTIONS OF THIS ACT.

20 (III) INFORMATION ON FILING CONSUMER COMPLAINTS,
21 INCLUDING A TOLL-FREE TELEPHONE NUMBER.

22 (IV) A LIST OF CURRENT LICENSEES.

23 (10) EXCEPT FOR THE INFORMATION SPECIFIED IN SECTION
24 5(7), MAKE THE INFORMATION COLLECTED UNDER SECTION 5
25 AVAILABLE TO THE PUBLIC UPON REQUEST TO THE DEPARTMENT
26 PURSUANT TO THE ACT OF FEBRUARY 14, 2008 (P.L.6, NO.3), KNOWN
27 AS THE RIGHT-TO-KNOW LAW.

28 Section 18. Administrative proceedings.

29 (a) Hearings.--A person aggrieved by a decision of the
30 department may appeal the decision to the secretary. The appeal

1 shall be conducted under 2 Pa.C.S. Ch. 5 Subch. A (relating to
2 practice and procedure of Commonwealth agencies).

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

6 (c) Final orders.--

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

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

13 (d) Appeals.--A person aggrieved by a decision of the
14 secretary may appeal the decision under 2 Pa.C.S. Ch. 7 Subch. A
15 (relating to judicial review of Commonwealth agency action).
16 Section 19. Banking Department Fund.

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

19 Section 20. Transition.

20 A person who provides debt management services before the
21 effective date of this section ~~and~~, WHO IS NOT THEN ACTING IN <—
22 VIOLATION OF 18 PA.C.S. § 7312 (RELATING TO DEBT POOLING) AND
23 WHO seeks to continue providing such services must submit an
24 application for a license under this act within 45 days of the
25 effective date of this section. The applicant may continue to
26 provide debt management services provisionally, according to the
27 requirements of this act, while the department processes the
28 application for licensure.

29 SECTION 21. EXEMPTION FROM OTHER STATUTES. <—

30 A LICENSEE UNDER THIS ACT SHALL NOT BE SUBJECT TO THE

1 PROVISIONS OF THE ACT OF SEPTEMBER 2, 1965 (P.L.490, NO.249),
2 REFERRED TO AS THE MONEY TRANSMISSION BUSINESS LICENSING LAW, TO
3 THE EXTENT THAT THE LICENSEE TRANSMITS MONEY PURSUANT TO THE
4 TERMS OF A DEBT MANAGEMENT SERVICES OR DEBT SETTLEMENT SERVICES
5 AGREEMENT.

6 SECTION 48. APPLICABILITY.

7 THE PROVISIONS OF THIS ACT SHALL APPLY TO:

8 (1) ANY DEBT MANAGEMENT SERVICES AGREEMENT OR DEBT
9 SETTLEMENT SERVICES AGREEMENT WHICH IS:

10 (I) NEGOTIATED, OFFERED OR OTHERWISE TRANSACTED
11 WITHIN THIS COMMONWEALTH, IN WHOLE OR IN PART, WHETHER BY
12 THE LICENSEE OR ANY OTHER PERSON;

13 (II) MADE OR EXECUTED WITHIN THIS COMMONWEALTH AFTER
14 THE EFFECTIVE DATE OF THIS ACT; OR

15 (III) NOTWITHSTANDING THE PLACE OF EXECUTION,
16 ENTERED INTO WITH A RESIDENT OF THIS COMMONWEALTH.

17 (2) ANY PERSON WHO ENGAGES IN DEBT MANAGEMENT SERVICES
18 OR DEBT SETTLEMENT SERVICES IN THIS COMMONWEALTH.

19 Section 49. Repeal.

20 The act of December 16, 1992 (P.L.1144, No.150), known as the
21 Credit Services Act, is repealed insofar as it is inconsistent
22 with this act.

23 Section 50. Effective date.

24 This act shall take effect in ~~60~~ 120 days.

<—