

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1193 Session of
2011

INTRODUCED BY WARD, D. WHITE, MENSCH, HUGHES, WAUGH, SOLOBAY,
SCHWANK, ERICKSON, RAFFERTY, TARTAGLIONE AND BRUBAKER,
JULY 21, 2011

REFERRED TO BANKING AND INSURANCE, JULY 21, 2011

AN ACT

1 Providing for the licensure of persons providing debt settlement
2 services, for powers and duties of the Department of Banking
3 and for enforcement; and making a related repeal.

4 The General Assembly of the Commonwealth of Pennsylvania
5 hereby enacts as follows:

6 CHAPTER 1

7 PRELIMINARY PROVISIONS

8 Section 101. Short title.

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

11 Section 102. 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 "Affiliate." Any of the following:

16 (1) A person hat directly controls, is controlled by or
17 is under common control with the licensee.

18 (2) An officer of or an individual performing similar

functions with respect to the licensee.

(3) A director of or an individual performing similar functions with respect to the licensee.

(4) An officer or director of or an individual performing similar functions with respect to a person described in paragraph (1).

"Agreement." An agreement between a provider and an individual for the performance of debt settlement services.

"Bank." A financial institution, including a commercial bank, savings bank, savings and loan association, credit union, mortgage bank and trust company, engaged in the business of banking, chartered under Federal or state law and regulated by a Federal or state banking regulatory authority.

"Concessions." Assent to repayment of a debt on terms more favorable to an individual than the terms of the contract between the individual and a creditor.

"Debt settlement services." Services as an intermediary between an individual and one or more unsecured creditors of the individual for the purpose of obtaining concessions where the contemplated concessions involve a reduction in principal of the individual's unsecured debt, but does not include:

(1) Legal services provided in an attorney-client relationship by an attorney licensed or otherwise authorized to practice law in this Commonwealth.

(2) Accounting services provided in an accountant-client relationship by a certified public accountant licensed to provide accounting services in this Commonwealth.

(3) Financial planning services provided in a financial planner-client relationship by a licensed member of a financial planning profession.

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

2 "Good faith." Honesty in fact and the observance of
3 reasonable standards of fair dealing.

4 "Person." An individual, corporation, business trust,
5 estate, trust, partnership, limited liability company,
6 association, joint venture or any other legal or commercial
7 entity. The term does not include a public corporation,
8 government or governmental subdivision, agency or
9 instrumentality.

10 "Principal amount of the debt." The amount of a debt at the
11 time of the execution of the agreement.

12 "Program." A program or strategy in which a provider
13 furnishes debt settlement services.

14 "Provider." A person required to be registered pursuant to
15 this act and that provides, offers to provide or agrees to
16 provide debt settlement services.

17 "Record." Information that is inscribed on a tangible medium
18 or that is stored in an electronic or other medium and is
19 retrievable in perceivable form.

20 Section 103. Nonapplicability.

21 (a) Providers.--This act does not apply to a provider to the
22 extent that the provider receives no compensation for debt
23 settlement services from or on behalf of the individuals to whom
24 it provides the services or from their creditors.

25 (b) Certain persons.--This act does not apply to the
26 following persons or their employees when the person or the
27 employee is engaged in the regular course of the person's
28 business or profession:

29 (1) A judicial officer, a person acting under an order
30 of a court or an administrative agency or an assignee for the

benefit of creditors.

(2) A bank, bank holding company or the subsidiary, agent or affiliate of either, or a credit union or other financial institution licensed under Federal or state law.

(3) A title insurer, escrow company or other person that provides bill-paying services if the provision of debt settlement services is incidental to the bill-paying services.

CHAPTER 3

LICENSING

Section 301. Licensing required.

(a) General rule.--Except as otherwise provided in subsection (b), on or after July 1, 2012, a provider may not provide debt settlement services to an individual who it reasonably should know resides in this Commonwealth at the time it agrees to provide the services, unless the provider is licensed under this act.

(b) Nonapplicability.--If a provider is licensed under this act, subsection (a) does not apply to an employee or agent of the provider.

(c) Listing.--The department shall maintain and publicize a list of the names of all licensed providers.

Section 302. Form of application and required documentation.

(a) Form.--An application for licensure as a provider must be in a form prescribed by the department.

(b) Fee and documentation.--Subject to adjustment of dollar amounts pursuant to section 901(f), an application for licensure as a provider must be accompanied by:

(1) The fee established by the department.

(2) Evidence of minimum insurance in an amount specified

1 by the department.

2 (3) In lieu of the aggregate umbrella insurance, a
3 surety bond filed with the department, in a form approved by
4 the department, for a term no less than the expiration of the
5 license and in the amount of not less than \$10,000 or other
6 larger amount that the department determines is warranted by
7 the financial condition and business experience of the
8 provider, the history of the provider in performing debt
9 settlement services, the risk to individuals and any other
10 factor the department considers appropriate, but in no event
11 greater than \$50,000. The surety bond shall run to the
12 Commonwealth for the benefit of this Commonwealth and of
13 individuals who reside in this Commonwealth when they agree
14 to receive debt settlement services from the provider, as
15 their interests may appear, payment of which is conditioned
16 upon noncompliance of the provider or its agent with this
17 act.

18 (4) Proof that the provider is authorized by the laws of
19 this Commonwealth to conduct business in this Commonwealth.
20 Section 303. Required information for application.

21 An application for licensure must be signed by the applicant
22 and declare as true any material matter pursuant to the
23 application for licensure. The application form shall contain a
24 statement informing the applicant that a false or dishonest
25 answer to a question may be grounds for denial or subsequent
26 suspension or revocation of the applicant's license. An
27 application shall include the following:

28 (1) The applicant's name, principal business address and
29 telephone number, and all other business addresses in this
30 Commonwealth, electronic mail addresses and Internet website

1 addresses.

2 (2) All names under which the applicant conducts
3 business.

4 (3) The address of each location in this Commonwealth at
5 which the applicant will provide debt settlement services or
6 a statement that the applicant will have no such location.

7 (4) The name and home address of each officer and
8 director of the applicant and each person that owns at least
9 10% of the applicant's business.

10 (5) A statement describing, to the extent it is known or
11 should be known by the applicant, any material civil or
12 criminal judgment relating to financial fraud or misuse and
13 any material administrative or enforcement action relating to
14 financial fraud or misuse by a governmental agency in any
15 jurisdiction against the applicant, any of its officers,
16 directors, owners or agents.

17 (6) A copy of each form of agreement that the applicant
18 will use with individuals who reside in this Commonwealth.

19 (7) The schedule of fees and charges that the applicant
20 will use with individuals who reside in this Commonwealth.

21 (8) A copy or description of the financial analysis or
22 budget that the provider will use in reviewing an
23 individual's financial condition.

24 (9) A description of any ownership interest of at least
25 10% by a director, owner or employee of the applicant in:

26 (i) any affiliate of the applicant; or

27 (ii) any entity that provides products or services
28 to the applicant or any individual relating to the
29 applicant's debt settlement services.

30 (10) The identity of each director who is an affiliate

1 of the applicant.

2 (11) The applicant's financial statements, reviewed by
3 an accountant licensed in the state of the applicant's
4 principal place of business, for each of the two years
5 immediately preceding the application or, if the applicant
6 has not been in operation for the two years preceding the
7 application, for the period of its existence.

8 (12) Evidence that the provider has a resident agent in
9 this Commonwealth for service of process.

10 (13) A description of the three most commonly used
11 educational programs that the applicant provides or intends
12 to provide to individuals who agree to use the provider's
13 services and a copy of any materials used or to be used in
14 those programs.

15 Section 304. Obligation to update application information.

16 An applicant or licensed provider shall notify the department
17 within 60 days after a change in the information specified in
18 section 302(b)(2) or section 303(1), (3) or (5).

19 Section 305. Public availability of application information.

20 Except the addresses required by section 303(4) and the
21 proprietary information required by section 303(8), (9), (10)
22 and (11), the department shall make the information in an
23 application for licensure and renewal of licensure as a provider
24 available to the public.

25 Section 306. Certificate of licensure.

26 (a) Issuance.--Except as otherwise provided in subsection
27 (b), the department shall issue a certificate of licensure as a
28 provider to a person that complies with sections 302 and 303.

29 (b) Grounds for denial.--The department may deny licensure
30 if:

1 (1) The application contains information that is
2 materially erroneous or incomplete.

3 (2) An officer, director or owner of the applicant has
4 been convicted of a crime, or suffered a civil judgment,
5 involving dishonesty or the violation of Federal or state
6 securities laws.

7 (3) The application is not accompanied by the fee
8 established by the department.

9 (4) There is reasonable evidence to support the
10 department's opinion that the applicant will not operate as a
11 debt settlement services provider in a lawful, honest and
12 fair manner.

13 Section 307. Procedure for licensure.

14 (a) Time frame.--The department shall approve or deny an
15 initial license as a provider within 60 days after an
16 application is filed. The department may extend the 60-day
17 period for not more than 45 days. Within seven days after
18 denying an application, the department, in a record, shall
19 inform the applicant of the reasons for the denial.

20 (b) Appeal.--If the department denies an application for
21 licensure as a provider or does not act on an application within
22 the time prescribed in subsection (a), the applicant may appeal
23 and request a hearing under 2 Pa.C.S. (relating to
24 administrative law and procedure).

25 (c) Validity.--Subject to section 308(d), a license as a
26 provider is valid for one year.

27 (d) Interim period.--Upon submission of an application for
28 licensure and until such time as an application is approved or
29 denied, the applicant may continue to provide debt settlement
30 services, but a denial of licensure terminates any further power

1 to provide services unless approved by the department.

2 Section 308. License renewal.

3 (a) Annual renewal.--A provider must obtain a renewal of its
4 license annually.

5 (b) Application.--An application for renewal of a license as
6 a provider must be in a form prescribed by the department,
7 signed under penalty of false statement, and:

8 (1) Be filed not less than 30 days nor more than 60 days
9 before the registration expires.

10 (2) Be accompanied by the fee established by the
11 department.

12 (3) Disclose any changes in the information contained in
13 the applicant's application for licensure or its immediately
14 previous application for renewal, as applicable.

15 (4) Provide any other information that the department
16 reasonably requires to perform the department's duties under
17 this section.

18 (c) Public information.--Except for the information required
19 by section 303(4), (8), (9), (10) and (11), the department shall
20 make the information in an application for renewal of licensure
21 as a provider available to the public.

22 (d) Effectiveness.--If a licensed provider files a timely
23 and complete application for renewal of licensure, the license
24 remains effective until the department, in a record, notifies
25 the applicant of a denial and states the reasons for the denial.

26 (e) Appeal.--If the department denies an application for
27 renewal of licensure as a provider, the applicant, within 30
28 days after receiving notice of the denial, may appeal and
29 request a hearing under 2 Pa.C.S. (relating to administrative
30 law and procedure), subject to section 903. While the appeal is

1 pending, the applicant shall continue to provide debt settlement
2 services to individuals with whom it has agreements. If the
3 denial is affirmed, subject to the department's order and
4 section 904, the applicant shall continue to provide debt
5 settlement services to individuals with whom it has agreements
6 until, with the approval of the department, it transfers the
7 agreements to another licensed provider.

8 Section 309. Licensure in another state.

9 If a provider holds a license or certificate of registration
10 in another state authorizing it to provide debt settlement
11 services, the provider may submit a copy of that license or
12 certificate and the application for it instead of an application
13 in the form prescribed by section 302(a), 303 or 308(b). The
14 department shall accept the application and the license or
15 certificate from the other state as an application for
16 registration as a provider or for renewal of registration as a
17 provider, as appropriate, in this Commonwealth if:

18 (1) The application in the other state contains
19 information substantially similar to or more comprehensive
20 than that required in an application submitted in this
21 Commonwealth.

22 (2) The applicant, under penalty of false statement,
23 certifies that the information contained in the application
24 is current or, to the extent it is not current, supplements
25 the application to make the information current.

26 CHAPTER 5

27 PROVIDER RESPONSIBILITIES

28 Section 501. Requirement of good faith.

29 A provider shall act in good faith in all matters under this
30 act.

1 Section 502. Customer service.

2 A provider that is required to be licensed under this act
3 shall maintain a toll-free communication system, staffed at a
4 level that reasonably permits an individual to speak to a
5 customer-service representative, as appropriate, during ordinary
6 business hours.

7 Section 503. Prerequisites for providing debt settlement
8 services.

9 (a) List of goods and services.--Before providing debt
10 settlement services, a licensed provider shall give the
11 individual an itemized list of goods and services and the
12 charges for each. The list must be clear and conspicuous.

13 (b) Financial analysis required.--A provider may not furnish
14 debt settlement services unless the provider has prepared a
15 financial analysis.

16 (c) Financial analysis copy and information.--Before an
17 individual assents to an agreement to engage in a program, a
18 provider shall:

19 (1) Provide the individual with a copy of the analysis
20 required by subsection (b) in a record that identifies the
21 provider and that the individual may keep whether or not the
22 individual assents to the agreement.

23 (2) Inform the individual of the availability, at the
24 individual's option, of assistance by a toll-free
25 communication system or in person to discuss the financial
26 analysis required by subsection (b).

27 (d) Information to be provided.--Before an individual
28 assents to an agreement to engage in a program, the provider
29 shall inform the individual of the following:

30 (1) Programs are not suitable for all individuals.

1 (2) Participation in a program may adversely affect the
2 individual's credit rating or credit scores.

3 (3) Nonpayment of debt may lead creditors to increase
4 finance and other charges or undertake collection activity,
5 including litigation.

6 (4) Unless the individual is insolvent, if a creditor
7 settles for less than the full amount of the debt, the
8 program may result in the creation of taxable income to the
9 individual, even though the individual does not receive any
10 money.

11 (5) Specific results cannot be predicted or guaranteed
12 and the provider cannot force negotiations or settlements
13 with creditors but will advocate solely on behalf of the
14 individual.

15 (6) Programs require that individuals meet a certain
16 savings goal in order to maximize settlement results.

17 (7) The provider does not provide accounting or legal
18 advice to individuals, unless the provider is professionally
19 licensed to provide such advice.

20 (8) The provider does not make monthly payments to the
21 individual's creditors.

22 (9) The name and business address of the provider.
23 Section 504. Communication by electronic or other means.

24 (a) Compliance.--A provider may satisfy the requirements of
25 sections 503, 505 and 512 by means of the Internet or other
26 electronic means if the provider obtains a consumer's consent in
27 the manner provided by section 101(c)(1) of the Electronic
28 Signatures in Global and National Commerce Act (Public Law
29 106-229, 15 U.S.C. § 7001 et seq.).

30 (b) Form.--The disclosures and materials required by

sections 503, 505 and 512 shall be presented in a form that is capable of being accurately reproduced for later reference.

(c) Written copy.--At the time of providing the materials and agreement required by sections 503(c) and (d), 505 and 512, a provider shall inform the individual that upon electronic, telephonic or written request, it will send the individual a written copy of the materials and shall comply with a request as provided in subsection (f).

(d) Request for written copy.--If a provider is requested, before the expiration of 90 days after a program is completed or terminated, to send a written copy of the materials required by sections 503(c) and (d), 505 and 512, the provider shall send the copy at no charge within three business days after the request, but the provider need not comply with a request more than once per calendar month or if it reasonably believes the request is made for purposes of harassment. If a request is made more than 90 days after a program is completed or terminated, the provider shall send within a reasonable time a written copy of the materials requested.

(e) Disclosure.--A provider that maintains an Internet website shall disclose on the home page of its Internet website or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals its contents:

(1) Its name and all names under which it does business.

(2) Its principal business address, telephone number and electronic mail address, if any.

(f) Withdrawal of consent.--Subject to subsection (g), if a consumer who has consented to electronic communication in the manner provided by section 101 of the Electronic Signatures in Global and National Commerce Act (Public Law 106-229, 15 U.S.C.

§ 7001 et seq.), withdraws consent as provided in the Electronic Signatures in Global and National Commerce Act, a provider may terminate its agreement with the consumer.

(g) Termination of agreement.--If a provider wishes to terminate an agreement with a consumer pursuant to subsection (f), it shall notify the consumer that it will terminate the agreement unless the consumer, within 30 days after receiving the notification, consents to electronic communication in the manner provided in section 101(c) of the Electronic Signatures in Global and National Commerce Act.

(h) Definition.--As used in this section, the term "consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family or household purposes.

Section 505. Form and contents of agreement.

(a) Form and contents.--An agreement must:

(1) Be in a record.

(2) Be dated and signed by the individual.

(3) Include the name of the individual and the address where the individual resides.

(4) Include the name, business address and telephone number of the provider.

(5) Be delivered to the individual immediately upon formation of the agreement.

(6) Disclose the following:

(i) The services to be provided.

(ii) The amount, or method of determining the amount, of all fees, individually itemized, to be paid by the individual.

(iii) How the provider will comply with its

obligations under section 512(a).

(iv) That the individual may cancel the agreement as provided in this chapter.

(v) That the individual may contact the department with any questions or complaints regarding the provider.

(vi) The address, telephone number and Internet address or Internet website of the department.

(b) Delivery.--For purposes of subsection (a)(5), delivery of an electronic record occurs when it is made available in a format in which the individual may retrieve, save and print it, and the individual is notified that it is available.

(c) Termination provision.--An agreement must provide that the individual has a right to terminate the agreement at any time by giving the provider written or electronic notice, in which event all powers of attorney granted by the individual to the provider are revoked and ineffective.

(d) Restrictions.--An agreement may not:

(1) Provide for application of the law of any jurisdiction other than the United States and this Commonwealth.

(2) Except as permitted by 9 U.S.C. § 2 (relating to validity, irrevocability, and enforcement of agreements to arbitrate) and 42 Pa.C.S. Ch. 73 (relating to arbitration), contain a provision that modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are generally available to the individual under law other than this act.

(3) Contain a provision that restricts the individual's remedies under this act or law other than this act.

(4) Contain a provision that:

1 (i) Limits or releases the liability of any person
2 for not performing the agreement or for violating this
3 act.

4 (ii) Indemnifies any person for liability arising
5 under the agreement or this act.

6 (e) Other rights and obligations.--All rights and
7 obligations specified in subsection (d) and section 506 exist
8 even if not provided in the agreement.

9 Section 506. Bank accounts.

10 A provider may request or require an individual to place
11 funds in an account, separate from the individual's then-
12 existing bank account, to be used for the provider's fees and
13 for payments to creditors or debt collectors in connection with
14 the debt settlement services provided that:

15 (1) The funds are held in an account at an insured
16 financial institution.

17 (2) The individual owns the funds held in the account
18 and is paid accrued interest on the account, if any.

19 (3) The entity administering the account is not owned or
20 controlled by, or in any way affiliated with, the provider.

21 (4) The entity administering the account does not give
22 or accept any money or other compensation in exchange for
23 referrals of business involving the provider or program.

24 (5) The individual may withdraw from the debt settlement
25 program at any time without penalty, and must immediately
26 receive all funds in the account, other than fees earned in
27 compliance with section 511.

28 Section 507. Required language.

29 Unless the department, by regulation, provides otherwise, the
30 disclosures and documents required by this act must be in

1 English. If a provider communicates with an individual primarily
2 in a language other than English, the provider must furnish a
3 translation into the other language of the disclosures and
4 documents required by this act.

5 Section 508. Fees and other charges.

6 (a) Prohibition.--A provider may not impose, directly or
7 indirectly, a fee or other charge on an individual or receive
8 money from or on behalf of an individual for debt settlement
9 services except as permitted by this section.

10 (b) Conditions.--A provider may not request or receive
11 payment of any fee or consideration until and unless:

12 (1) the provider has settled the terms of at least one
13 debt pursuant to a settlement agreement or other such valid
14 contractual agreement executed by the individual;

15 (2) the individual has made at least one payment
16 pursuant to that settlement agreement or other valid
17 contractual agreement between the individual and the creditor
18 or debt collector; and

19 (3) the fee or consideration either:

20 (i) bears the same proportional relationship to the
21 total fee for settling the terms of the entire debt
22 balance as the individual debt amount bears to the entire
23 debt amount. The individual debt amount and the entire
24 debt amount are those owed at the time the debt was
25 enrolled in the service; or

26 (ii) is a percentage of the amount saved as a result
27 of the settlement. The percentage charged cannot change
28 from one individual debt to another. The amount saved is
29 the difference between the amount owed at the time the
30 debt was enrolled in the plan and the amount actually

1 paid to satisfy the debt.

2 (c) Agreement.--A provider may not impose charges or receive
3 payment for debt settlement services until the provider and the
4 individual have signed an agreement that complies with sections
5 505 and 701.

6 (d) Payment dishonored.--If a payment to a provider by an
7 individual under this act is dishonored, a provider may impose a
8 reasonable charge to the individual, not to exceed the amount
9 permitted by law.

10 Section 509. Voluntary contributions.

11 A provider may not solicit a voluntary contribution from an
12 individual or an affiliate of the individual for any service
13 provided to the individual.

14 Section 510. Voidable agreements.

15 (a) Unauthorized fees.--If a provider imposes a fee or other
16 charge or receives money or other payments not authorized by
17 section 508, the individual may void the agreement and recover
18 as provided in section 905.

19 (b) Nonregistered provider.--If a provider is not registered
20 as required by this act when an individual assents to an
21 agreement, the agreement is voidable by the individual.

22 (c) Claim.--If an individual voids an agreement under this
23 section, the provider does not have a claim against the
24 individual for breach of contract or for restitution.

25 Section 511. Termination of agreement.

26 If an individual who has entered into a fee agreement fails
27 for 60 days to make payments required by the agreement, a
28 provider may terminate the agreement.

29 Section 512. Periodic reports and retention of records.

30 (a) Accounting.--If a creditor has agreed to accept as

1 payment in full an amount less than the principal amount of the
2 debt owed by an individual, a provider who has established a
3 program for the individual shall document, in a record, an
4 accounting of all of the following:

5 (1) The amount the creditor accepts as settlement in
6 full of the debt.

7 (2) Any other terms of the settlement.

8 (3) The amount of the debt when the creditor agreed to
9 the settlement.

10 (4) For providers using fee agreements that calculate
11 any portion of the fee based on a percentage of savings the
12 individual realizes from a settled debt, the calculation of
13 that fee.

14 (b) Records.--A provider shall maintain records for each
15 individual for whom it provides debt settlement services for
16 four years after the final payment made by the individual and
17 produce a copy of them to the individual within a reasonable
18 time after a request for them. The provider may use electronic
19 or other means of storage of the records.

20 CHAPTER 7

21 VIOLATIONS

22 Section 701. Prohibited acts and practices.

23 A provider may not:

24 (1) Exercise or attempt to exercise a power of attorney
25 after an individual has terminated an agreement.

26 (2) Initiate a transfer from an individual's account at
27 a bank or with another person unless the transfer is:

28 (i) A return of money to the individual.

29 (ii) Before termination of an agreement, properly
30 authorized by the agreement and this act, for payment of

1 a fee.

2 (iii) In payment of a creditor to fund a negotiated
3 settlement authorized by the individual.

4 (3) Structure a settlement in a manner that would result
5 in a negative amortization of any of an individual's debts.

6 (4) Settle a debt or lead an individual to believe that
7 a payment to a creditor is in settlement of a debt to the
8 creditor unless, at the time of settlement, the individual
9 receives a certification or confirmation by the creditor that
10 the payment is in full settlement of the debt, or is part of
11 a payment plan that is in full settlement of the debt.

12 (5) Make a representation that:

13 (i) The provider will furnish money to pay bills or
14 prevent attachments.

15 (ii) Payment of a certain amount will guarantee
16 satisfaction of a certain amount or range of
17 indebtedness.

18 (iii) Participation in a program will or may prevent
19 litigation, garnishment, attachment, repossession,
20 foreclosure, eviction or loss of employment.

21 (6) Represent that it is authorized or competent to
22 furnish legal advice or perform legal services unless such
23 advice or services are provided by a licensed attorney
24 working with the provider.

25 (7) Represent that it is a not-for-profit entity unless
26 it is organized and properly operating as a not-for-profit
27 under the law of the state in which it was formed or that it
28 is a tax-exempt entity unless it has received certification
29 of tax-exempt status from the Internal Revenue Service.

30 (8) Take a confession of judgment or power of attorney

1 to confess judgment against an individual.

2 (9) Employ an unfair, unconscionable or deceptive act or
3 practice, including the knowing omission of any material
4 information.

5 (10) Purchase a debt or obligation of the individual.

6 Section 702. Advertising.

7 A provider that advertises debt settlement services shall not
8 make statements that are misleading or deceptive, and the
9 advertisements shall not conflict with the information specified
10 in section 503(d)(2), (3) and (5).

11 CHAPTER 9

12 ADMINISTRATION AND ENFORCEMENT

13 Section 901. Powers of department.

14 (a) Action by department.--The department may act on its own
15 initiative or in response to complaints and may receive
16 complaints, take action to obtain voluntary compliance with this
17 act and seek or provide remedies as provided in this act.

18 (b) Investigation.--The department may investigate and
19 examine, in this Commonwealth or elsewhere, by subpoena or
20 otherwise, the activities, books, accounts and records of a
21 person that provides or offers to provide debt settlement
22 services, or a person to which a provider has delegated its
23 obligations under an agreement or this act, to determine
24 compliance with this act. Information that identifies
25 individuals who have agreements with the provider shall not be
26 disclosed to the public. In connection with the investigation,
27 the department may:

28 (1) Charge the person the reasonable expenses
29 necessarily incurred to conduct the examination.

30 (2) Require or permit a person to file a statement under

oath as to all the facts and circumstances of a matter to be investigated.

(c) Regulations.--The department may adopt regulations to implement the provisions of this act.

(d) Fees.--The department, by rule, shall establish reasonable fees to be paid by providers for the expense of administering this act. The department shall use fees collected under this act to defray the costs of administering this act.

(e) Adjustment.--The department, by rule, shall adopt dollar amounts instead of those specified in sections 302, 902 and 904 to reflect inflation, as measured by the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers or, if that index is not available, another index adopted by rule by the department. The department shall adopt a base year and adjust the dollar amounts, effective on July 1 of each year, if the change in the index from the base year, as of December 31 of the preceding year, is at least 10%. The dollar amount must be rounded to the nearest \$10.

(f) Notification.--The department shall notify registered providers of any change in dollar amounts made pursuant to subsection (e) and make that information available to the public.

Section 902. Administrative remedies.

(a) Enforcement.--The department may enforce this act and rules adopted under this act by taking one or more of the following actions:

(1) Ordering a provider or a director, employee or other agent of a provider to cease and desist from any violations.

(2) Ordering a provider or a person that has caused a violation to correct the violation, including making

1 restitution of money or property to a person aggrieved by a
2 violation.

3 (3) Imposing on a provider or a person that has caused a
4 violation a civil penalty not exceeding \$1,000 for each
5 violation.

6 (4) Prosecuting a civil action to enforce an order or to
7 obtain restitution or an injunction or other equitable
8 relief, or both.

9 (5) Intervening in an action brought under section 904.

10 (b) Additional penalty.--If a person violates or knowingly
11 authorizes, directs, or aids in the violation of a final order
12 issued under subsection (a) (1) or (2), the department may impose
13 an additional civil penalty not exceeding \$1,000 for each
14 violation.

15 (c) Costs.--The department may recover the reasonable costs
16 of enforcing this act under subsections (a) and (b), including
17 attorney fees.

18 (d) Factors.--In determining the amount of a civil penalty
19 to impose under subsection (a) or (b), the department shall
20 consider the seriousness of the violation, the good faith of the
21 violator, any previous violations by the violator, the
22 deleterious effect of the violation on the public, the net worth
23 of the violator and any other factor the department considers
24 relevant to the determination of the civil penalty.

25 Section 903. Suspension, revocation or nonrenewal of
26 registration.

27 (a) General rule.--The department may suspend, revoke or
28 deny renewal of a provider's registration if:

29 (1) A fact or condition exists that, if it had existed
30 when the registrant applied for registration as a provider,

would have been a reason for denying registration.

(2) The provider has committed a material violation of this act or a rule or order of the department under this act.

(3) The provider is insolvent.

(4) The provider or an employee or affiliate of the provider has refused to permit the department to make an examination authorized by this act, failed to comply with section 901(b)(2) within 30 days after request or made a material misrepresentation or omission in complying with section 901(b)(2).

(5) The provider has not responded within a reasonable time and in an appropriate manner to communications from the department.

(b) Appeal.--If the department suspends or revokes a provider's registration, the provider may appeal and request a hearing pursuant to 2 Pa.C.S. (relating to administrative law and procedure).

(c) Definition.--As used in this section, the term "insolvent" means:

(1) Having generally ceased to pay debts in the ordinary course of business other than as a result of good-faith dispute.

(2) Being unable to pay debts as they become due.

(3) Being insolvent within the meaning of 11 U.S.C (relating to bankruptcy).

Section 904. Private enforcement.

(a) Agreement voided.--If an individual voids an agreement under section 510, the individual may recover in a civil action all money paid by or on behalf of the individual pursuant to the agreement, in addition to the recovery under subsection (b)(3).

1 (b) Violation.--Subject to subsection (c), an individual
2 with respect to whom a licensee violates this act may recover in
3 a civil action from the provider and any person that caused the
4 violation:

5 (1) Compensatory damages for economic injury caused by
6 the violation.

7 (2) Except as otherwise provided in subsection (c) and
8 subject to adjustment of the dollar amount pursuant to
9 section 901(f), with respect to a violation of section 503,
10 505, 506, 507, 508, 512 or 701, the greater of the amount
11 recoverable under paragraph (1) or \$1,000.

12 (3) Reasonable attorney fees and costs.

13 (c) Class action.--In a class action, the minimum damages
14 provided in subsection (b)(2) do not apply.

15 (d) Additional recovery.--In addition to the remedy
16 available under subsection (b), if a provider violates an
17 individual's rights under section 506, the individual may
18 recover in a civil action all money paid by or on behalf of the
19 individual pursuant to the agreement, except for amounts paid to
20 creditors.

21 (e) Nonliability.--A provider is not liable under this
22 section for a violation of this act if the provider proves that
23 the violation was not intentional and resulted from a good faith
24 error notwithstanding the maintenance of procedures reasonably
25 adopted to avoid the error. If, in connection with a violation,
26 the provider has received more money than authorized by an
27 agreement or this act, the defense provided by this subsection
28 is not available unless the provider refunds the excess within
29 three business days after learning of the violation.

30 Section 905. Violation of unfair or deceptive practices

1 statute.

2 If an act or practice of a provider violates both this act
3 and the act of December 17, 1968 (P.L.1224, No.387), known as
4 the Unfair Trade Practices and Consumer Protection Law, an
5 individual may not recover under both for the same act or
6 practice.

7 CHAPTER 21

8 MISCELLANEOUS PROVISIONS

9 Section 2101. Relation to Electronic Signatures in Global and
10 National Commerce Act.

11 This act modifies, limits and supersedes the Electronic
12 Signatures in Global and National Commerce Act (Public Law
13 106-229, 15 U.S.C. § 7001 et seq.), but does not modify, limit
14 or supersede section 101(c) of the Electronic Signatures in
15 Global and National Commerce Act or authorize electronic
16 delivery of any of the notices described in section 103(b) of
17 the Electronic Signatures in Global and National Commerce Act.

18 Section 2102. Transitional provisions.

19 Transactions entered into before this act takes effect and
20 the rights, duties and interests resulting from them may be
21 completed, terminated or enforced as required or permitted by a
22 law amended, repealed or modified by this act as though the
23 amendment, repeal or modification had not occurred.

24 Section 2103. Repeal.

25 Repeals are as follows:

26 (1) The General Assembly declares that the repeal under
27 paragraph (2) is necessary to effectuate this act.

28 (2) The act of October 9, 2008 (P.L.1421, No.117), known
29 as the Debt Management Services Act, is repealed.

30 Section 2104. Effective date.

1 This act shall take effect in 60 days.