

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

SENATOR D. WHITE, BANKING AND INSURANCE, AS AMENDED, JUNE 20,
2012

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 PROVIDING FOR THE LICENSURE OF PERSONS PROVIDING DEBT SETTLEMENT ←
5 SERVICES, FOR POWERS AND DUTIES OF THE DEPARTMENT OF BANKING
6 AND FOR ENFORCEMENT; IMPOSING CIVIL PENALTIES; AND REPEALING
7 IN PART THE DEBT MANAGEMENT SERVICES ACT.

8 The General Assembly of the Commonwealth of Pennsylvania
9 hereby enacts as follows:

10 CHAPTER 1 ←

11 PRELIMINARY PROVISIONS

12 ~~Section 101. Short title.~~

13 ~~This act shall be known and may be cited as the Debt~~
14 ~~Settlement Services Act.~~

15 ~~Section 102. Definitions.~~

16 ~~The following words and phrases when used in this act shall~~
17 ~~have the meanings given to them in this section unless the~~
18 ~~context clearly indicates otherwise:~~

19 ~~"Affiliate." Any of the following:~~

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

~~(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.~~

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

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

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

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

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

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

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

~~Section 103. Nonapplicability.~~

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

~~(b) Certain persons. This act does not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person's~~

~~business or profession:~~

~~(1) A judicial officer, a person acting under an order 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~~

1 ~~as a provider must be accompanied by:~~

2 ~~(1) The fee established by the department.~~

3 ~~(2) Evidence of minimum insurance in an amount specified~~
4 ~~by the department.~~

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

21 ~~(4) Proof that the provider is authorized by the laws of~~
22 ~~this Commonwealth to conduct business in this Commonwealth.~~

23 ~~Section 303. Required information for application.~~

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

1 ~~(1) The applicant's name, principal business address and~~
2 ~~telephone number, and all other business addresses in this~~
3 ~~Commonwealth, electronic mail addresses and Internet website~~
4 ~~addresses.~~

5 ~~(2) All names under which the applicant conducts~~
6 ~~business.~~

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

10 ~~(4) The name and home address of each officer and~~
11 ~~director of the applicant and each person that owns at least~~
12 ~~10% of the applicant's business.~~

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

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

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

24 ~~(8) A copy or description of the financial analysis or~~
25 ~~budget that the provider will use in reviewing an~~
26 ~~individual's financial condition.~~

27 ~~(9) A description of any ownership interest of at least~~
28 ~~10% by a director, owner or employee of the applicant in:~~

29 ~~(i) any affiliate of the applicant; or~~

30 ~~(ii) any entity that provides products or services~~

~~to the applicant or any individual relating to the
applicant's debt settlement services.~~

~~(10) The identity of each director who is an affiliate
of the applicant.~~

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

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

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

~~Section 304. Obligation to update application information.~~

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

~~Section 305. Public availability of application information.~~

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

~~Section 306. Certificate of licensure.~~

~~(a) Issuance. Except as otherwise provided in subsection
(b), the department shall issue a certificate of licensure as a~~

~~provider to a person that complies with sections 302 and 303.~~

~~(b) Grounds for denial. The department may deny licensure if:~~

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

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

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

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

~~Section 307. Procedure for licensure.~~

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

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

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

~~(d) Interim period. Upon submission of an application for~~

~~licensure and until such time as an application is approved or denied, the applicant may continue to provide debt settlement services, but a denial of licensure terminates any further power to provide services unless approved by the department.~~

~~Section 308. License renewal.~~

~~(a) Annual renewal. A provider must obtain a renewal of its license annually.~~

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

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

~~(2) Be accompanied by the fee established by the department.~~

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

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

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

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

~~(e) Appeal. If the department denies an application for renewal of licensure as a provider, the applicant, within 30~~

~~days after receiving notice of the denial, may appeal and request a hearing under 2 Pa.C.S. (relating to administrative law and procedure), subject to section 903. While the appeal is pending, the applicant shall continue to provide debt settlement services to individuals with whom it has agreements. If the denial is affirmed, subject to the department's order and section 904, the applicant shall continue to provide debt settlement services to individuals with whom it has agreements until, with the approval of the department, it transfers the agreements to another licensed provider.~~

~~Section 309. Licensure in another state.~~

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

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

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

~~CHAPTER 5~~

~~PROVIDER RESPONSIBILITIES~~

~~Section 501. Requirement of good faith.~~

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

~~Section 502. Customer service.~~

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

~~Section 503. Prerequisites for providing debt settlement services.~~

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

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

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

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

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

~~(d) Information to be provided. Before an individual~~

~~assents to an agreement to engage in a program, the provider shall inform the individual of the following:~~

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

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

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

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

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

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

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

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

~~(9) The name and business address of the provider.~~

~~Section 504. Communication by electronic or other means.~~

~~(a) Compliance. A provider may satisfy the requirements of sections 503, 505 and 512 by means of the Internet or other electronic means if the provider obtains a consumer's consent in the manner provided by section 101(c)(1) of the Electronic~~

~~Signatures in Global and National Commerce Act (Public Law 106-229, 15 U.S.C. § 7001 et seq.).~~

~~(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~~

1 ~~amount, of all fees, individually itemized, to be paid by~~
2 ~~the individual.~~

3 ~~(iii) How the provider will comply with its~~
4 ~~obligations under section 512(a).~~

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

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

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

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

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

20 ~~(d) Restrictions. An agreement may not:~~

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

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

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

3 ~~(4) Contain a provision that:~~

4 ~~(i) Limits or releases the liability of any person~~
5 ~~for not performing the agreement or for violating this~~
6 ~~act.~~

7 ~~(ii) Indemnifies any person for liability arising~~
8 ~~under the agreement or this act.~~

9 ~~(e) Other rights and obligations. All rights and~~
10 ~~obligations specified in subsection (d) and section 506 exist~~
11 ~~even if not provided in the agreement.~~

12 ~~Section 506. Bank accounts.~~

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

18 ~~(1) The funds are held in an account at an insured~~
19 ~~financial institution.~~

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

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

24 ~~(4) The entity administering the account does not give~~
25 ~~or accept any money or other compensation in exchange for~~
26 ~~referrals of business involving the provider or program.~~

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

~~Section 507. Required language.~~

~~Unless the department, by regulation, provides otherwise, the disclosures and documents required by this act must be in English. If a provider communicates with an individual primarily in a language other than English, the provider must furnish a translation into the other language of the disclosures and documents required by this act.~~

~~Section 508. Fees and other charges.~~

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

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

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

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

~~(3) the fee or consideration either:~~

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

~~(ii) is a percentage of the amount saved as a result of the settlement. The percentage charged cannot change~~

1 ~~from one individual debt to another. The amount saved is~~
2 ~~the difference between the amount owed at the time the~~
3 ~~debt was enrolled in the plan and the amount actually~~
4 ~~paid to satisfy the debt.~~

5 ~~(c) Agreement. A provider may not impose charges or receive~~
6 ~~payment for debt settlement services until the provider and the~~
7 ~~individual have signed an agreement that complies with sections~~
8 ~~505 and 701.~~

9 ~~(d) Payment dishonored. If a payment to a provider by an~~
10 ~~individual under this act is dishonored, a provider may impose a~~
11 ~~reasonable charge to the individual, not to exceed the amount~~
12 ~~permitted by law.~~

13 ~~Section 509. Voluntary contributions.~~

14 ~~A provider may not solicit a voluntary contribution from an~~
15 ~~individual or an affiliate of the individual for any service~~
16 ~~provided to the individual.~~

17 ~~Section 510. Voidable agreements.~~

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

22 ~~(b) Nonregistered provider. If a provider is not registered~~
23 ~~as required by this act when an individual assents to an~~
24 ~~agreement, the agreement is voidable by the individual.~~

25 ~~(c) Claim. If an individual voids an agreement under this~~
26 ~~section, the provider does not have a claim against the~~
27 ~~individual for breach of contract or for restitution.~~

28 ~~Section 511. Termination of agreement.~~

29 ~~If an individual who has entered into a fee agreement fails~~
30 ~~for 60 days to make payments required by the agreement, a~~

~~provider may terminate the agreement.~~

~~Section 512. Periodic reports and retention of records.~~

~~(a) Accounting. If a creditor has agreed to accept as payment in full an amount less than the principal amount of the debt owed by an individual, a provider who has established a program for the individual shall document, in a record, an accounting of all of the following:~~

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

~~(2) Any other terms of the settlement.~~

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

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

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

~~CHAPTER 7~~

~~VIOLATIONS~~

~~Section 701. Prohibited acts and practices.~~

~~A provider may not:~~

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

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

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

~~(ii) Before termination of an agreement, properly authorized by the agreement and this act, for payment of a fee.~~

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

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

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

~~(5) Make a representation that:~~

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

~~(ii) Payment of a certain amount will guarantee satisfaction of a certain amount or range of indebtedness.~~

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

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

~~(7) Represent that it is a not for profit entity unless it is organized and properly operating as a not for profit under the law of the state in which it was formed or that it~~

~~is a tax exempt entity unless it has received certification
of tax exempt status from the Internal Revenue Service.~~

~~(8) Take a confession of judgment or power of attorney
to confess judgment against an individual.~~

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

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

~~Section 702. Advertising.~~

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

~~CHAPTER 9~~

~~ADMINISTRATION AND ENFORCEMENT~~

~~Section 901. Powers of department.~~

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

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

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

~~(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~~

1 ~~agent of a provider to cease and desist from any violations.~~

2 ~~(2) Ordering a provider or a person that has caused a~~
3 ~~violation to correct the violation, including making~~
4 ~~restitution of money or property to a person aggrieved by a~~
5 ~~violation.~~

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

9 ~~(4) Prosecuting a civil action to enforce an order or to~~
10 ~~obtain restitution or an injunction or other equitable~~
11 ~~relief, or both.~~

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

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

18 ~~(c) Costs. The department may recover the reasonable costs~~
19 ~~of enforcing this act under subsections (a) and (b), including~~
20 ~~attorney fees.~~

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

28 ~~Section 903. Suspension, revocation or nonrenewal of~~
29 ~~registration.~~

30 ~~(a) General rule. The department may suspend, revoke or~~

~~deny renewal of a provider's registration if:~~

~~(1) A fact or condition exists that, if it had existed 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).~~

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

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

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

~~(3) Reasonable attorney fees and costs.~~

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

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

~~(e) Nonliability. A provider is not liable under this section for a violation of this act if the provider proves that the violation was not intentional and resulted from a good faith error notwithstanding the maintenance of procedures reasonably adopted to avoid the error. If, in connection with a violation, the provider has received more money than authorized by an agreement or this act, the defense provided by this subsection~~

~~is not available unless the provider refunds the excess within
three business days after learning of the violation.~~

~~Section 905. Violation of unfair or deceptive practices
statute.~~

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

~~CHAPTER 21~~

~~MISCELLANEOUS PROVISIONS~~

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

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

~~Section 2102. Transitional provisions.~~

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

~~Section 2103. Repeal.~~

~~Repeals are as follows:~~

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

~~(2) The act of October 9, 2008 (P.L.1421, No.117), known
as the Debt Management Services Act, is repealed.
Section 2104. Effective date.
This act shall take effect in 60 days.~~

CHAPTER 1

PRELIMINARY PROVISIONS

SECTION 101. SHORT TITLE.

THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE DEBT
SETTLEMENT SERVICES ACT.

SECTION 102. DEFINITIONS.

THE FOLLOWING WORDS AND PHRASES WHEN USED IN THIS ACT SHALL
HAVE THE MEANINGS GIVEN TO THEM IN THIS SECTION UNLESS THE
CONTEXT CLEARLY INDICATES OTHERWISE:

"AFFILIATE." ANY OF THE FOLLOWING:

(1) A PERSON THAT DIRECTLY CONTROLS, IS CONTROLLED BY OR
IS UNDER COMMON CONTROL WITH THE LICENSEE.

(2) AN OFFICER OF OR INDIVIDUAL PERFORMING SIMILAR
FUNCTIONS WITH RESPECT TO THE LICENSEE.

(3) A DIRECTOR OF OR 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.

1 "CONCESSIONS." ASSENT TO REPAYMENT OF A DEBT ON TERMS MORE
2 FAVORABLE TO AN INDIVIDUAL THAN THE TERMS OF THE CONTRACT
3 BETWEEN THE INDIVIDUAL AND A CREDITOR.

4 "DEBT SETTLEMENT SERVICES." SERVICES AS AN INTERMEDIARY
5 BETWEEN AN INDIVIDUAL AND ONE OR MORE UNSECURED CREDITORS OF THE
6 INDIVIDUAL FOR THE PURPOSE OF OBTAINING CONCESSIONS WHERE THE
7 CONTEMPLATED CONCESSIONS INVOLVE A REDUCTION IN PRINCIPAL OF THE
8 INDIVIDUAL'S UNSECURED DEBT, BUT DOES NOT INCLUDE:

9 (1) LEGAL SERVICES PROVIDED IN AN ATTORNEY-CLIENT
10 RELATIONSHIP BY AN ATTORNEY LICENSED OR OTHERWISE AUTHORIZED
11 TO PRACTICE LAW IN THIS COMMONWEALTH.

12 (2) ACCOUNTING SERVICES PROVIDED IN AN ACCOUNTANT-CLIENT
13 RELATIONSHIP BY A CERTIFIED PUBLIC ACCOUNTANT LICENSED TO
14 PROVIDE ACCOUNTING SERVICES IN THIS COMMONWEALTH.

15 (3) FINANCIAL PLANNING SERVICES PROVIDED IN A FINANCIAL
16 PLANNER-CLIENT RELATIONSHIP BY A LICENSED MEMBER OF A
17 FINANCIAL PLANNING PROFESSION.

18 "DEPARTMENT." THE DEPARTMENT OF BANKING OF THE COMMONWEALTH.

19 "GOOD FAITH." HONESTY IN FACT AND THE OBSERVANCE OF
20 REASONABLE STANDARDS OF FAIR DEALING.

21 "PERSON." AN INDIVIDUAL, CORPORATION, BUSINESS TRUST,
22 ESTATE, TRUST, PARTNERSHIP, LIMITED LIABILITY COMPANY,
23 ASSOCIATION, JOINT VENTURE OR ANY OTHER LEGAL OR COMMERCIAL
24 ENTITY. THE TERM DOES NOT INCLUDE A PUBLIC CORPORATION,
25 GOVERNMENT OR GOVERNMENTAL SUBDIVISION, AGENCY OR
26 INSTRUMENTALITY.

27 "PROGRAM." A PROGRAM OR STRATEGY IN WHICH A PROVIDER
28 FURNISHES DEBT SETTLEMENT SERVICES.

29 "PROVIDER." A PERSON REQUIRED TO BE LICENSED PURSUANT TO
30 THIS ACT AND THAT PROVIDES, OFFERS TO PROVIDE OR AGREES TO

1 PROVIDE DEBT SETTLEMENT SERVICES.

2 "RECORD." INFORMATION THAT IS INSCRIBED ON A TANGIBLE MEDIUM
3 OR THAT IS STORED IN AN ELECTRONIC OR OTHER MEDIUM AND IS
4 RETRIEVABLE IN PERCEIVABLE FORM.

5 SECTION 103. NONAPPLICABILITY.

6 THIS ACT DOES NOT APPLY TO THE FOLLOWING PERSONS OR THEIR
7 EMPLOYEES WHEN THE PERSON OR THE EMPLOYEE IS ENGAGED IN THE
8 REGULAR COURSE OF THE PERSON'S BUSINESS OR PROFESSION:

9 (1) A JUDICIAL OFFICER, A PERSON ACTING UNDER AN ORDER
10 OF A COURT OR AN ADMINISTRATIVE AGENCY OR AN ASSIGNEE FOR THE
11 BENEFIT OF CREDITORS.

12 (2) A BANK, BANK HOLDING COMPANY OR THE SUBSIDIARY,
13 AGENT OR AFFILIATE OF EITHER, OR A CREDIT UNION OR OTHER
14 FINANCIAL INSTITUTION LICENSED UNDER FEDERAL OR STATE LAW.

15 (3) A TITLE INSURER, ESCROW COMPANY OR OTHER PERSON THAT
16 PROVIDES BILL-PAYING SERVICES IF THE PROVISION OF DEBT
17 SETTLEMENT SERVICES IS INCIDENTAL TO THE BILL-PAYING
18 SERVICES.

19 CHAPTER 3

20 LICENSURE

21 SECTION 301. LICENSING REQUIRED.

22 (A) GENERAL RULE.--EXCEPT AS OTHERWISE PROVIDED IN
23 SUBSECTION (B), ON OR AFTER JULY 1, 2012, A PROVIDER MAY NOT
24 PROVIDE DEBT SETTLEMENT SERVICES TO AN INDIVIDUAL WHO IT
25 REASONABLY SHOULD KNOW RESIDES IN THIS COMMONWEALTH AT THE TIME
26 IT AGREES TO PROVIDE THE SERVICES, UNLESS THE PROVIDER IS
27 LICENSED UNDER THIS ACT.

28 (B) NONAPPLICABILITY.--IF A PROVIDER IS LICENSED UNDER THIS
29 ACT, SUBSECTION (A) DOES NOT APPLY TO AN EMPLOYEE OR AGENT OF
30 THE PROVIDER.

1 (C) LISTING.--THE DEPARTMENT SHALL MAINTAIN AND PUBLICIZE A
2 LIST OF THE NAMES OF ALL LICENSED PROVIDERS.

3 SECTION 302. FORM OF APPLICATION AND REQUIRED DOCUMENTATION.

4 (A) FORM.--AN APPLICATION FOR LICENSURE AS A PROVIDER MUST
5 BE IN A FORM PRESCRIBED BY THE DEPARTMENT.

6 (B) FEE AND DOCUMENTATION.--AN APPLICATION FOR LICENSURE AS
7 A PROVIDER MUST BE ACCOMPANIED BY:

8 (1) A LICENSING FEE ESTABLISHED BY THE DEPARTMENT.

9 (2) EVIDENCE OF MINIMUM INSURANCE IN AN AMOUNT SPECIFIED
10 BY THE DEPARTMENT.

11 (3) IN LIEU OF THE AGGREGATE UMBRELLA INSURANCE, A
12 SURETY BOND FILED WITH THE DEPARTMENT, IN A FORM APPROVED BY
13 THE DEPARTMENT, FOR A TERM NO LESS THAN THE EXPIRATION OF THE
14 LICENSE AND IN THE AMOUNT OF NOT LESS THAN \$10,000 OR OTHER
15 LARGER AMOUNT THAT THE DEPARTMENT DETERMINES IS WARRANTED BY
16 THE FINANCIAL CONDITION AND BUSINESS EXPERIENCE OF THE
17 PROVIDER, THE HISTORY OF THE PROVIDER IN PERFORMING DEBT
18 SETTLEMENT SERVICES, THE RISK TO INDIVIDUALS AND ANY OTHER
19 FACTOR THE DEPARTMENT CONSIDERS APPROPRIATE, BUT IN NO EVENT
20 GREATER THAN \$50,000. THE SURETY BOND SHALL RUN TO THE
21 COMMONWEALTH FOR THE BENEFIT OF THE COMMONWEALTH AND OF
22 INDIVIDUALS WHO RESIDE IN THIS COMMONWEALTH WHEN THEY AGREE
23 TO RECEIVE DEBT SETTLEMENT SERVICES FROM THE PROVIDER, AS
24 THEIR INTERESTS MAY APPEAR, PAYMENT OF WHICH IS CONDITIONED
25 UPON NONCOMPLIANCE OF THE PROVIDER OR ITS AGENT WITH THIS
26 ACT.

27 (4) PROOF THAT THE PROVIDER IS AUTHORIZED BY THE LAWS OF
28 THIS COMMONWEALTH TO CONDUCT BUSINESS IN THIS COMMONWEALTH.

29 SECTION 303. REQUIRED INFORMATION FOR APPLICATION.

30 AN APPLICATION FOR LICENSURE MUST BE SIGNED BY THE APPLICANT

1 AND DECLARE AS TRUE ANY MATERIAL MATTER PURSUANT TO THE
2 APPLICATION FOR LICENSURE. THE APPLICATION FORM SHALL CONTAIN A
3 STATEMENT INFORMING THE APPLICANT THAT A FALSE OR DISHONEST
4 ANSWER TO A QUESTION MAY BE GROUNDS FOR DENIAL OR SUBSEQUENT
5 SUSPENSION OR REVOCATION OF THE APPLICANT'S LICENSE. AN
6 APPLICATION SHALL INCLUDE THE FOLLOWING:

7 (1) THE APPLICANT'S NAME, PRINCIPAL BUSINESS ADDRESS AND
8 TELEPHONE NUMBER, AND ALL OTHER BUSINESS ADDRESSES IN THIS
9 COMMONWEALTH, E-MAIL ADDRESSES AND INTERNET WEBSITE
10 ADDRESSES.

11 (2) ALL NAMES UNDER WHICH THE APPLICANT CONDUCTS
12 BUSINESS.

13 (3) THE ADDRESS OF EACH LOCATION IN THIS COMMONWEALTH AT
14 WHICH THE APPLICANT WILL PROVIDE DEBT SETTLEMENT SERVICES OR
15 A STATEMENT THAT THE APPLICANT WILL HAVE NO SUCH LOCATION.

16 (4) THE NAME AND HOME ADDRESS OF EACH OFFICER AND
17 DIRECTOR OF THE APPLICANT AND EACH PERSON THAT OWNS AT LEAST
18 10% OF THE APPLICANT'S BUSINESS.

19 (5) A STATEMENT DESCRIBING, TO THE EXTENT IT IS KNOWN OR
20 SHOULD BE KNOWN BY THE APPLICANT, ANY MATERIAL CIVIL OR
21 CRIMINAL JUDGMENT RELATING TO FINANCIAL FRAUD OR MISUSE AND
22 ANY MATERIAL ADMINISTRATIVE OR ENFORCEMENT ACTION RELATING TO
23 FINANCIAL FRAUD OR MISUSE BY A GOVERNMENTAL AGENCY IN ANY
24 JURISDICTION AGAINST THE APPLICANT, ANY OF ITS OFFICERS,
25 DIRECTORS, OWNERS OR AGENTS.

26 (6) A COPY OF EACH FORM OF AGREEMENT THAT THE APPLICANT
27 WILL USE WITH INDIVIDUALS WHO RESIDE IN THIS COMMONWEALTH.

28 (7) THE SCHEDULE OF FEES AND CHARGES THAT THE APPLICANT
29 WILL USE WITH INDIVIDUALS WHO RESIDE IN THIS COMMONWEALTH.

30 (8) A COPY OR DESCRIPTION OF THE FINANCIAL ANALYSIS OR

1 BUDGET THAT THE PROVIDER WILL USE IN REVIEWING AN
2 INDIVIDUAL'S FINANCIAL CONDITION.

3 (9) A DESCRIPTION OF ANY OWNERSHIP INTEREST OF AT LEAST
4 10% BY A DIRECTOR, OWNER OR EMPLOYEE OF THE APPLICANT IN:

5 (I) ANY AFFILIATE OF THE APPLICANT; OR

6 (II) ANY ENTITY THAT PROVIDES PRODUCTS OR SERVICES
7 TO THE APPLICANT OR ANY INDIVIDUAL RELATING TO THE
8 APPLICANT'S DEBT SETTLEMENT SERVICES.

9 (10) THE IDENTITY OF EACH DIRECTOR WHO IS AN AFFILIATE
10 OF THE APPLICANT.

11 (11) THE APPLICANT'S FINANCIAL STATEMENTS, REVIEWED BY
12 AN ACCOUNTANT LICENSED IN THE STATE OF THE APPLICANT'S
13 PRINCIPAL PLACE OF BUSINESS, FOR EACH OF THE TWO YEARS
14 IMMEDIATELY PRECEDING THE APPLICATION OR, IF THE APPLICANT
15 HAS NOT BEEN IN OPERATION FOR THE TWO YEARS PRECEDING THE
16 APPLICATION, FOR THE PERIOD OF ITS EXISTENCE.

17 (12) EVIDENCE THAT THE PROVIDER HAS A RESIDENT AGENT IN
18 THIS COMMONWEALTH FOR SERVICE OF PROCESS.

19 (13) A DESCRIPTION OF THE THREE MOST COMMONLY USED
20 EDUCATIONAL PROGRAMS THAT THE APPLICANT PROVIDES OR INTENDS
21 TO PROVIDE TO INDIVIDUALS WHO AGREE TO USE THE PROVIDER'S
22 SERVICES AND A COPY OF ANY MATERIALS USED OR TO BE USED IN
23 THOSE PROGRAMS.

24 SECTION 304. OBLIGATION TO UPDATE APPLICATION INFORMATION.

25 AN APPLICANT OR LICENSED PROVIDER SHALL NOTIFY THE DEPARTMENT
26 WITHIN 60 DAYS AFTER A CHANGE IN THE INFORMATION REQUIRED IN
27 SECTION 302(B) (2) OR 303(1), (3) OR (5).

28 SECTION 305. PUBLIC AVAILABILITY OF APPLICATION INFORMATION.

29 EXCEPT THE ADDRESSES REQUIRED BY SECTION 303(4) AND THE
30 PROPRIETARY INFORMATION REQUIRED BY SECTION 303(8), (9), (10)

1 AND (11), THE DEPARTMENT SHALL MAKE THE INFORMATION IN AN
2 APPLICATION FOR LICENSURE AND RENEWAL OF LICENSURE AS A PROVIDER
3 AVAILABLE TO THE PUBLIC.

4 SECTION 306. CERTIFICATE OF LICENSURE.

5 (A) ISSUANCE.--EXCEPT AS OTHERWISE PROVIDED IN SUBSECTION
6 (B), THE DEPARTMENT SHALL ISSUE A CERTIFICATE OF LICENSURE AS A
7 PROVIDER TO A PERSON THAT COMPLIES WITH SECTIONS 302 AND 303.

8 (B) GROUNDS FOR DENIAL.--THE DEPARTMENT MAY DENY LICENSURE
9 IF:

10 (1) THE APPLICATION CONTAINS INFORMATION THAT IS
11 MATERIALLY ERRONEOUS OR INCOMPLETE.

12 (2) AN OFFICER, DIRECTOR OR OWNER OF THE APPLICANT HAS
13 BEEN CONVICTED OF A CRIME, OR SUFFERED A CIVIL JUDGMENT,
14 INVOLVING DISHONESTY OR THE VIOLATION OF FEDERAL OR STATE
15 SECURITIES LAWS.

16 (3) THE APPLICATION IS NOT ACCOMPANIED BY THE FEE
17 ESTABLISHED BY THE DEPARTMENT.

18 (4) THERE IS REASONABLE EVIDENCE TO SUPPORT THE
19 DEPARTMENT'S OPINION THAT THE APPLICANT WILL NOT OPERATE AS A
20 DEBT SETTLEMENT SERVICES PROVIDER IN A LAWFUL, HONEST AND
21 FAIR MANNER.

22 SECTION 307. PROCEDURE FOR LICENSURE.

23 (A) TIME FRAME.--THE DEPARTMENT SHALL APPROVE OR DENY AN
24 INITIAL LICENSE AS A PROVIDER WITHIN 60 DAYS AFTER AN
25 APPLICATION IS FILED. THE DEPARTMENT MAY EXTEND THE 60-DAY
26 PERIOD FOR NOT MORE THAN 45 DAYS. WITHIN SEVEN DAYS AFTER
27 DENYING AN APPLICATION, THE DEPARTMENT, IN A RECORD, SHALL
28 INFORM THE APPLICANT OF THE REASONS FOR THE DENIAL.

29 (B) APPEAL.--IF THE DEPARTMENT DENIES AN APPLICATION FOR
30 LICENSURE AS A PROVIDER OR DOES NOT ACT ON AN APPLICATION WITHIN

1 THE TIME PRESCRIBED IN SUBSECTION (A), THE APPLICANT MAY APPEAL
2 AND REQUEST A HEARING UNDER 2 PA.C.S. (RELATING TO
3 ADMINISTRATIVE LAW AND PROCEDURE).

4 (C) VALIDITY.--SUBJECT TO SECTION 308(D), A LICENSE AS A
5 PROVIDER IS VALID FOR ONE YEAR.

6 (D) INTERIM PERIOD.--UPON SUBMISSION OF AN APPLICATION FOR
7 LICENSURE AND UNTIL SUCH TIME AS AN APPLICATION IS APPROVED OR
8 DENIED, THE APPLICANT MAY CONTINUE TO PROVIDE DEBT SETTLEMENT
9 SERVICES, BUT A DENIAL OF LICENSURE TERMINATES ANY FURTHER POWER
10 TO PROVIDE SERVICES UNLESS APPROVED BY THE DEPARTMENT.

11 SECTION 308. LICENSE RENEWAL.

12 (A) ANNUAL RENEWAL.--A PROVIDER MUST OBTAIN A RENEWAL OF ITS
13 LICENSE ANNUALLY.

14 (B) APPLICATION.--AN APPLICATION FOR RENEWAL OF A LICENSE AS
15 A PROVIDER MUST BE IN A FORM PRESCRIBED BY THE DEPARTMENT,
16 SIGNED UNDER PENALTY OF FALSE STATEMENT, AND:

17 (1) BE FILED NOT LESS THAN 30 DAYS NOR MORE THAN 60 DAYS
18 BEFORE THE REGISTRATION EXPIRES.

19 (2) BE ACCOMPANIED BY THE FEE ESTABLISHED BY THE
20 DEPARTMENT.

21 (3) DISCLOSE ANY CHANGES IN THE INFORMATION CONTAINED IN
22 THE APPLICANT'S APPLICATION FOR LICENSURE OR ITS IMMEDIATELY
23 PREVIOUS APPLICATION FOR RENEWAL, AS APPLICABLE.

24 (4) PROVIDE ANY OTHER INFORMATION THAT THE DEPARTMENT
25 REASONABLY REQUIRES TO PERFORM THE DEPARTMENT'S DUTIES UNDER
26 THIS SECTION.

27 (C) PUBLIC INFORMATION.--EXCEPT FOR THE INFORMATION REQUIRED
28 BY SECTION 303(4), (8), (9), (10) AND (11), THE DEPARTMENT SHALL
29 MAKE THE INFORMATION IN AN APPLICATION FOR RENEWAL OF LICENSURE
30 AS A PROVIDER AVAILABLE TO THE PUBLIC.

1 (D) EFFECTIVENESS.--IF A LICENSED PROVIDER FILES A TIMELY
2 AND COMPLETE APPLICATION FOR RENEWAL OF LICENSE, THE LICENSE
3 REMAINS EFFECTIVE UNTIL THE DEPARTMENT, IN A RECORD, NOTIFIES
4 THE APPLICANT OF A DENIAL AND STATES THE REASONS FOR THE DENIAL.

5 (E) APPEAL.--IF THE DEPARTMENT DENIES AN APPLICATION FOR
6 RENEWAL OF LICENSE AS A PROVIDER, THE APPLICANT, WITHIN 30
7 DAYS AFTER RECEIVING NOTICE OF THE DENIAL, MAY APPEAL AND
8 REQUEST A HEARING UNDER 2 PA.C.S. (RELATING TO ADMINISTRATIVE
9 LAW AND PROCEDURE). WHILE THE APPEAL IS PENDING, THE APPLICANT
10 SHALL CONTINUE TO PROVIDE DEBT SETTLEMENT SERVICES TO
11 INDIVIDUALS WITH WHOM IT HAS AGREEMENTS. IF THE DENIAL IS
12 AFFIRMED, THE APPLICANT SHALL CONTINUE TO PROVIDE DEBT
13 SETTLEMENT SERVICES TO INDIVIDUALS WITH WHOM IT HAS AGREEMENTS
14 UNTIL, WITH THE APPROVAL OF THE DEPARTMENT, IT TRANSFERS THE
15 AGREEMENTS TO ANOTHER LICENSED PROVIDER.

16 CHAPTER 5

17 PROVIDER RESPONSIBILITIES

18 SECTION 501. REQUIREMENT OF GOOD FAITH.

19 A PROVIDER SHALL ACT IN GOOD FAITH IN ALL MATTERS UNDER THIS
20 ACT.

21 SECTION 502. PREREQUISITES FOR PROVIDING DEBT SETTLEMENT 22 SERVICES.

23 (A) DISCLOSURE.--BEFORE AN INDIVIDUAL CONSENTS TO PAY FOR
24 GOODS OR SERVICES OFFERED, PROVIDERS SHALL DISCLOSE TRUTHFULLY,
25 IN A CLEAR AND CONSPICUOUS MANNER, THE FOLLOWING MATERIAL
26 INFORMATION:

27 (1) THE AMOUNT OF TIME NECESSARY TO ACHIEVE THE
28 REPRESENTED RESULTS, AND THE EXTENT THAT THE DEBT SETTLEMENT
29 SERVICES MAY INCLUDE A SETTLEMENT OFFER TO ANY OF THE
30 INDIVIDUAL'S CREDITORS OR DEBT COLLECTORS, THE TIME BY WHICH

1 THE PROVIDER WILL MAKE A BONA FIDE SETTLEMENT OFFER TO EACH
2 OF THEM AND THE COST TO THE INDIVIDUAL FOR PROVIDING DEBT
3 SETTLEMENT SERVICES.

4 (2) TO THE EXTENT THAT THE DEBT SETTLEMENT SERVICES MAY
5 INCLUDE A SETTLEMENT OFFER TO ANY OF THE INDIVIDUAL'S
6 CREDITORS OR DEBT COLLECTORS, THE AMOUNT OF MONEY OR THE
7 PERCENTAGE OF EACH OUTSTANDING DEBT THAT THE INDIVIDUAL SHALL
8 ACCUMULATE BEFORE THE PROVIDER WILL MAKE A BONA FIDE
9 SETTLEMENT OFFER TO EACH OF THEM.

10 (3) TO THE EXTENT THAT ANY ASPECT OF THE DEBT SETTLEMENT
11 SERVICES RELIES UPON OR RESULTS IN THE INDIVIDUAL'S FAILURE
12 TO MAKE TIMELY PAYMENTS TO CREDITORS OR DEBT COLLECTORS, THAT
13 THE USE OF THE DEBT SETTLEMENT SERVICES WILL LIKELY ADVERSELY
14 AFFECT THE INDIVIDUAL'S CREDITWORTHINESS, MAY RESULT IN THE
15 INDIVIDUAL BEING SUBJECT TO COLLECTION ACTIONS OR SUED BY
16 CREDITORS OR DEBT COLLECTORS, AND MAY INCREASE THE AMOUNT OF
17 MONEY THE INDIVIDUAL OWES DUE TO THE ACCRUAL OF FEES AND
18 INTEREST.

19 (4) TO THE EXTENT THAT THE PROVIDER REQUESTS OR REQUIRES
20 THE INDIVIDUAL TO PLACE FUNDS IN AN ACCOUNT AT A BANK, THAT
21 THE INDIVIDUAL OWNS THE FUNDS HELD IN THE ACCOUNT, THE
22 INDIVIDUAL MAY WITHDRAW FROM THE DEBT SETTLEMENT SERVICES AT
23 ANY TIME WITHOUT PENALTY, AND, IF THE INDIVIDUAL WITHDRAWS,
24 THE INDIVIDUAL SHALL RECEIVE ALL FUNDS IN THE ACCOUNT, OTHER
25 THAN FUNDS EARNED BY THE PROVIDER, WITHIN SEVEN BUSINESS DAYS
26 OF THE INDIVIDUAL'S REQUEST.

27 (B) PROHIBITION.--A PROVIDER SHALL NOT MISREPRESENT,
28 DIRECTLY OR BY IMPLICATION, ANY MATERIAL ASPECT OF ANY DEBT
29 SETTLEMENT SERVICES, INCLUDING, BUT NOT LIMITED TO:

30 (1) THE AMOUNT OF MONEY OR THE PERCENTAGE OF THE DEBT

1 AMOUNT THAT AN INDIVIDUAL MAY SAVE BY USING SUCH SERVICE.

2 (2) THE AMOUNT OF TIME NECESSARY TO ACHIEVE THE
3 REPRESENTED RESULTS.

4 (3) THE AMOUNT OF MONEY OR THE PERCENTAGE OF EACH
5 OUTSTANDING DEBT THAT THE INDIVIDUAL SHALL ACCUMULATE BEFORE
6 THE PROVIDER WILL INITIATE ATTEMPTS WITH THE INDIVIDUAL'S
7 CREDITORS OR DEBT COLLECTORS OR MAKE A BONA FIDE OFFER TO
8 NEGOTIATE, SETTLE OR MODIFY THE TERMS OF THE INDIVIDUAL'S
9 DEBT.

10 (4) THE EFFECT OF THE SERVICE ON THE INDIVIDUAL'S
11 CREDITWORTHINESS.

12 (5) THE EFFECT OF THE SERVICE ON COLLECTION EFFORTS OF
13 THE INDIVIDUAL'S CREDITORS OR DEBT COLLECTORS.

14 (6) THE PERCENTAGE OR NUMBER OF INDIVIDUALS WHO ATTAIN
15 THE REPRESENTED RESULTS.

16 (7) WHETHER DEBT SETTLEMENT SERVICES ARE OFFERED OR
17 PROVIDED BY A NONPROFIT ENTITY.

18 (C) PAYMENT OR CONSIDERATION.--A PROVIDER SHALL NOT RECEIVE
19 PAYMENT OF ANY FEE OR CONSIDERATION FOR ANY DEBT SETTLEMENT
20 SERVICES UNTIL AND UNLESS:

21 (1) THE PROVIDER HAS RENEGOTIATED, SETTLED, REDUCED OR
22 OTHERWISE ALTERED THE TERMS OF AT LEAST ONE DEBT UNDER A DEBT
23 SETTLEMENT PLAN.

24 (2) THE INDIVIDUAL HAS MADE AT LEAST ONE PAYMENT UNDER
25 SUCH DEBT SETTLEMENT PLAN.

26 (3) THE FEE OR CONSIDERATION FOR SETTLING EACH
27 INDIVIDUAL DEBT ENROLLED IN A DEBT SETTLEMENT PLAN SHALL MEET
28 ONE OF THE FOLLOWING CRITERIA:

29 (I) BEAR THE SAME PROPORTIONAL RELATIONSHIP TO THE
30 TOTAL FEE FOR SETTLING THE ENTIRE DEBT BALANCE AS THE

1 INDIVIDUAL DEBT AMOUNT BEARS TO THE ENTIRE DEBT AMOUNT.
2 FOR PURPOSES OF THIS SUBPARAGRAPH, THE INDIVIDUAL DEBT
3 AMOUNT AND THE ENTIRE DEBT AMOUNT ARE AMOUNTS OWED AT THE
4 TIME THE DEBT WAS ENROLLED IN THE DEBT SETTLEMENT
5 SERVICE.

6 (II) BE A PERCENTAGE OF THE AMOUNT SAVED AS A RESULT
7 OF THE SETTLEMENT. THE PERCENTAGE CHARGED SHALL NOT
8 CHANGE FROM ONE INDIVIDUAL DEBT TO ANOTHER. FOR PURPOSES
9 OF THIS SUBPARAGRAPH, THE AMOUNT SAVED IS THE DIFFERENCE
10 BETWEEN THE AMOUNT OWED AT THE TIME THE DEBT WAS ENROLLED
11 IN THE DEBT SETTLEMENT SERVICE AND THE AMOUNT ACTUALLY
12 PAID TO SATISFY THE DEBT.

13 (D) CONSTRUCTION.--NOTHING IN THIS SECTION PROHIBITS
14 REQUESTING OR REQUIRING THE INDIVIDUAL TO PLACE FUNDS IN AN
15 ACCOUNT TO BE USED FOR THE PROVIDER'S FEES FOR PAYMENTS TO
16 CREDITORS OR DEBT COLLECTORS IN CONNECTION WITH THE
17 RENEGOTIATION, SETTLEMENT, REDUCTION OR OTHER ALTERATION OF THE
18 TERMS OF PAYMENT OR OTHER TERMS OF DEBT, PROVIDED THAT:

19 (1) THE FUNDS ARE HELD IN AN ACCOUNT AT A BANK.

20 (2) THE INDIVIDUAL OWNS THE FUNDS HELD IN THE ACCOUNT
21 AND IS PAID ACCRUED INTEREST ON THE ACCOUNT, IF ANY.

22 (3) IF THE PROVIDER DOES NOT ADMINISTER THE ACCOUNT, THE
23 ENTITY ADMINISTERING THE ACCOUNT IS NOT OWNED OR CONTROLLED
24 BY, OR IN ANY WAY AFFILIATED WITH, THE PROVIDER.

25 (4) THE ENTITY ADMINISTERING THE ACCOUNT DOES NOT GIVE
26 OR ACCEPT ANY MONEY OR OTHER COMPENSATION IN EXCHANGE FOR
27 REFERRALS OF BUSINESS BY THE PROVIDER.

28 (5) THE INDIVIDUAL MAY WITHDRAW FROM THE DEBT SETTLEMENT
29 SERVICES AT ANY TIME WITHOUT PENALTY, AND SHALL RECEIVE ALL
30 FUNDS IN THE ACCOUNT, OTHER THAN FUNDS EARNED BY THE PROVIDER

1 IN COMPLIANCE WITH THIS SECTION, WITHIN SEVEN DAYS OF THE
2 INDIVIDUAL'S REQUEST.

3 (E) NONLICENSED PROVIDER.--IF A PROVIDER IS NOT LICENSED AS
4 REQUIRED BY THIS ACT WHEN AN INDIVIDUAL ASSENTS TO AN AGREEMENT,
5 THE AGREEMENT IS VOIDABLE BY THE INDIVIDUAL.

6 CHAPTER 7

7 ADMINISTRATION AND ENFORCEMENT

8 SECTION 701. POWERS OF DEPARTMENT.

9 (A) ACTION BY DEPARTMENT.--THE DEPARTMENT MAY ACT ON ITS OWN
10 INITIATIVE OR IN RESPONSE TO COMPLAINTS AND MAY RECEIVE
11 COMPLAINTS, TAKE ACTION TO OBTAIN VOLUNTARY COMPLIANCE WITH THIS
12 ACT AND SEEK OR PROVIDE REMEDIES AS PROVIDED IN THIS ACT.

13 (B) INVESTIGATION.--THE DEPARTMENT MAY INVESTIGATE AND
14 EXAMINE, IN THIS COMMONWEALTH OR ELSEWHERE, BY SUBPOENA OR
15 OTHERWISE, THE ACTIVITIES, BOOKS, ACCOUNTS AND RECORDS OF A
16 PERSON THAT PROVIDES OR OFFERS TO PROVIDE DEBT SETTLEMENT
17 SERVICES, OR A PERSON TO WHICH A PROVIDER HAS DELEGATED ITS
18 OBLIGATIONS UNDER AN AGREEMENT OR THIS ACT, TO DETERMINE
19 COMPLIANCE WITH THIS ACT. INFORMATION THAT IDENTIFIES
20 INDIVIDUALS WHO HAVE AGREEMENTS WITH THE PROVIDER SHALL NOT BE
21 DISCLOSED TO THE PUBLIC. IN CONNECTION WITH THE INVESTIGATION,
22 THE DEPARTMENT MAY:

23 (1) CHARGE THE PERSON THE REASONABLE EXPENSES
24 NECESSARILY INCURRED TO CONDUCT THE EXAMINATION.

25 (2) REQUIRE OR PERMIT A PERSON TO FILE A STATEMENT UNDER
26 OATH AS TO ALL THE FACTS AND CIRCUMSTANCES OF A MATTER TO BE
27 INVESTIGATED.

28 (C) ENFORCEMENT.--THE DEPARTMENT MAY ENFORCE VIOLATIONS OF
29 THIS ACT BY TAKING ONE OR MORE OF THE FOLLOWING ACTIONS:

30 (1) ORDERING A PROVIDER OR A DIRECTOR, EMPLOYEE OR OTHER

1 AGENT OF A PROVIDER TO CEASE AND DESIST FROM ANY VIOLATIONS.

2 (2) ORDERING A PROVIDER OR A PERSON THAT HAS CAUSED A
3 VIOLATION TO CORRECT THE VIOLATION, INCLUDING MAKING
4 RESTITUTION OF MONEY OR PROPERTY TO A PERSON AGGRIEVED BY A
5 VIOLATION.

6 (3) IMPOSING ON A PROVIDER OR A PERSON THAT HAS CAUSED A
7 VIOLATION A CIVIL PENALTY NOT EXCEEDING \$1,000 FOR EACH
8 VIOLATION.

9 (4) PROSECUTING A CIVIL ACTION TO ENFORCE AN ORDER OR TO
10 OBTAIN RESTITUTION OR AN INJUNCTION OR OTHER EQUITABLE
11 RELIEF, OR BOTH.

12 SECTION 702. SUSPENSION, REVOCATION OR NONRENEWAL OF A LICENSE

13 (A) GENERAL RULE.--THE DEPARTMENT MAY SUSPEND, REVOKE OR
14 DENY RENEWAL OF A PROVIDER'S LICENSE IF:

15 (1) THE PROVIDER HAS COMMITTED A MATERIAL VIOLATION OF
16 THIS ACT.

17 (2) THE PROVIDER IS INSOLVENT.

18 (B) APPEAL.--IF THE DEPARTMENT SUSPENDS OR REVOKES A
19 PROVIDER'S LICENSE, THE PROVIDER MAY APPEAL AND REQUEST A
20 HEARING PURSUANT TO 2 PA.C.S. (RELATING TO ADMINISTRATIVE LAW
21 AND PROCEDURE).

22 CHAPTER 21

23 MISCELLANEOUS PROVISIONS

24 SECTION 2101. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND
25 NATIONAL COMMERCE ACT.

26 THIS ACT MODIFIES, LIMITS AND SUPERSEDES THE ELECTRONIC
27 SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT (PUBLIC LAW
28 106-229, 15 U.S.C. § 7001 ET SEQ.), BUT DOES NOT MODIFY, LIMIT
29 OR SUPERSEDE SECTION 101(C) OF THE ELECTRONIC SIGNATURES IN
30 GLOBAL AND NATIONAL COMMERCE ACT OR AUTHORIZE ELECTRONIC

1 DELIVERY OF ANY OF THE NOTICES DESCRIBED IN SECTION 103(B) OF
2 THE ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.
3 SECTION 2102. TRANSITIONAL PROVISIONS.

4 TRANSACTIONS ENTERED INTO BEFORE THIS ACT TAKES EFFECT AND
5 THE RIGHTS, DUTIES AND INTERESTS RESULTING FROM THEM MAY BE
6 COMPLETED, TERMINATED OR ENFORCED AS REQUIRED OR PERMITTED BY A
7 LAW REPEALED OR MODIFIED BY THIS ACT AS THOUGH THE REPEAL OR
8 MODIFICATION HAD NOT OCCURRED.

9 SECTION 2103. REPEAL.

10 THE ACT OF OCTOBER 9, 2008 (P.L.1421, NO.117), KNOWN AS THE
11 DEBT MANAGEMENT SERVICES ACT, IS REPEALED INsofar AS IT APPLIES
12 TO DEBT SETTLEMENT SERVICES.

13 SECTION 2104. EFFECTIVE DATE.

14 THIS ACT SHALL TAKE EFFECT IMMEDIATELY.