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THE GENERAL ASSEMBLY OF PENNSYLVANIA

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**SENATE BILL**

**No. 1276** Session of  
2008

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INTRODUCED BY BROWNE, WASHINGTON, M. WHITE, RAFFERTY, WOZNIAK,  
BOSCOLA, C. WILLIAMS, EARLL, A. WILLIAMS, FUMO, COSTA AND  
GREENLEAF, FEBRUARY 11, 2008

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REFERRED TO BANKING AND INSURANCE, FEBRUARY 11, 2008

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AN ACT

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

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

8 Section 1. Short title.

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

11 Section 2. Definitions.

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

15 "Branch office." A business location within this  
16 Commonwealth of a person required to be licensed under this act.  
17 The term does not include a person's principal office location.

18 "Consumer." An individual who resides in this Commonwealth  
19 and is seeking debt management services or has entered into a

1 debt management plan.

2 "Consumer education program." A program or plan that seeks  
3 to improve the financial literacy of consumers.

4 "Credit counseling agency." An individual, organization or  
5 corporation that provides debt management plan services to  
6 consumers, usually for a fee, contribution or other  
7 consideration.

8 "Debt management plan." A program whereby money is received  
9 from a consumer by a credit counseling agency for the purpose of  
10 distributing that money to one or more creditors of the consumer  
11 in full or partial payment of the consumer's obligations.

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

13 "Licensee." A credit counseling agency licensed under this  
14 act to provide debt management or credit counseling services.

15 "Principal office." The main office location of a person  
16 required to be licensed under this act.

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

18 Section 3. Scope.

19 This act shall not apply to:

20 (1) A financial institution, personal property broker,  
21 agent or title company.

22 (2) Debt management or credit counseling provided in the  
23 practice of law.

24 (3) A consumer reporting agency as defined in the  
25 Federal Fair Credit Reporting Act (Public Law 91-508, 15  
26 U.S.C. § 1681 et seq.).

27 (4) A certified public accountant when services are  
28 rendered in the course of his practice as a certified public  
29 accountant and fees for such services are not in excess of  
30 those stated in this act.

1 Section 4. Duties of department.

2 (a) Internet website information.--Department must provide  
3 the following on its Internet website:

4 (1) Information for credit counseling agencies on the  
5 provisions of this act.

6 (2) Information for consumers regarding the protections  
7 of this act.

8 (3) Information on filing consumer complaints, including  
9 a toll-free telephone number.

10 (4) A list of current licensed credit counseling  
11 agencies.

12 Section 5. Licensure required.

13 (a) General rule.--A credit counseling agency that, in its  
14 own name or on behalf of other persons, engages in the business  
15 of providing debt management plan or credit counseling services  
16 in this Commonwealth or with persons located in this  
17 Commonwealth shall obtain a license from the department.

18 (b) Fees.--Each applicant for a license shall include with  
19 its application payments for the following fees:

20 (1) \$200 for principal office.

21 (2) \$100 for each branch office.

22 The fees shall be deposited into the Banking Department Fund.

23 (c) Renewal.--License must be renewed every calendar year,  
24 subject to the renewal fees set forth in subsection (b).

25 (d) Designated agents.--No license shall be issued to any  
26 credit counseling agency whose principal place of business is  
27 located outside of this Commonwealth, unless the credit  
28 counseling agency designates an agent residing within this  
29 Commonwealth for service of process.

30 (e) Conditions of licensure.--As a condition of licensure,

1 each applicant shall provide evidence that it satisfies the  
2 following criteria:

3 (1) A separate trust account with an FDIC-insured  
4 financial institution for the handling of client funds. A  
5 licensee may not commingle any trust account established for  
6 the benefit of consumers with any operating accounts of the  
7 licensee.

8 (2) Counselor certification through a third-party  
9 certification provider.

10 (3) A board of directors, a majority of which does not  
11 include individuals who would have a direct stake in the  
12 outcome of the debt management or counseling process.

13 (4) Agency accreditation provided by a third-party  
14 accreditation body. Such accreditation shall ensure  
15 compliance to industry standards and best practices.

16 (5) Annual audits by an independent certified public  
17 account, with such audits, taking place within six months of  
18 the close of the applicant's fiscal year.

19 Section 6. License.

20 The secretary may by order, after notice and opportunity for  
21 hearing, assess penalties and deny, refuse to renew, suspend or  
22 revoke a license issued under this act if it is in the public  
23 interest and the applicant or licensee, any partner, officer or  
24 director, any person occupying a similar status or performing  
25 similar functions or any person directly or indirectly  
26 controlling the applicant or licensee:

27 (1) Has violated any provision of this act or  
28 regulations promulgated under this act.

29 (2) Has not met the standards established in this act.

30 (3) Has filed an application for a license under this

1 act which as of its effective date, or as of any date after  
2 the filing in the case of an order denying of the filing, was  
3 incomplete in any material respect or contained any statement  
4 which was, in light of the circumstances under which it was  
5 made, false or misleading with respect to any material fact.

6 (4) Has made a false or misleading statement to the  
7 secretary or in any reports to the secretary.

8 (5) Has made fraudulent misrepresentations or  
9 circumvented or concealed, through whatever subterfuge or  
10 device, any of the material particulars or the nature thereof  
11 required to be stated or furnished to a person under the  
12 provisions of this act.

13 (6) Has failed to supervise its agents, managers or  
14 employees.

15 (7) Is the subject of an order entered within the past  
16 five years by this Commonwealth, any other Federal or state  
17 regulator denying, suspending or revoking license or  
18 registration.

19 (8) Is permanently, preliminarily or temporarily  
20 enjoined by any court of competent jurisdiction from engaging  
21 in or continuing any conduct or practice involving any aspect  
22 of debt adjustment or collection activities.

23 (9) Has engaged in dishonest or unethical practices in  
24 the conduct of the business of debt adjustment.

25 (10) Has violated applicable Federal laws or regulations  
26 promulgated under Federal law.

27 (11) Has been convicted of a crime involving moral  
28 turpitude.

29 (12) Has maintained a continuous course of unfair  
30 conduct.

1           (13) Is insolvent or has filed in bankruptcy or  
2           receivership or made assignments for the benefit of  
3           creditors.

4           (14) For other good cause shown.

5 Section 7. Surety bond.

6           (a) Terms of bond.--

7           (1) With application for a new or renewal license, the  
8           applicant or licensee shall file a surety bond or bond  
9           renewal certificate with the secretary. The bond shall be  
10          issued in favor of the Commonwealth for the benefit of any  
11          consumer who is injured by a violation of this act or a  
12          regulation adopted under this act committed by a licensee or  
13          agent of a licensee, including an agent managing a trust  
14          account.

15          (2) The bond shall be in an amount between \$10,000 and  
16          \$350,000, as established by regulation of the secretary and  
17          issued by a bonding, surety or insurance company that is  
18          authorized to do business in this Commonwealth.

19          (3) The bond shall remain in effect until the surety is  
20          released from liability by the secretary or until the bond is  
21          canceled by the surety.

22          (b) Cancellation.--Any surety may cancel a bond upon 30  
23          days' written notice to the Insurance Commissioner, but no such  
24          cancellation shall affect any liability which arises prior to  
25          the termination of such 30-day period. Upon the cancellation of  
26          a bond by a surety, the licensee shall file a new bond with the  
27          commissioner or the license shall be automatically suspended at  
28          the end of such 30-day period.

29 Section 8. Unlawful fees and costs.

30          (a) Limitation.--

1 (1) It shall be unlawful for a credit counseling agency  
2 to charge or accept from a consumer, directly or indirectly,  
3 a fee or contribution greater than \$50 for the initial setup  
4 or initial consultation.

5 (2) After the initial setup or initial consultation, a  
6 credit counseling agency may not charge or accept a fee or  
7 contribution from a consumer greater than \$120 per year for  
8 additional consultations or, alternatively, if debt  
9 management services are provided, may charge either 7.5% of  
10 the amount paid monthly by the consumer or \$35 per month,  
11 whichever is more.

12 (b) Construction.--Nothing in this section shall be  
13 construed to prohibit a credit counseling agency, while engaging  
14 in debt management or credit counseling services, from imposing  
15 upon and receiving from a consumer a reasonable and separate  
16 charge or fee for insufficient funds transactions.

17 Section 9. Debt management plans.

18 (a) Consumer education program.--A credit counseling agency  
19 may not perform debt management services for a consumer unless  
20 it provides the consumer with a consumer education program at no  
21 additional cost.

22 (b) Agreement required.--

23 (1) A debt management plan evidenced by an agreement  
24 between the licensee and the consumer shall be clearly  
25 acknowledged by both parties. A copy of the agreement must be  
26 provided to the consumer.

27 (2) The agreement shall contain:

28 (i) The name and address of both the consumer and  
29 credit counseling agency.

30 (ii) Full description of all services to be

1 performed for the consumer.

2 (iii) Clear indication of costs to the consumer,  
3 including contributions or fees, highlighted in boldface  
4 type.

5 (iv) A statement that the agreement can be  
6 terminated for any reason by the consumer and that the  
7 consumer has no obligation to continue the arrangement  
8 unless satisfied with the services provided.

9 (v) An indication of how to resolve disputes under  
10 the agreement.

11 (vi) A complete list of consumer and agency  
12 obligations that are subject to the agreement.

13 Section 10. Prohibited act.

14 No credit counseling agency may:

15 (1) Purchase any debt or obligation of a consumer.

16 (2) Lend money or provide credit to any consumer.

17 (3) Obtain a mortgage or any other security interest in  
18 the property of a consumer.

19 (4) Operate as a debt collector.

20 (5) Structure an agreement for the consumer that, at the  
21 conclusion of the debt management plan, would result in  
22 negative amortization of any of the consumer's obligations to  
23 his creditors.

24 Section 11. Advertising.

25 A credit counseling agency may not engage in false or  
26 misleading advertising concerning the terms or conditions of  
27 service or assistance offered.

28 Section 12. Conflict.

29 If a provision of this act conflicts with any other law, the  
30 provisions of this act shall control.

1 Section 20. Effective date.

2 This act shall take effect in 60 days.