

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1276 Session of 2008

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

SENATOR ARMSTRONG, APPROPRIATIONS, RE-REPORTED AS AMENDED, JUNE 25, 2008

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 PROVIDING FOR THE LICENSURE OF CREDIT COUNSELING AGENCIES AND <—
7 FOR THE POWERS AND DUTIES OF THE DEPARTMENT OF BANKING;
8 REQUIRING PENAL BONDS; PROHIBITING CERTAIN FEES AND COSTS;
9 PROVIDING FOR DEBT MANAGEMENT PLANS; PROHIBITING CERTAIN ACTS
10 BY CREDIT COUNSELING AGENCIES; AND MAKING A RELATED REPEAL.

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16 The General Assembly of the Commonwealth of Pennsylvania
17 hereby enacts as follows:

18 ~~Section 1. Short title.~~ <—

19 ~~This act shall be known and may be cited as the Debt~~
20 ~~Management Services and Credit Counseling Act.~~

21 ~~Section 2. Definitions.~~

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

25 ~~"Branch office." A business location within this~~
26 ~~Commonwealth of a person required to be licensed under this act.~~
27 ~~The term does not include a person's principal office location.~~

28 ~~"Consumer." An individual who resides in this Commonwealth~~
29 ~~and is seeking debt management services or has entered into a~~
30 ~~debt management plan.~~

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

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

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

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

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

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

16 ~~"Secretary."—The Secretary of Banking of the Commonwealth.~~

17 ~~Section 3.—Scope.~~

18 ~~This act shall not apply to:~~

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

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

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

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

30 ~~Section 4.—Duties of department.~~

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

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

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

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

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

11 ~~Section 5. Licensure required.~~

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

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

19 ~~(1) \$200 for principal office.~~

20 ~~(2) \$100 for each branch office.~~

21 ~~The fees shall be deposited into the Banking Department Fund.~~

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

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

29 ~~(e) Conditions of licensure. As a condition of licensure,~~
30 ~~each applicant shall provide evidence that it satisfies the~~

1 following criteria:

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

7 ~~(2) Counselor certification through a third party~~
8 ~~certification provider.~~

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

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

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

18 Section 6. License.

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

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

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

29 ~~(3) Has filed an application for a license under this~~
30 ~~act which as of its effective date, or as of any date after~~

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

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

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

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

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

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

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

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

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

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

30 ~~(13) Is insolvent or has filed in bankruptcy or~~

1 ~~receivership or made assignments for the benefit of~~
2 ~~creditors.~~

3 ~~(14) For other good cause shown.~~

4 ~~Section 7. Surety bond.~~

5 ~~(a) Terms of bond.~~

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

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

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

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

28 ~~Section 8. Unlawful fees and costs.~~

29 ~~(a) Limitation.~~

30 ~~(1) It shall be unlawful for a credit counseling agency~~

1 ~~to charge or accept from a consumer, directly or indirectly,~~
2 ~~a fee or contribution greater than \$50 for the initial setup~~
3 ~~or initial consultation.~~

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

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

16 ~~Section 9. Debt management plans.~~

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

21 ~~(b) Agreement required.—~~

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

26 ~~(2) The agreement shall contain:~~

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

29 ~~(ii) Full description of all services to be~~
30 ~~performed for the consumer.~~

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

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

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

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

12 ~~Section 10.— Prohibited act.~~

13 ~~No credit counseling agency may:~~

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

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

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

18 ~~(4) Operate as a debt collector.~~

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

23 ~~Section 11.— Advertising.~~

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

27 ~~Section 12.— Conflict.~~

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

30 ~~Section 20.— Effective date.~~

1 ~~This act shall take effect in 60 days.~~

2 SECTION 1. SHORT TITLE. ←

3 THIS ACT SHALL BE KNOWN AND MAY BE CITED AS THE DEBT
4 MANAGEMENT SERVICES ACT.

5 SECTION 2. DEFINITIONS.

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

9 "APPLICANT." A PERSON WHO APPLIES FOR A LICENSE UNDER THIS
10 ACT.

11 "BANKING INSTITUTION." A STATE-CHARTERED BANK, A BANK AND
12 TRUST COMPANY, A SAVINGS BANK OR PRIVATE BANK, A NATIONAL BANK,
13 A FEDERALLY CHARTERED OR STATE-CHARTERED SAVINGS ASSOCIATION, A
14 SUBSIDIARY OF ANY OF THE FOREGOING, OR A FEDERALLY CHARTERED OR
15 STATE-CHARTERED CREDIT UNION.

16 "BRANCH OFFICE." A BUSINESS LOCATION WITHIN THIS
17 COMMONWEALTH OF A PERSON REQUIRED TO BE LICENSED UNDER THIS ACT.
18 THE TERM DOES NOT INCLUDE A PERSON'S PRINCIPAL OFFICE LOCATION.

19 "CONSUMER." AN INDIVIDUAL WHO IS SEEKING A DEBT MANAGEMENT
20 PLAN OR HAS ENTERED INTO A DEBT MANAGEMENT PLAN.

21 "CONSUMER EDUCATION PROGRAM." A PROGRAM OR PLAN THAT SEEKS
22 TO IMPROVE THE FINANCIAL LITERACY OF CONSUMERS.

23 "DEBT MANAGEMENT PLAN." A PROGRAM WHEREBY MONEY IS RECEIVED
24 FROM A CONSUMER FOR THE PURPOSE OF DISTRIBUTING THAT MONEY TO
25 ONE OR MORE CREDITORS OF THE CONSUMER IN FULL OR PARTIAL PAYMENT
26 OF THE CONSUMER'S OBLIGATIONS.

27 "DEBT MANAGEMENT PLAN BUSINESS." THE BUSINESS OF
28 ADVERTISING, SOLICITING, NEGOTIATING, ARRANGING, OFFERING OR
29 PROVIDING DEBT MANAGEMENT PLANS.

30 "DEPARTMENT." THE DEPARTMENT OF BANKING OF THE COMMONWEALTH.

1 "LICENSEE." A PERSON LICENSED UNDER THIS ACT TO PROVIDE DEBT
2 MANAGEMENT PLANS.

3 "PERSON." AN INDIVIDUAL, ASSOCIATION, JOINT VENTURE OR
4 JOINT-STOCK COMPANY, PARTNERSHIP, LIMITED PARTNERSHIP, LIMITED
5 PARTNERSHIP ASSOCIATION, LIMITED LIABILITY COMPANY, BUSINESS
6 CORPORATION, NONPROFIT CORPORATION OR ANY OTHER GROUP OF
7 INDIVIDUALS, HOWEVER ORGANIZED.

8 "PRINCIPAL OFFICE." THE MAIN OFFICE LOCATION OF A PERSON
9 REQUIRED TO BE LICENSED UNDER THIS ACT.

10 "SECRETARY." THE SECRETARY OF BANKING OF THE COMMONWEALTH.
11 SECTION 3. SCOPE OF ACT.

12 THIS ACT SHALL NOT APPLY TO:

13 (1) A BANKING INSTITUTION.

14 (2) DEBT MANAGEMENT PLANS PROVIDED IN THE PRACTICE OF
15 LAW.

16 (3) A CONSUMER REPORTING AGENCY AS DEFINED IN THE
17 FEDERAL FAIR CREDIT REPORTING ACT (PUBLIC LAW 91-508, 15
18 U.S.C. § 1681 ET SEQ.).

19 (4) A CERTIFIED PUBLIC ACCOUNTANT WHEN DEBT MANAGEMENT
20 PLANS PROVIDED IN THE COURSE OF PRACTICE AS A CERTIFIED
21 PUBLIC ACCOUNTANT AND FEES FOR SUCH PLANS ARE NOT IN EXCESS
22 OF THOSE STATED IN THIS ACT.

23 SECTION 4. DEBT MANAGEMENT PLAN LICENSE REQUIRED.

24 (A) GENERAL RULE.--EXCEPT AS PROVIDED UNDER SECTION 3, NO
25 PERSON SHALL ENGAGE IN THE BUSINESS OF PROVIDING DEBT MANAGEMENT
26 PLANS IN THIS COMMONWEALTH FOR A FEE, CONTRIBUTION OR OTHER
27 CONSIDERATION WITHOUT OBTAINING A LICENSE UNDER THIS ACT.

28 (B) CONDITIONS OF LICENSURE.--AS A CONDITION OF LICENSURE,
29 EACH APPLICANT SHALL PROVIDE EVIDENCE THAT THE APPLICANT:

30 (1) HAS ESTABLISHED A SEPARATE TRUST ACCOUNT WITH AN

1 FDIC-INSURED FINANCIAL INSTITUTION FOR THE HANDLING OF CLIENT
2 FUNDS. A LICENSEE MAY NOT COMMINGLE ANY TRUST ACCOUNT
3 ESTABLISHED FOR THE BENEFIT OF CONSUMERS WITH ANY OPERATING
4 ACCOUNTS OF THE LICENSEE.

5 (2) HAS OBTAINED COUNSELOR CERTIFICATION THROUGH A
6 THIRD-PARTY CERTIFICATION PROVIDER.

7 (3) MAINTAINS A BOARD OF DIRECTORS, A MAJORITY OF WHICH
8 DOES NOT INCLUDE INDIVIDUALS WHO WOULD HAVE A DIRECT STAKE IN
9 THE OUTCOME OF DEBT MANAGEMENT PLANS.

10 (4) HAS OBTAINED ACCREDITATION PROVIDED BY A THIRD-PARTY
11 ACCREDITATION BODY. SUCH ACCREDITATION SHALL ENSURE
12 COMPLIANCE TO INDUSTRY STANDARDS AND BEST PRACTICES.

13 (5) IS SUBJECT TO ANNUAL AUDITS BY AN INDEPENDENT
14 CERTIFIED PUBLIC ACCOUNTANT, WITH SUCH AUDITS TAKING PLACE
15 WITHIN SIX MONTHS OF THE CLOSE OF THE APPLICANT'S FISCAL
16 YEAR.

17 SECTION 5. APPLICATION FOR LICENSURE.

18 AN APPLICATION FOR A LICENSE SHALL BE SUBMITTED TO THE
19 DEPARTMENT IN THE FORM REQUIRED BY THE DEPARTMENT AND SHALL
20 INCLUDE THE FOLLOWING:

21 (1) THE APPLICANT'S NAME, ADDRESS, TELEPHONE NUMBER,
22 ELECTRONIC MAIL ADDRESS AND INTERNET WEBSITE.

23 (2) THE ADDRESS OF THE APPLICANT'S PRINCIPAL OFFICE AND
24 ANY BRANCH OFFICES WHERE THE APPLICANT WILL ENGAGE IN THE
25 DEBT MANAGEMENT PLAN BUSINESS.

26 (3) THE NAME AND ADDRESS OF EACH OWNER, OFFICER,
27 DIRECTOR OR PRINCIPAL OF THE APPLICANT.

28 (4) THE NAME AND ADDRESS OF THE APPLICANT'S AGENT FOR
29 SERVICE OF PROCESS IN THIS COMMONWEALTH.

30 (5) A DESCRIPTION OF THE OWNERSHIP INTEREST OF ANY

1 OFFICER, DIRECTOR, AGENT OR EMPLOYEE OF THE APPLICANT IN AN
2 AFFILIATE OR SUBSIDIARY OF THE APPLICANT OR IN ANY OTHER
3 BUSINESS ENTITY THAT WILL PROVIDE ANY SERVICE TO THE
4 APPLICANT OR TO A CONSUMER RELATING TO THE APPLICANT'S
5 PROVISION OF DEBT MANAGEMENT PLANS.

6 (6) A LIST OF OTHER STATES IN WHICH THE APPLICANT
7 ENGAGES IN THE DEBT MANAGEMENT PLAN BUSINESS, INCLUDING ANY
8 RELEVANT LICENSE OR REGISTRATION NUMBER AND INFORMATION
9 REGARDING WHETHER A LICENSE OR REGISTRATION IN ANOTHER STATE
10 HAS EVER BEEN SUSPENDED OR REVOKED.

11 (7) THE FINANCIAL STATEMENT FROM THE APPLICANT'S MOST
12 RECENT FISCAL YEAR, INCLUDING AN AUDIT OPINION FROM AN
13 INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT.

14 (8) A COPY OF A LIABILITY OR FIDELITY INSURANCE POLICY
15 THAT INSURES AGAINST DISHONESTY, FRAUD, THEFT OR OTHER
16 MALFEASANCE ON THE PART OF THE APPLICANT'S EMPLOYEES,
17 OFFICERS, DIRECTORS OR PRINCIPALS.

18 (9) A COPY OF THE APPLICANT'S STANDARD DEBT MANAGEMENT
19 PLAN AGREEMENT.

20 (10) INFORMATION REGARDING THE APPLICANT'S TRUST
21 ACCOUNT, INCLUDING THE NAME AND ADDRESS OF THE FDIC-INSURED
22 DEPOSITORY INSTITUTION WHERE THE ACCOUNT IS LOCATED AND THE
23 NUMBER OF THE ACCOUNT.

24 (11) A LIST OF THE APPLICANT'S CREDIT COUNSELORS,
25 SUPERVISORS OR MANAGERS WHO ARE CERTIFIED BY AN INDEPENDENT
26 CERTIFYING ORGANIZATION ACCEPTABLE TO THE DEPARTMENT AND A
27 PLAN TO ENSURE THAT ANY OF THE CREDIT COUNSELORS, SUPERVISORS
28 OR MANAGERS WHO ARE NOT CERTIFIED BECOME CERTIFIED WITHIN SIX
29 MONTHS OF THE ISSUANCE DATE OF THE LICENSE.

30 (12) EVIDENCE THAT THE APPLICANT IS ACCREDITED BY AN

1 INDEPENDENT ACCREDITING ORGANIZATION ACCEPTABLE TO THE
2 DEPARTMENT.

3 (13) A PENAL BOND MEETING THE REQUIREMENTS OF SECTION 6.

4 (14) A NONREFUNDABLE FEE OF \$3,000 FOR THE PRINCIPAL
5 OFFICE LICENSE AND \$1,500 FOR THE BRANCH OFFICE LICENSE.

6 (15) ANY OTHER INFORMATION THAT THE DEPARTMENT REQUIRES.
7 SECTION 6. CAPITAL; PENAL BOND.

8 (A) CAPITAL.--AN APPLICANT SHALL DEMONSTRATE A TANGIBLE NET
9 WORTH OF \$250,000 AND SHALL MAINTAIN THAT TANGIBLE NET WORTH AS
10 A LICENSEE.

11 (B) PENAL BOND.--THE DEPARTMENT SHALL ISSUE A LICENSE UNDER
12 THIS ACT IF THE APPLICANT OBTAINS AND MAINTAINS A BOND IN THE
13 AMOUNT OF \$100,000, IN A FORM ACCEPTABLE TO THE DEPARTMENT,
14 PRIOR TO THE ISSUANCE OF THE LICENSE, FROM A SURETY COMPANY
15 AUTHORIZED TO DO BUSINESS IN THIS COMMONWEALTH. THE BOND SHALL
16 BE A PENAL BOND IN FAVOR OF THE COMMONWEALTH CONDITIONED ON
17 COMPLIANCE WITH THIS ACT AND SUBJECT TO FORFEITURE BY THE
18 DEPARTMENT. THE BOND SHALL ALSO BE FOR THE USE OF ANY PERSON
19 AGAINST THE LICENSEE FOR THE BENEFIT OF ANY CONSUMER WHO IS
20 INJURED BY A VIOLATION OF THIS ACT. AN AGGRIEVED PERSON MAY,
21 WITH THE WRITTEN CONSENT OF THE DEPARTMENT, RECOVER FEES AND
22 COSTS FROM THE BOND BY FILING A CLAIM WITH THE SURETY COMPANY OR
23 MAINTAINING AN ACTION ON THE BOND. IN THE ALTERNATIVE, AN
24 AGGRIEVED PERSON MAY RECOVER FEES AND COSTS BY FILING A FORMAL
25 COMPLAINT AGAINST THE LICENSEE WITH THE DEPARTMENT WHICH SHALL
26 ADJUDICATE THE MATTER. THE ADJUDICATION SHALL BE BINDING UPON
27 THE SURETY COMPANY AND ENFORCEABLE BY THE DEPARTMENT IN
28 COMMONWEALTH COURT AND BY AN AGGRIEVED PERSON IN ANY COURT. AN
29 AGGRIEVED PERSON SEEKING TO RECOVER FROM A BOND THAT HAS ALREADY
30 BEEN FORFEITED BY THE DEPARTMENT OR WHICH THE DEPARTMENT IS IN

1 THE PROCESS OF FORFEITING MAY RECOVER PAYMENT ON THE BOND IF,
2 AFTER FILING A PETITION WITH THE DEPARTMENT, THE DEPARTMENT
3 CONSENTS TO THE AGGRIEVED PERSON'S REQUESTED PAYMENT OR PORTION
4 THEREOF. THE DEPARTMENT MAY PAY THE AGGRIEVED PERSON FROM THE
5 BOND PROCEEDS IT RECOVERS. NOTHING IN THIS SECTION SHALL LIMIT
6 THE ABILITY OF ANY COURT OR MAGISTERIAL DISTRICT JUDGE TO AWARD
7 TO AN AGGRIEVED PERSON OTHER DAMAGES, COURT COSTS AND ATTORNEY
8 FEES AS PERMITTED BY LAW, BUT THOSE DAMAGES THAT ARE NOT FEES OR
9 COSTS MAY NOT BE RECOVERED FROM THE BOND. THE DEPARTMENT MAY
10 CONSENT TO OR ORDER PRO RATA OR OTHER RECOVERY ON THE BOND FOR
11 ANY AGGRIEVED PERSON IF CLAIMS AGAINST THE BOND EXCEED ITS FULL
12 MONETARY AMOUNT. NO BOND SHALL COMPLY WITH THE REQUIREMENTS OF
13 THIS SECTION UNLESS IT CONTAINS A PROVISION THAT IT SHALL NOT BE
14 CANCELED FOR ANY CAUSE UNLESS NOTICE OF INTENTION TO CANCEL IS
15 GIVEN TO THE DEPARTMENT AT LEAST 30 DAYS BEFORE THE DAY UPON
16 WHICH CANCELLATION SHALL TAKE EFFECT. CANCELLATION OF THE BOND
17 SHALL NOT INVALIDATE THE BOND FOR THE PERIOD OF TIME IT WAS IN
18 EFFECT.

19 SECTION 7. ISSUANCE OF LICENSE.

20 (A) TIME FOR ISSUANCE.--THE DEPARTMENT SHALL ISSUE OR REFUSE
21 TO ISSUE A LICENSE TO AN APPLICANT WITHIN 60 DAYS OF RECEIVING
22 THE APPLICANT'S COMPLETED APPLICATION. THE DEPARTMENT MAY EXTEND
23 THE TIME PERIOD FOR 30 DAYS. THE DEPARTMENT SHALL NOTIFY THE
24 APPLICANT OF THE EXTENDED TIME PERIOD, INCLUDING A FINAL
25 DECISION DATE, IN WRITING.

26 (B) INVESTIGATION.--UPON RECEIPT OF A COMPLETED APPLICATION,
27 THE DEPARTMENT MAY CONDUCT AN INVESTIGATION OF THE APPLICANT,
28 INCLUDING THE OWNERS, OFFICERS, DIRECTORS, PRINCIPALS OR AGENTS.

29 (C) APPEAL OF DENIAL.--IF AN APPLICATION FOR A LICENSE IS
30 DENIED, THE DEPARTMENT SHALL NOTIFY THE APPLICANT IN WRITING,

1 INCLUDING THE REASON FOR THE DENIAL. NOTIFICATION SHALL INCLUDE
2 INFORMATION FOR APPEALING THE DECISION WITHIN 30 DAYS.

3 (D) DURATION.--A LICENSE SHALL BE ISSUED FOR A PERIOD OF ONE
4 YEAR.

5 (E) CONTENTS.--A LICENSE SHALL BE ON A FORM DETERMINED BY
6 THE DEPARTMENT AND SHALL CONTAIN, AT A MINIMUM, THE NAME OF THE
7 LICENSEE, THE ADDRESS AT WHICH THE LICENSEE IS CONDUCTING
8 BUSINESS AND A LICENSE NUMBER.

9 (F) SEPARATE LICENSES.--A SEPARATE LICENSE SHALL BE REQUIRED
10 FOR EACH LOCATION FROM WHICH A LICENSEE ENGAGES IN THE DEBT
11 MANAGEMENT PLAN BUSINESS.

12 (G) DISPLAY.--A LICENSE SHALL BE DISPLAYED PROMINENTLY IN
13 EACH LICENSED OFFICE.

14 (H) TRANSFER PROHIBITED.--A LICENSE MAY NOT BE TRANSFERRED,
15 ASSIGNED OR PLEDGED.

16 (I) CHANGE OF ADDRESS.--A LICENSEE CHANGING ADDRESS SHALL
17 PROVIDE NOTICE TO THE DEPARTMENT OF THE NEW ADDRESS 30 DAYS
18 PRIOR TO THE CHANGE OF ADDRESS.

19 SECTION 8. RENEWAL OF LICENSE.

20 (A) GENERAL RULE.--AN APPLICATION FOR RENEWAL OF A LICENSE
21 SHALL BE SUBMITTED TO THE DEPARTMENT ON THE FORM DETERMINED BY
22 THE DEPARTMENT AND IN THE TIME PERIOD DETERMINED BY THE
23 DEPARTMENT. AN APPLICATION FOR RENEWAL SHALL BE ACCOMPANIED BY A
24 FEE OF \$1,500 FOR THE PRINCIPAL OFFICE LICENSE AND \$750 FOR EACH
25 BRANCH OFFICE LICENSE.

26 (B) ANNUAL REPORT.--ON A DATE DETERMINED BY THE DEPARTMENT,
27 A LICENSEE SHALL FILE ANNUALLY A REPORT WITH THE DEPARTMENT
28 SETTING FORTH SUCH INFORMATION AS THE DEPARTMENT SHALL REQUIRE
29 CONCERNING THE DEBT MANAGEMENT PLAN BUSINESS CONDUCTED BY THE
30 LICENSEE DURING THE PRECEDING CALENDAR YEAR. THE REPORT SHALL BE

1 ON A FORM PROVIDED BY THE DEPARTMENT. LICENSEES WHO FAIL TO FILE
2 THE REQUIRED REPORT ON THE DATE REQUIRED BY THE DEPARTMENT MAY
3 BE SUBJECT TO A PENALTY OF \$100 FOR EACH DAY AFTER THE DUE DATE
4 UNTIL THE REPORT IS FILED.

5 (C) REQUIRED CONDITION.--THE DEPARTMENT SHALL DETERMINE THE
6 INFORMATION AND DOCUMENTATION THAT SHALL BE PROVIDED IN THE
7 APPLICATION FOR RENEWAL OF A LICENSE SUFFICIENT TO ESTABLISH
8 THAT THE LICENSEE CONTINUES TO CONDUCT THE DEBT MANAGEMENT PLAN
9 BUSINESS IN ACCORDANCE WITH THIS ACT.

10 SECTION 9. REASONS FOR DENIAL, SUSPENSION, REVOCATION OR
11 REFUSAL.

12 THE DEPARTMENT MAY DENY, SUSPEND, REVOKE OR REFUSE TO RENEW A
13 LICENSE FOR THE FOLLOWING ACTIONS TAKEN BY THE APPLICANT OR
14 LICENSEE OR ANY OF THE OWNERS, OFFICERS, DIRECTORS, PRINCIPALS
15 OR AGENTS:

16 (1) A MATERIAL MISSTATEMENT IN THE LICENSE APPLICATION
17 OR OTHER SUBMISSION REQUIRED UNDER THIS ACT OR BY THE
18 DEPARTMENT.

19 (2) FAILURE TO COMPLY WITH OR A VIOLATION OF ANY
20 PROVISION OF THIS ACT.

21 (3) UNFAIR OR UNETHICAL CONDUCT IN CONNECTION WITH THE
22 DEBT MANAGEMENT PLAN BUSINESS.

23 (4) FAILURE TO POSSESS THE FINANCIAL ABILITY OR
24 RESPONSIBILITY, CHARACTER, REPUTATION, INTEGRITY OR GENERAL
25 FITNESS SUFFICIENT TO WARRANT THE BELIEF THAT THE DEBT
26 MANAGEMENT PLAN BUSINESS WILL BE CONDUCTED LAWFULLY, HONESTLY
27 AND IN THE PUBLIC INTEREST.

28 (5) CONVICTION OR A PLEA OF GUILTY OR NOLO CONTENDERE TO
29 A CRIME OF MORAL TURPITUDE OR TO AN OFFENSE GRADED AS A
30 FELONY.

1 (6) RECEIPT OF AN INJUNCTION BY A COURT OF COMPETENT
2 JURISDICTION FROM ENGAGING IN THE DEBT MANAGEMENT PLAN
3 BUSINESS.

4 (7) HAS HAD A LICENSE ISSUED BY THE DEPARTMENT DENIED,
5 NOT RENEWED, SUSPENDED OR REVOKED.

6 (8) WAS THE SUBJECT OF A UNITED STATES POSTAL SERVICE
7 FRAUD ORDER.

8 (9) DEMONSTRATED NEGLIGENCE OR INCOMPETENCE IN
9 PERFORMING AN ACT FOR WHICH THE APPLICANT IS REQUIRED TO HOLD
10 A LICENSE UNDER THIS ACT.

11 (10) HAS AN OUTSTANDING DEBT TO THE COMMONWEALTH OR ANY
12 COMMONWEALTH AGENCY.

13 SECTION 10. REINSTATEMENT.

14 THE DEPARTMENT MAY REINSTATE A LICENSE THAT WAS PREVIOUSLY
15 SUSPENDED, REVOKED OR DENIED RENEWAL IF THE DEPARTMENT
16 DETERMINES THAT:

17 (1) A CONDITION THAT WARRANTED THE ORIGINAL ACTION HAS
18 BEEN CORRECTED TO THE DEPARTMENT'S SATISFACTION;

19 (2) THE DEPARTMENT HAS REASON TO BELIEVE THAT THE
20 CONDITION IS NOT LIKELY TO OCCUR AGAIN; AND

21 (3) THE LICENSEE SATISFIES ALL OTHER REQUIREMENTS OF
22 THIS ACT.

23 SECTION 11. POWERS AND DUTIES OF DEPARTMENT.

24 THE DEPARTMENT SHALL HAVE THE POWER TO:

25 (1) EXAMINE AND INVESTIGATE ANY DOCUMENT, ACCOUNT, BOOK
26 OR RECORD OF A LICENSEE TO ENSURE COMPLIANCE WITH THIS ACT.

27 THE EXAMINATION MAY INCLUDE DOCUMENTS, ACCOUNTS, BOOKS OR
28 RECORDS THAT RELATE TO THE OPERATION OF THE LICENSEE THAT ARE
29 IN THE POSSESSION OF AN AFFILIATE, SUBSIDIARY OR OTHER
30 BUSINESS ENTITY. THE EXAMINATION MAY BE CONDUCTED WITHOUT

1 PRIOR NOTICE TO THE LICENSEE AND THE COSTS OF THE EXAMINATION
2 SHALL BE PAID BY THE LICENSEE. FOR THE PURPOSE OF CONDUCTING
3 AN EXAMINATION OR INVESTIGATION, THE DEPARTMENT MAY REQUIRE A
4 LICENSEE TO SUPPLY RECORDS OR COPIES OF RECORDS AT A LOCATION
5 IN THIS COMMONWEALTH DETERMINED BY THE DEPARTMENT.

6 (2) CONDUCT ADMINISTRATIVE HEARINGS ON ANY MATTER
7 PERTAINING TO THIS ACT AND ISSUE SUBPOENAS TO COMPEL THE
8 ATTENDANCE OF WITNESSES OR THE PRODUCTION OF DOCUMENTS,
9 ACCOUNTS, BOOKS OR RECORDS AT A HEARING. A DOCUMENT, ACCOUNT,
10 BOOK OR RECORD SUBJECT TO SUBPOENA MAY BE RETAINED BY THE
11 DEPARTMENT UNTIL THE RELATED PROCEEDING IS COMPLETED. A
12 DEPARTMENT OFFICIAL MAY ADMINISTER OATHS OR AFFIRMATIONS TO A
13 PERSON WHOSE TESTIMONY IS REQUIRED.

14 (3) REQUEST INFORMATION FROM ANY FEDERAL, STATE, LOCAL
15 OR FOREIGN GOVERNMENT ENTITY REGARDING AN APPLICANT, A
16 LICENSEE OR A PERSON RELATED TO THE DEBT MANAGEMENT PLAN
17 BUSINESS. THE COSTS ASSOCIATED WITH A REQUEST SHALL BE PAID
18 BY THE APPLICANT OR LICENSEE.

19 (4) PROHIBIT OR PERMANENTLY REMOVE A PERSON OR LICENSEE
20 RESPONSIBLE FOR A VIOLATION OF THIS ACT FROM WORKING IN THE
21 PERSON'S OR LICENSEE'S PRESENT CAPACITY OR IN ANY OTHER
22 CAPACITY RELATED TO ACTIVITIES REGULATED BY THE DEPARTMENT.

23 (5) ORDER A PERSON OR LICENSEE TO MAKE RESTITUTION FOR
24 ACTUAL DAMAGES TO CONSUMERS CAUSED BY A VIOLATION OF THIS
25 ACT.

26 (6) ISSUE A CEASE AND DESIST ORDER THAT TAKES EFFECT
27 IMMEDIATELY, SUBJECT TO A HEARING WITHIN 14 DAYS OF THE
28 ISSUANCE OF THE ORDER.

29 (7) IMPOSE OTHER CONDITIONS OR TAKE OTHER ACTIONS AS THE
30 DEPARTMENT DEEMS APPROPRIATE TO ADMINISTER OR ENFORCE THIS

1 ACT.

2 SECTION 12. ADMINISTRATIVE PROCEEDINGS.

3 (A) HEARINGS.--A PERSON AGGRIEVED BY A DECISION OF THE
4 DEPARTMENT MAY APPEAL THE DECISION TO THE SECRETARY.

5 (B) INJUNCTIONS.--THE DEPARTMENT MAY MAINTAIN AN ACTION FOR
6 AN INJUNCTION OR SIMILAR PROCESS TO RESTRAIN OR PREVENT A PERSON
7 FROM VIOLATING THIS ACT.

8 (C) FINAL ORDERS.--A DECISION OF THE SECRETARY SHALL BE A
9 FINAL ORDER OF THE DEPARTMENT AND SHALL BE ENFORCEABLE IN A
10 COURT OF COMPETENT JURISDICTION.

11 SECTION 13. LICENSEE REQUIREMENTS.

12 (A) WRITTEN POLICIES.--A LICENSEE SHALL ADOPT WRITTEN
13 POLICIES DESCRIBING SAFEGUARDS ADOPTED TO PREVENT CONFLICTS OF
14 INTEREST IN THE CONDUCT OF ITS BUSINESS.

15 (B) NOTIFICATION--A LICENSEE SHALL NOTIFY THE DEPARTMENT
16 WITHIN THREE BUSINESS DAYS OF RECEIVING KNOWLEDGE OF ANY OF THE
17 FOLLOWING:

18 (1) THE LICENSEE'S PENAL BOND IS CANCELED OR OTHERWISE
19 BECOMES INOPERATIVE.

20 (2) AN ACTION TAKEN BY ANOTHER FEDERAL OR STATE
21 REGULATORY AGENCY OR BY A LAW ENFORCEMENT AGENCY AGAINST THE
22 LICENSEE OR ANY OWNERS, OFFICERS, DIRECTORS, PRINCIPALS,
23 AGENTS OR EMPLOYEES OF THE LICENSEE.

24 (3) THE LICENSEE IS INSOLVENT.

25 (4) THE LICENSEE IS UNABLE TO ADMINISTER THE PROVISIONS
26 OF ANY DEBT MANAGEMENT PLAN THAT THE LICENSEE HAS ENTERED
27 INTO WITH A CONSUMER, UNLESS THE INABILITY IS DUE TO A
28 REFUSAL OF A CONSUMER TO FUND A DEBT MANAGEMENT PLAN.

29 (C) ADVERTISING.--ALL ADVERTISING BY A LICENSEE SHALL
30 INDICATE THAT THE LICENSEE IS LICENSED BY THE DEPARTMENT.

1 SECTION 14. REQUIREMENTS FOR PROVIDING DEBT MANAGEMENT PLANS.

2 A LICENSEE SHALL OFFER AND PROVIDE DEBT MANAGEMENT PLANS IN
3 ACCORDANCE WITH THE FOLLOWING:

4 (1) THE LICENSEE SHALL PROVIDE EACH CONSUMER FOR WHOM IT
5 PROVIDES A DEBT MANAGEMENT PLAN WITH A CONSUMER EDUCATION
6 PROGRAM AT NO ADDITIONAL COST TO THE CONSUMER.

7 (2) PRIOR TO A LICENSEE AND CONSUMER ENTERING INTO A
8 DEBT MANAGEMENT PLAN AGREEMENT, THE LICENSEE SHALL PREPARE AN
9 ANALYSIS OF THE CONSUMER'S FINANCIAL SITUATION AND A BUDGET
10 FOR THE CONSUMER. THE ANALYSIS SHALL INCLUDE A DETERMINATION
11 THAT THE CONSUMER WILL BENEFIT FROM THE DEBT MANAGEMENT PLAN
12 AND AN EXPLANATION OF THAT BENEFIT. THE LICENSEE SHALL
13 DISCUSS THE ANALYSIS AND BUDGET WITH THE CONSUMER AND PROVIDE
14 THE CONSUMER WITH COPIES OF THE ANALYSIS AND BUDGET.

15 (3) PRIOR TO A LICENSEE EXECUTING A DEBT MANAGEMENT
16 PLAN, THE LICENSEE AND THE CONSUMER SHALL ENTER INTO A DEBT
17 MANAGEMENT PLAN AGREEMENT. THE AGREEMENT SHALL BE IN WRITING,
18 SIGNED BY THE LICENSEE AND THE CONSUMER AND PRINTED IN AT
19 LEAST 12-POINT TYPE AND SHALL CONTAIN THE FOLLOWING
20 INFORMATION:

21 (I) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE
22 LICENSEE.

23 (II) THE LICENSE NUMBER OF THE LICENSEE.

24 (III) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE
25 CONSUMER.

26 (IV) THE NAME OF THE LICENSEE'S EMPLOYEE WHO
27 PREPARED THE DEBT MANAGEMENT PLAN AGREEMENT.

28 (V) A DESCRIPTION OF THE DEBT MANAGEMENT PLAN TO BE
29 PROVIDED TO THE CONSUMER.

30 (VI) A DESCRIPTION OF THE FEES THAT WILL BE CHARGED

1 TO THE CONSUMER.

2 (VII) THE NAME AND ADDRESS OF THE DEPOSITORY
3 INSTITUTION IN WHICH A TRUST ACCOUNT WILL BE LOCATED TO
4 DEPOSIT THE CONSUMER'S FUNDS FOR DISBURSEMENT TO THE
5 CONSUMER'S CREDITORS.

6 (VIII) A LIST OF EACH OF THE CONSUMER'S CREDITORS
7 THAT THE LICENSEE IN GOOD FAITH REASONABLY EXPECTS TO
8 PARTICIPATE IN THE LICENSEE'S DEBT MANAGEMENT PLAN,
9 INCLUDING THE AMOUNT OWED TO EACH CREDITOR AND THE
10 SCHEDULE OF PAYMENTS TO BE MADE TO EACH CREDITOR. THE
11 SCHEDULE OF PAYMENTS SHALL INCLUDE THE AMOUNT OF EACH
12 PAYMENT AND THE DATE ON WHICH IT WILL BE MADE.

13 (IX) A SCHEDULE OF THE PAYMENTS THAT THE CONSUMER
14 MUST MAKE TO THE LICENSEE, INCLUDING THE AMOUNT OF EACH
15 PAYMENT, THE DATE IT IS DUE AND THE FORM IN WHICH IT MUST
16 BE MADE.

17 (X) DISCLOSURE OF ANY FEES THAT EITHER THE CONSUMER
18 MUST PAY TO THE LICENSEE OR THAT THE LICENSEE WILL RETAIN
19 FROM EACH OF THE CONSUMER'S PAYMENTS TO THE LICENSEE.

20 (XI) A NOTICE, IN BOLD PRINT, THAT THE CONSUMER'S
21 PARTICIPATION IN THE DEBT MANAGEMENT PLAN AGREEMENT MAY
22 NEGATIVELY IMPACT THE CONSUMER'S CREDIT RATING OR CREDIT
23 SCORE.

24 (XII) DISCLOSURE THAT THE LICENSEE MAY RECEIVE
25 COMPENSATION FROM THE CONSUMER'S CREDITORS FOR PROVIDING
26 THE DEBT MANAGEMENT PLAN TO THE CONSUMER, IF APPLICABLE.

27 (XIII) NOTICE THAT EITHER PARTY MAY TERMINATE THE
28 DEBT MANAGEMENT PLAN AGREEMENT UPON TEN DAYS' WRITTEN
29 NOTICE TO THE OTHER PARTY.

30 (XIV) NOTICE THAT IF THE DEBT MANAGEMENT PLAN

1 AGREEMENT IS TERMINATED, THE CONSUMER IS ENTITLED TO A
2 PROMPT REFUND OF ANY PAYMENTS MADE THAT HAVE NOT YET BEEN
3 DISBURSED TO THE CONSUMER'S CREDITORS.

4 (XV) AN EXPLANATION OF THE WAY IN WHICH DISPUTES
5 UNDER THE DEBT MANAGEMENT PLAN AGREEMENT WILL BE
6 RESOLVED.

7 (XVI) AN EXPLANATION OF APPLICABLE PRIVACY LAWS.

8 (4) THE LICENSEE SHALL PROVIDE EACH CONSUMER
9 PARTICIPATING IN A DEBT MANAGEMENT PLAN AGREEMENT WITH
10 QUARTERLY STATEMENTS SETTING FORTH THE PAYMENTS RECEIVED FROM
11 THE CONSUMER AND THE DISBURSEMENTS MADE TO THE CONSUMER'S
12 CREDITORS.

13 (5) THE LICENSEE SHALL DEPOSIT A CONSUMER'S PAYMENT
14 UNDER A DEBT MANAGEMENT PLAN AGREEMENT INTO THE LICENSEE'S
15 TRUST ACCOUNT WITHIN TWO BUSINESS DAYS OF RECEIVING THE
16 PAYMENT.

17 (6) THE LICENSEE SHALL DISBURSE A CONSUMER'S FUNDS TO
18 THE CONSUMER'S CREDITORS IN A TIMELY MANNER PURSUANT TO THE
19 CONSUMER'S DEBT MANAGEMENT PLAN AGREEMENT.

20 SECTION 15. PROHIBITIONS.

21 A LICENSEE SHALL NOT:

22 (1) PURCHASE ANY DEBT OR OBLIGATION OF A CONSUMER.

23 (2) LEND MONEY OR PROVIDE CREDIT TO A CONSUMER.

24 (3) OFFER OR PROVIDE CREDIT INSURANCE TO A CONSUMER.

25 (4) OBTAIN A MORTGAGE OR OTHER SECURITY INTEREST IN THE
26 PROPERTY OF A CONSUMER.

27 (5) OPERATE AS A COLLECTION AGENCY OR DEBT COLLECTOR.

28 (6) STRUCTURE A CONSUMER'S DEBT MANAGEMENT PLAN
29 AGREEMENT IN A WAY THAT RESULTS IN THE NEGATIVE AMORTIZATION
30 OF ANY OF THE CONSUMER'S DEBTS.

1 (7) ALTER THE TERMS OF ANY DEBT OF A CONSUMER UNLESS THE
2 ALTERATION BENEFITS THE CONSUMER AND THE CONSUMER HAS
3 APPROVED THE PROPOSED ALTERATION.

4 (8) ADVERTISE OR DISSEMINATE INFORMATION REGARDING THE
5 DEBT MANAGEMENT PLANS IN ANY WAY THAT IS FALSE, MISLEADING OR
6 DECEPTIVE.

7 (9) RECEIVE A FEE OR CONSIDERATION FOR REFERRING A
8 CLIENT TO ANOTHER BUSINESS.

9 (10) CONDUCT A BUSINESS OTHER THAN THE DEBT MANAGEMENT
10 PLAN BUSINESS LICENSED BY THE DEPARTMENT UNDER THIS ACT
11 WITHOUT AT LEAST 30 DAYS' PRIOR WRITTEN NOTIFICATION TO THE
12 DEPARTMENT.

13 SECTION 16. CONSUMER FEES.

14 (A) INITIAL CONSULTATION.--A LICENSEE MAY CHARGE A FEE OF
15 NOT MORE THAN \$50 FOR AN INITIAL CONSULTATION WITH A CONSUMER.

16 (B) MONTHLY MAINTENANCE FEE.--WHEN A CONSUMER AND A LICENSEE
17 HAVE ENTERED INTO A DEBT MANAGEMENT PLAN AGREEMENT, THE LICENSEE
18 MAY CHARGE THE CONSUMER A MONTHLY MAINTENANCE FEE OF \$10 PER
19 ACCOUNT REMAINING UNDER THE AGREEMENT FOR THAT MONTH, PROVIDED
20 THAT THE TOTAL MONTHLY FEE MAY NOT EXCEED \$50.

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

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

27 (E) CONTRIBUTIONS PROHIBITED.--A LICENSEE SHALL NOT REQUIRE
28 OR ACCEPT ANY CONTRIBUTION FROM A CONSUMER.

29 (F) NO OTHER FEES PERMITTED.--A LICENSEE SHALL NOT CHARGE A
30 CONSUMER ANY FEES UNLESS AUTHORIZED UNDER THIS SECTION.

1 SECTION 17. PENALTIES.

2 (A) VIOLATION BY LICENSEE.--A PERSON LICENSED UNDER THIS ACT
3 OR DIRECTOR, OFFICER, OWNER, PARTNER, EMPLOYEE OR AGENT OF A
4 LICENSEE WHO VIOLATES THIS ACT OR WHO COMMITS ANY ACTION WHICH
5 WOULD SUBJECT THE LICENSEE TO DENIAL, SUSPENSION, REVOCATION OR
6 NONRENEWAL MAY BE FINED BY THE DEPARTMENT AN AMOUNT NOT TO
7 EXCEED \$10,000 FOR EACH OFFENSE.

8 (B) VIOLATION BY PERSON OPERATING WITHOUT A LICENSE.--A
9 PERSON SUBJECT TO THE PROVISIONS OF THIS ACT AND NOT LICENSED BY
10 THE DEPARTMENT WHO VIOLATES THIS ACT OR WHO COMMITS ANY ACTION
11 WHICH WOULD SUBJECT A LICENSEE TO DENIAL, SUSPENSION, REVOCATION
12 OR NONRENEWAL MAY BE FINED BY THE DEPARTMENT AN AMOUNT NOT TO
13 EXCEED \$10,000 FOR EACH OFFENSE.

14 (C) CRIMINAL OFFENSE FOR PERSON OPERATING WITHOUT A
15 LICENSE.--A PERSON WHO IS SUBJECT TO THIS ACT, NOT LICENSED BY
16 THE DEPARTMENT AND WHO VIOLATES THIS ACT OR COMMITS AN ACT WHICH
17 WOULD SUBJECT A LICENSEE TO DENIAL, SUSPENSION, REVOCATION OR
18 NONRENEWAL COMMITS A FELONY OF THE THIRD DEGREE.

19 (D) UNFAIR TRADE PRACTICES.--A VIOLATION OF ANY PROVISION OF
20 THIS ACT SHALL BE DEEMED TO BE A VIOLATION OF THE ACT OF
21 DECEMBER 17, 1968 (P.L.1224, NO.387), KNOWN AS THE UNFAIR TRADE
22 PRACTICES AND CONSUMER PROTECTION LAW.

23 SECTION 18. DAMAGES.

24 A CONSUMER INJURED BY A VIOLATION OF THIS ACT OR BY A
25 LICENSEE'S BREACH OF A DEBT MANAGEMENT PLAN AGREEMENT SUBJECT TO
26 THIS ACT MAY BRING AN ACTION FOR RECOVERY OF DAMAGES. JUDGMENT
27 SHALL BE ENTERED FOR ACTUAL DAMAGES, BUT IN NO CASE LESS THAN
28 THE AMOUNT PAID BY THE CONSUMER TO THE LICENSEE, PLUS REASONABLE
29 ATTORNEY FEES AND COSTS.

30 SECTION 19. APPLICABILITY.

1 THE PROVISIONS OF THIS ACT SHALL APPLY TO:

2 (1) ANY DEBT MANAGEMENT PLAN WHICH IS:

3 (I) NEGOTIATED, OFFERED OR OTHERWISE TRANSACTED
4 WITHIN THIS COMMONWEALTH, IN WHOLE OR IN PART, WHETHER BY
5 THE LICENSEE OR ANY OTHER PERSON;

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

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

10 (2) ANY PERSON WHO ENGAGES IN THE DEBT MANAGEMENT PLAN
11 BUSINESS IN THIS COMMONWEALTH.

12 SECTION 20. TRANSITION.

13 A PERSON WHO PROVIDES DEBT MANAGEMENT PLANS BEFORE THE
14 EFFECTIVE DATE OF THIS ACT AND SEEKS TO CONTINUE PROVIDING DEBT
15 MANAGEMENT PLANS MUST SUBMIT AN APPLICATION FOR A LICENSE UNDER
16 THIS ACT WITHIN 45 DAYS OF THE EFFECTIVE DATE OF THIS ACT. THE
17 APPLICANT MAY CONTINUE TO PROVIDE DEBT MANAGEMENT PLANS
18 PROVISIONALLY, ACCORDING TO THE REQUIREMENTS OF THIS ACT WHILE
19 THE DEPARTMENT APPROVES OR DISAPPROVES THE APPLICATION FOR
20 LICENSURE UNDER THIS ACT.

21 SECTION 21. REGULATIONS.

22 THE DEPARTMENT SHALL PROMULGATE REGULATIONS AS NECESSARY TO
23 ENFORCE THE PROVISIONS OF THIS ACT.

24 SECTION 22. EFFECT ON OTHER LAWS.

25 A LICENSEE UNDER THIS ACT SHALL NOT BE SUBJECT TO THE
26 PROVISIONS OF THE ACT OF SEPTEMBER 2, 1965 (P.L.490, NO.249),
27 REFERRED TO AS THE MONEY TRANSMISSION BUSINESS LICENSING LAW, TO
28 THE EXTENT THAT THE LICENSEE TRANSMITS MONEY PURSUANT TO THE
29 TERMS OF A DEBT MANAGEMENT PLAN AGREEMENT.

30 SECTION 23. REPEAL.

1 (A) INTENT.--THE GENERAL ASSEMBLY DECLARES THAT THE REPEAL
2 UNDER SUBSECTION (B) IS NECESSARY TO EFFECTUATE THE PURPOSES OF
3 THIS ACT.

4 (B) PROVISION.--THE ACT OF DECEMBER 16, 1992 (P.L.1144,
5 NO.150), KNOWN AS THE CREDIT SERVICES ACT, IS REPEALED.
6 SECTION 24. EFFECTIVE DATE.

7 THIS ACT SHALL TAKE EFFECT IN 120 DAYS.