

THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 1284 Session of
2010

INTRODUCED BY WARD, D. WHITE, BRUBAKER, WAUGH, WASHINGTON AND
ERICKSON, MARCH 24, 2010

REFERRED TO BANKING AND INSURANCE, MARCH 24, 2010

AN ACT

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

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

6 CHAPTER 1

7 PRELIMINARY PROVISIONS

8 Section 101. Short title.

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

11 Section 102. Definitions.

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

15 "Affiliate." Any of the following:

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

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

functions with respect to the licensee.

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

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

"Agreement." An agreement between a licensee 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.

"Business address." The physical location of a business, including the name and number of a street.

"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 through a program designed under this act, without the intermediary receiving money from the individual with the intent to distribute such money to the individual's creditor, 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

1 provide accounting services in this Commonwealth.

2 (3) Financial planning services provided in a financial
3 planner-client relationship by a member of a financial
4 planning profession whose members the department, by
5 regulation, determines are:

6 (i) Licensed by this Commonwealth.

7 (ii) Subject to a disciplinary mechanism.

8 (iii) Subject to a code of professional
9 responsibility.

10 (iv) Subject to a continuing education requirement.

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

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

14 "Licensee." A person licensed under the provisions of this
15 act.

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

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

24 "Program." A program or strategy in which a licensee
25 furnishes services, which contemplate that creditors will settle
26 debts for less than the full principal amount of debt owed by an
27 individual.

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

1 "Sign." With present intent to authenticate or adopt a
2 record:

- 3 (1) to execute or adopt a tangible symbol; or
- 4 (2) to attach to or logically associate with the record
- 5 an electronic sound, symbol or process.

6 "State." A state of the United States, the District of
7 Columbia, Puerto Rico, the United States Virgin Islands or any
8 territory or insular possession subject to the jurisdiction of
9 the United States.

10 Section 103. Nonapplicability.

11 (a) Exemption from act.--This act does not apply to the
12 following persons:

13 (1) A banking institution or its agent or a federally
14 chartered or State-chartered credit union, if the primary
15 regulator of the banking institution or federally chartered
16 or State-chartered credit union supervises the banking
17 institution or federally chartered or State-chartered credit
18 union.

19 (2) Judicial officers or persons acting under court
20 order.

21 (3) Agencies or instrumentalities of Federal, State or
22 local government.

23 (4) Employees of licensees or exempt persons under this
24 act.

25 (5) Attorneys who are admitted to the bar of this
26 Commonwealth and provide legal services within an attorney-
27 client relationship and who engage in debt settlement
28 services within the normal course of legal practice.

29 (b) Exemption from licensing.--The following persons are not
30 required to be licensed under this act, but must comply with the

provisions of this act if they offer, obtain or provide debt settlement services:

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

(2) Title insurance companies licensed under the act of May 17, 1921 (P.L.682, No.284), known as The Insurance Company Law of 1921, or their agents.

(3) Mortgage lenders, mortgage brokers and mortgage loan correspondents licensed under the provisions of 7 Pa.C.S. Ch. 61 (relating to mortgage loan industry licensing and consumer protection).

CHAPTER 3

LICENSING

Section 301. License required.

(a) Debt settlement services.--No person may advertise, solicit, state or represent that it can offer, obtain or procure debt settlement services to or for a consumer or provide debt settlement services to a consumer unless the person is licensed by the department under this act.

(b) Debt settlement services.--No person may advertise, solicit, state or represent that it can offer, obtain or procure debt settlement services to or for a consumer or provide debt settlement services to a consumer for a fee unless the person is licensed by the department under this act and is operating in accordance with regulations promulgated by the department regarding the conduct of debt settlement services.

Section 302. Application for licensure.

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

1 department and shall include following:

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

4 (2) The address of each location in this Commonwealth
5 where the applicant will provide debt settlement services.

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

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

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

16 (6) A list of other states in which the applicant
17 engages in the business of providing debt settlement
18 services, including any relevant license or registration
19 number and information regarding whether a license or
20 registration in another state has ever been suspended or
21 revoked.

22 (7) The audited financial statement from the applicant's
23 most recent fiscal year, including an audit opinion from an
24 independent certified public accountant.

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

29 (9) A copy of the applicant's standard debt settlement
30 services agreement.

1 (10) Evidence that the applicant is accredited by an
2 independent accrediting organization acceptable to the
3 department.

4 (11) A penal bond meeting the requirements of section
5 304.

6 (12) A nonrefundable fee of \$2,000.

7 (13) A description of the consumer education program
8 that the applicant provides or intends to provide to
9 consumers along with copies of any written materials used or
10 to be used in the program.

11 (14) Any other information that the department
12 reasonably requires.

13 Section 303. License fees for certain entities.

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

22 Section 304. Penal bond.

23 (a) General rule.--The department shall issue a license
24 under this act if the applicant obtains and maintains a bond in
25 the amount of \$50,000, in a form acceptable to the department,
26 prior to the issuance of the license, from a surety company
27 authorized to do business in this Commonwealth. The bond shall
28 be a penal bond conditioned on compliance with this act and
29 subject to forfeiture by the department and shall run to the
30 Commonwealth for its use. The bond shall also be for the use of

1 any person against the licensee for the benefit of any consumer
2 who is injured by a violation of this act or regulation
3 promulgated under this act.

4 (a.1) Bond substitute.--As a substitute for the bond, a
5 licensee may file with the department, in the amount of the bond
6 requirement per subsection (a), one of the following:

7 (1) An irrevocable letter of credit, issued or confirmed
8 by a bank approved by the department, payable upon
9 presentation of a certificate by the department stating that
10 the licensee or its agent has not complied with this act.

11 (2) Bonds or other obligations of the United States or
12 guaranteed by the United States or bonds or other obligations
13 of the Commonwealth or a political subdivision of the
14 Commonwealth, to be deposited and maintained with a bank
15 approved by the department for this purpose.

16 (b) Rights of aggrieved persons.--

17 (1) If the person is aggrieved, the person may, with the
18 written consent of the department, recover fees and costs
19 from the bond or bond substitute by filing a claim with the
20 surety company or maintaining an action on the bond or bond
21 substitute.

22 (2) In the alternative, an aggrieved person may recover
23 fees and costs by filing a formal complaint against the
24 licensee with the department, which shall adjudicate the
25 matter. The adjudication shall be binding upon the surety
26 company and enforceable by the department in Commonwealth
27 Court and by an aggrieved person in any court.

28 (3) Any aggrieved person seeking to recover from a bond
29 or bond substitute that has already been forfeited by the
30 department or which the department is in the process of

1 forfeiting may recover payment on the bond or bond substitute
2 if, after filing a petition with the department, the
3 department consents to the aggrieved person's requested
4 payment or portion thereof. The department may pay the
5 aggrieved person from the bond or bond substitute proceeds it
6 recovers.

7 (c) Other relief.--

8 (1) Nothing in this section shall be construed to limit
9 the ability of any court or magisterial district judge to
10 award to any aggrieved person other damages, court costs and
11 attorney fees as permitted by law, but those claims that are
12 not fees or related costs may not be recovered from the bond
13 or bond substitute.

14 (2) The department, in its discretion, may consent to or
15 order pro rata or other recovery on the bond or bond
16 substitute for any aggrieved person if claims against the
17 bond or bond substitute may or do exceed its full monetary
18 amount.

19 (d) Cancellation of bonds.--No bond or bond substitute shall
20 comply with the requirements of this section unless it contains
21 a provision that it shall not be canceled for any cause unless
22 notice of intention to cancel is given to the department at
23 least 30 days before the day upon which cancellation shall take
24 effect. Cancellation of the bond or bond substitute shall not
25 invalidate the bond or bond substitute regarding the period of
26 time it was in effect.

27 Section 305. Issuance of license.

28 (a) Time for issuance.--The department shall decide whether
29 to issue a license to an applicant within 60 days of receiving
30 the applicant's completed application. If the department needs

1 longer than 60 days to make a decision, it may extend the time
2 period for 30 days. The department shall notify the applicant of
3 the extended time period, including a final decision date, in
4 writing.

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

9 (c) Appeal of denial.--If the department refuses to issue a
10 license, it shall notify the applicant in writing that the
11 license has been denied, including the reason for the denial and
12 that the applicant has the right to appeal the denial to the
13 secretary within 30 days.

14 (d) Duration.--A license shall be issued for a period of one
15 year on a schedule determined by the department, provided that
16 if a license is issued prior to the beginning of a licensing
17 year, the license shall only be valid until the end of that
18 licensing year, at which time it may be renewed subject to the
19 provisions of this act. In the event that a license is denied,
20 canceled, surrendered, revoked or suspended, no part of the
21 license fee or license renewal fee is subject to rebate.

22 (e) Contents.--The license shall be on a form determined by
23 the department and shall contain, at a minimum, the name of the
24 licensee, the address at which the licensee is conducting
25 business and a license number.

26 (f) Display.--The license shall be displayed prominently at
27 the licensee's business locations.

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

30 (h) Conditional licenses.--The department may impose

1 conditions on the issuance of any license under this act. If the
2 department determines that conditions imposed upon a license
3 have not been fulfilled, the department may take any action
4 authorized under this act against the licensee that the
5 department deems necessary. In the case of applicants, the
6 department may issue licenses effective immediately upon receipt
7 of an application, which licenses shall be conditional licenses
8 issued under this subsection.

9 Section 306. Renewal of license.

10 (a) General rule.--An application for renewal of a license
11 shall be submitted to the department on the form determined by
12 the department and in the time period determined by the
13 department. Each application for renewal shall be accompanied by
14 a fee of \$1,250.

15 (b) Required condition.--The department shall determine the
16 information and documentation that shall be provided in the
17 application for renewal of a license sufficient to establish
18 that the licensee continues to conduct its business in
19 accordance with this act.

20 Section 307. Reasons for denial, suspension, revocation or
21 refusal.

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

25 (1) Made a material misstatement in the license
26 application or any other submission required by this act or
27 the department.

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

1 (3) Engaged in unfair or unethical conduct in connection
2 with the debt settlement services business.

3 (4) Does not possess the financial responsibility,
4 character, reputation, integrity and general fitness
5 sufficient to warrant the belief that the debt settlement
6 services business will be conducted lawfully, honestly and in
7 the public interest.

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

11 (6) Been enjoined by a court of competent jurisdiction
12 from engaging in the business of debt settlement services.

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

15 (8) Became the subject of a United States Postal Service
16 fraud order.

17 (9) Has been convicted of a crime or suffered a civil
18 judgment involving dishonesty or the violation of Federal or
19 State securities laws.

20 (10) Has an outstanding debt to the Commonwealth or any
21 Commonwealth agency.

22 (11) Has failed to maintain the bond or bond substitute
23 required under section 304.

24 (12) Becomes insolvent, meaning that the liabilities of
25 the applicant or licensee exceed the assets of the applicant
26 or licensee or that the applicant or licensee cannot meet the
27 obligations of the applicant or licensee as they mature or is
28 in such financial condition that the applicant or licensee
29 cannot continue in business with safety to the customers of
30 the applicant or licensee.

1 Section 308. Reinstatement.

2 The department may reinstate a license that was previously
3 suspended, revoked or denied renewal, if all of the following
4 exist:

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

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

9 (3) The licensee satisfies all other requirements of
10 this act.

11 Section 309. Limitations on license.

12 (a) Name or address.--A licensee shall not conduct business
13 under this act using a name or at an address different from that
14 contained on the licensee's license. When a licensee changes its
15 name or its business address, it shall notify the department
16 within ten days of the change and the department may issue a new
17 license specifying the licensee's new name or address.

18 (b) Other businesses.--A licensee shall not conduct a
19 business other than the debt settlement service business
20 licensed by the department under this act unless it notifies the
21 department in writing at least 30 days before beginning to
22 conduct that business.

23 Section 310. Licensure in another state.

24 If an applicant holds a license or certificate of
25 registration in another state authorizing it to provide debt
26 settlement services, the applicant may submit a copy of that
27 license or certificate and the application for it instead of an
28 application in the form prescribed by this chapter. The
29 department shall accept the application and the license or
30 certificate from the other state as an application for

1 registration as a licensee or for renewal of registration as a
2 licensee, as appropriate, in this Commonwealth if:

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

7 (2) The applicant provides the information required by
8 section 302(1), (2) and (9).

9 (3) The applicant, under penalty of false statement,
10 certifies that the information contained in the application
11 is current or, to the extent it is not current, supplements
12 the application to make the information current.

13 CHAPTER 5

14 LICENSEE RESPONSIBILITIES

15 Section 501. Requirement of good faith.

16 A licensee shall act in good faith in all matters under this
17 act.

18 Section 502. Customer service.

19 A licensee shall maintain a toll-free communication system,
20 staffed at a level that reasonably permits an individual to
21 speak to a customer-service representative, as appropriate,
22 during ordinary business hours.

23 Section 503. Prerequisites for providing debt settlement
24 services.

25 (a) List of goods and services.--Before providing debt
26 settlement services, a licensee shall give the individual an
27 itemized list of goods and services and the charges for each.
28 The list must be clear and conspicuous.

29 (b) Financial analysis.--A licensee may not furnish debt
30 settlement services unless the licensee has prepared a financial

1 analysis.

2 (c) Copy of financial analysis and assistance option.--
3 Before an individual assents to an agreement to engage in a
4 program, a licensee shall:

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

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

13 (d) Disclosure.--Before an individual assents to an
14 agreement to engage in a program, the licensee shall inform the
15 individual of the following:

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

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

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

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

27 (5) Specific results cannot be predicted or guaranteed
28 and the licensee cannot force negotiations or settlements
29 with creditors but will advocate solely on behalf of the
30 individual.

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

3 (7) The licensee does not provide accounting or legal
4 advice to individuals, unless the licensee is professionally
5 licensed to provide such advice.

6 (8) The licensee is the individual's advocate and does
7 not receive compensation from creditors, banks or third party
8 collection agencies.

9 (9) The licensee does not make monthly payments to the
10 individual's creditors.

11 (10) The name and business address of the licensee.
12 Section 504. Communication by electronic or other means.

13 (a) Compliance with Federal law.--A licensee may satisfy the
14 requirements of section 503, 505 or 512 by means of the Internet
15 or other electronic means if the licensee obtains a consumer's
16 consent in the manner provided by section 101(c)(1) of the
17 Electronic Signatures in Global and National Commerce Act
18 (Public Law 106-229, 15 U.S.C. § 7001 et seq.).

19 (b) Form.--The disclosures and materials required by
20 sections 503, 505 and 512 shall be presented in a form that is
21 capable of being accurately reproduced for later reference.

22 (c) Screen information.--With respect to disclosure by means
23 of an Internet website, the disclosure of the information
24 required by section 503(d) must appear on one or more screens
25 that:

26 (1) Contain no other information.

27 (2) The individual must see before proceeding to assent
28 to formation of a program.

29 (d) Request for written copy.--At the time of providing the
30 materials and agreement required by sections 503(c) and (d), 505

1 and 512, a licensee shall inform the individual that upon
2 electronic, telephonic or written request, it will send the
3 individual a written copy of the materials and shall comply with
4 a request as provided in subsection (e).

5 (e) Procedure.--If a licensee is requested, before the
6 expiration of 90 days after a program is completed or
7 terminated, to send a written copy of the materials required by
8 section 503(c) and (d), 505 or 512, the licensee shall send them
9 at no charge within three business days after the request, but
10 the licensee need not comply with a request more than once per
11 calendar month or if it reasonably believes the request is made
12 for purposes of harassment. If a request is made more than 90
13 days after a program is completed or terminated, the licensee
14 shall send, within a reasonable time, a written copy of the
15 materials requested.

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

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

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

23 (g) Termination of agreement.--Subject to subsection (h), if
24 a consumer who has consented to electronic communication in the
25 manner provided by section 101 of the Electronic Signatures in
26 Global and National Commerce Act withdraws consent as provided
27 in that act, a licensee may terminate its agreement with the
28 consumer.

29 (h) Notification.--If a licensee wishes to terminate an
30 agreement with a consumer under subsection (g), it shall notify

1 the consumer that it will terminate the agreement unless the
2 consumer, within 30 days after receiving the notification,
3 consents to electronic communication in the manner provided in
4 section 101(c) of the Electronic Signatures in Global and
5 National Commerce Act.

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

10 Section 505. Form and contents of agreement.

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

12 (1) Be in a record.

13 (2) Be dated and signed by the individual.

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

16 (4) Include the name, business address and telephone
17 number of the licensee.

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

20 (6) Disclose:

21 (i) The services to be provided.

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

25 (iii) How the licensee will comply with its
26 obligations under section 512(a).

27 (iv) That the individual may cancel the agreement as
28 provided in section 506.

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

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

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

(c) Limitation.--If the department supplies the licensee with any information required under subsection (a)(6)(vi), the licensee may comply with that requirement only by disclosing the information supplied by the department.

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

(e) Amount of debt to be settled.--An agreement may confer on a licensee a power of attorney to settle the individual's debt for no more than 50% of the amount of the debt. An agreement may not confer a power of attorney to settle a debt for more than 50% of that amount, but may confer a power of attorney to negotiate with creditors of the individual on behalf of the individual. An agreement must provide that the licensee will obtain the assent of the individual after a creditor has assented to a settlement for more than 50% of the amount of the debt.

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

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

(2) Except as permitted by 9 United States Code § 2

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

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

9 (4) Contain a provision that:

10 (i) Limits or releases the liability of any person
11 for not performing the agreement or for violating this
12 act.

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

15 (g) Other rights and obligations.--All rights and
16 obligations specified in subsection (d) and section 506 exist
17 even if not provided in the agreement.

18 Section 506. Cancellation of agreement and waiver.

19 (a) Cancellation.--An individual may cancel an agreement
20 before midnight of the third business day after the individual
21 assents to it, unless the agreement does not comply with
22 subsection (b) or section 505 or 701, in which event the
23 individual may cancel the agreement within 30 days after the
24 individual assents to it. To exercise the right of cancellation,
25 the individual must give notice in a record to the licensee.
26 Notice by mail is given when mailed.

27 (b) Notice.--An agreement must be accompanied by the
28 following notice:

29 Notice of right of cancellation.

30 You may cancel this agreement, without any penalty or

obligation, at any time before midnight of the third business day that begins the day after you agree to it by electronic communication or by signing it.

To cancel this agreement during this period, send an e-mail to (e-mail address of licensee) or mail or deliver a signed, dated copy of this notice, or any other written notice to (name of licensee) at (address of licensee) before midnight on the third business day after you sign the agreement.

If you cancel this agreement within the three-day period, we will refund all money you already have paid us.

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 licensee communicates with an individual primarily in a language other than English, the licensee 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 licensee 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) Agreement.--A licensee may not impose charges or receive payment for debt settlement services until the licensee and the individual have signed an agreement that complies with this act.

(c) Authorized fees.--If an individual assents to an agreement, a licensee may not impose a fee or other charge for educational or counseling services, or the like, except as otherwise provided in this subsection and except for educational

1 or counseling services required in connection with a government-
2 sponsored program. The department may authorize a licensee to
3 charge a fee based on the nature and extent of the educational
4 or counseling services furnished by the licensee.

5 (d) Amount of fees for certain debt settlement services.--If
6 an individual assents to an agreement that contemplates that
7 creditors will settle debts for less than the principal amount
8 of the debt, a licensee may charge:

9 (1) A fee for consultation, obtaining a credit report,
10 setting up an account, and the like, in an amount not
11 exceeding the lesser of \$400 or 4% of the debt in the plan at
12 the inception of the plan.

13 (2) A monthly service fee, not to exceed \$10 times the
14 number of creditors remaining in a plan at the time the fee
15 is assessed, but not more than \$50 in any month.

16 (3) Fees as permitted in subsection (g).

17 (e) Absence of agreement.--If an individual does not assent
18 to an agreement, a licensee may receive for educational and
19 counseling services it provides to the individual a fee not
20 exceeding \$100 or, with the approval of the department, a larger
21 fee. The department may approve a fee larger than \$100 if the
22 nature and extent of the educational and counseling services
23 warrant the larger fee.

24 (f) Refund.--If, before the expiration of 90 days after the
25 completion or termination of educational or counseling services,
26 an individual assents to an agreement, the licensee shall refund
27 to the individual any fee paid pursuant to subsection (e).

28 (g) Other fee calculation.--Except as otherwise provided in
29 subsection (d), if an agreement contemplates that creditors will
30 settle an individual's debts for less than the principal amount

1 of the debt, compensation for services may not exceed the
2 following applicable fee limits, the terms of which shall be
3 clearly disclosed in the agreement:

4 (1) With respect to an agreement that provides for a
5 flat fee based on the overall amount of included debt, the
6 total aggregate amount of fees charged to any individual
7 under this act, including fees charged under subsection (d)
8 (1) and (2), may not exceed 17% of the principal amount of
9 debt included in the agreement at the inception of the
10 agreement. The flat fee authorized under this paragraph shall
11 be assessed in equal monthly payments over at least half the
12 length of the plan, as estimated at the plan's inception,
13 unless the payment of fees is voluntarily accelerated by the
14 individual in a separate record and at least half of the
15 overall amount of outstanding debt covered by the agreement
16 has been settled.

17 (2) With respect to agreements in which fees are
18 calculated as a percentage of the amount saved by an
19 individual, a settlement fee may not exceed 30% of the excess
20 of the outstanding amount of each debt over the amount
21 actually paid to the creditor, as calculated at the time of
22 settlement. Settlement fees authorized under this paragraph
23 shall become billable only as debts are settled, and the
24 total aggregate amount of fees charged to any individual
25 under this part, including fees charged under subsection (d)
26 (1) and (2), may not exceed 20% of the principal amount of
27 debt included in the agreement at the agreement's inception.

28 (3) A licensee may not impose or receive fees under both
29 paragraphs (1) and (2).

30 (h) Payment dishonored.--If a payment to a licensee by an

individual under this act is dishonored, a licensee may impose a reasonable charge on the individual, not to exceed the lesser of \$25 and the amount permitted by law other than this act.

Section 509. Voluntary contributions.

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

Section 510. Voidable agreements.

(a) Unauthorized fees.--If a licensee imposes a fee or other charge or receives money or other payments not authorized by section 508, the individual may void the agreement and recover as provided in section 904.

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

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

Section 511. Termination of agreement.

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

Section 512. Periodic reports and retention of records.

(a) Reports required.--A licensee shall provide the accounting required by subsection (b):

(1) Upon cancellation or termination of an agreement.

(2) Before cancellation or termination of any agreement:

(i) After each settlement of a debt with a creditor on behalf of the individual.

(ii) Within five business days after a request by an

individual, but the licensee need not comply with more than one request in any calendar month.

(b) 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 licensee 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 licensees 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.

(c) Retention.--A licensee 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 licensee may use electronic or other means of storage of the records.

CHAPTER 7

VIOLATIONS

Section 701. Prohibited acts and practices.

(a) Prohibitions.--A licensee may not:

(1) Settle a debt on behalf of an individual for more than 50% of the amount of the debt owed a creditor, unless the individual assents to the settlement after the creditor has assented.

1 (2) Take a power of attorney that authorizes it to
2 settle a debt, unless the power of attorney expressly limits
3 the licensee's authority to settle debts for not more than
4 50% of the amount of the debt owed a creditor.

5 (3) Exercise or attempt to exercise a power of attorney
6 after an individual has terminated an agreement.

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

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

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

13 (iii) In payment of a creditor to fund a negotiated
14 settlement authorized under paragraph (1) or (2).

15 (iv) In payment of a creditor to fund a negotiated
16 settlement of which both the settlement and transfer of
17 money has been authorized by the debtor.

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

20 (6) Settle a debt or lead an individual to believe that
21 a payment to a creditor is in settlement of a debt to the
22 creditor unless, at the time of settlement, the individual
23 receives a certification or confirmation by the creditor that
24 the payment is in full settlement of the debt or is part of a
25 payment plan that is in full settlement of the debt.

26 (7) Make a representation that:

27 (i) The licensee will furnish money to pay bills or
28 prevent attachments.

29 (ii) Payment of a certain amount will guarantee
30 satisfaction of a certain amount or range of

1 indebtedness.

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

5 (8) Represent that it is authorized or competent to
6 furnish legal advice or perform legal services unless the
7 advice or services are provided by a licensed attorney
8 working with the licensee.

9 (9) Represent that it is a not-for-profit entity unless
10 it is organized and properly operating as a not-for-profit
11 under the law of the state in which it was formed or that it
12 is a tax-exempt entity unless it has received certification
13 of tax-exempt status from the Federal Internal Revenue
14 Service.

15 (10) Take a confession of judgment or power of attorney
16 to confess judgment against an individual.

17 (11) Employ an unfair, unconscionable or deceptive act
18 or practice, including the knowing omission of any material
19 information.

20 (b) Debt settlement services.--If a licensee furnishes debt
21 settlement services to an individual, the licensee may not,
22 directly or indirectly:

23 (1) Purchase a debt or obligation of the individual.

24 (2) Receive from or on behalf of the individual:

25 (i) A promissory note or other negotiable instrument
26 other than a check or a demand draft.

27 (ii) A post-dated check or demand draft.

28 (3) Lend money or provide credit to the individual,
29 except as a deferral of a fee payment at no additional
30 expense to the individual.

1 (4) Obtain a mortgage or other security interest from
2 any person in connection with the services provided to the
3 individual.

4 (5) Except as permitted by Federal law, disclose the
5 identity or identifying information of the individual or the
6 identity of the individual's creditors, except to:

7 (i) The department, upon proper demand.

8 (ii) A creditor of the individual, to the extent
9 necessary to secure the cooperation of the creditor in a
10 program.

11 (iii) The extent necessary to administer the
12 program.

13 (6) Except as otherwise provided in section 508, provide
14 the individual less than the full benefit of a compromise of
15 a debt arranged by the licensee.

16 (7) Furnish legal advice or perform legal services,
17 unless the person furnishing that advice to or performing
18 those services for the individual is licensed to practice
19 law.

20 (8) Advise individuals to stop payment on any of the
21 accounts being handled by the licensee.

22 (c) Practice of law.--This act does not authorize any person
23 to engage in the practice of law.

24 Section 702. Advertising.

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

29 Section 703. Internal complaint policy.

30 Each licensee shall establish an internal formal complaint

1 policy that creates a process for the licensee to receive,
2 review and address or resolve formal complaints internally. The
3 availability of this process shall be communicated in writing to
4 individuals enrolled in the licensee's program. This policy
5 shall include a provision that all consumers who file a formal
6 complaint shall receive a response from the licensee within a
7 reasonable time from the licensee's receipt of such complaint.
8 The licensee shall maintain a file for each such formal
9 complaint that documents the complaint, its handling and the
10 resolution of such complaint, and the licensee shall disclose
11 the file to the department upon request.

12 CHAPTER 9

13 ADMINISTRATION AND ENFORCEMENT

14 Section 901. Powers of department.

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

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

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

1 (2) Require or permit a person to file a statement under
2 oath as to all the facts and circumstances of a matter to be
3 investigated.

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

6 (d) Cooperative arrangements.--The department may enter into
7 cooperative arrangements with any other Federal or state agency
8 having authority over licensees and may exchange with any of
9 those agencies information about a licensee, including
10 information obtained during an examination of the licensee.

11 (e) Adjustments.--The department, by regulation, shall adopt
12 dollar amounts instead of those specified in sections 902 and
13 904 to reflect inflation, as measured by the United States
14 Bureau of Labor Statistics Consumer Price Index for All Urban
15 Consumers or, if that index is not available, another index
16 adopted by regulation. The department shall adopt a base year
17 and adjust the dollar amounts, effective July 1 of each year, if
18 the change in the index from the base year, as of December 31 of
19 the preceding year, is at least 10%. The dollar amount must be
20 rounded to the nearest \$10.

21 (f) Notification.--The department shall notify registered
22 licensees of any change in dollar amounts made under subsection
23 (f) and make that information available to the public.

24 Section 902. Administrative remedies.

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

28 (1) Ordering a licensee or a director, employee or other
29 agent of a licensee to cease and desist from any violation.

30 (2) Ordering a licensee or a person that has caused a

1 violation to correct the violation, including making
2 restitution of money or property to a person aggrieved by a
3 violation.

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

7 (4) Prosecuting a civil action to:

8 (i) Enforce an order.

9 (ii) Obtain restitution or an injunction or other
10 equitable relief, or both.

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

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

17 (c) Action.--The department may maintain an action to
18 enforce this act in any county.

19 (d) Attorney fees and costs.--The department may recover the
20 reasonable costs of enforcing this act under subsections (a),
21 (b) and (c), including attorney fees based on the hours
22 reasonably expended and the hourly rates for attorneys of
23 comparable experience in the community.

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

1 Section 903. Suspension, revocation or nonrenewal of
2 registration.

3 (a) General rule.--The department may suspend, revoke or
4 deny renewal of a licensee's registration if:

5 (1) A fact or condition exists that, if it had existed
6 when the registrant applied for registration as a licensee,
7 would have been a reason for denying registration.

8 (2) The licensee has committed a material violation of
9 this act or a regulation or order of the department under
10 this act.

11 (3) The licensee is insolvent.

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

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

21 (b) Appeal.--If the department suspends or revokes a
22 licensee's registration, the licensee may appeal and request a
23 hearing under 2 Pa.C.S. (relating to administrative law and
24 procedure).

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

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

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

1 (3) Being insolvent within the meaning of 11 United
2 States Code (relating to bankruptcy).
3 Section 904. Private enforcement.

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

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

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

14 (2) Except as otherwise provided in subsection (c) and
15 subject to adjustment of the dollar amount under section
16 901(f), with respect to a violation of section 503, 505, 506,
17 507, 508, 512 or 701(a) or (b), the greater of the amount
18 recoverable under paragraph (1) or \$1,000.

19 (3) Reasonable attorney fees and costs.

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

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

28 (e) Nonliability.--A licensee is not liable under this
29 section for a violation of this act if the licensee proves that
30 the violation was not intentional and resulted from a good faith

1 error notwithstanding the maintenance of procedures reasonably
2 adapted to avoid the error. If, in connection with a violation,
3 the licensee has received more money than authorized by an
4 agreement or this act, the defense provided by this subsection
5 is not available unless the licensee refunds the excess within
6 three business days after learning of the violation.

7 Section 905. Violation of unfair or deceptive practices
8 statute.

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

14 CHAPTER 21

15 MISCELLANEOUS PROVISIONS

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

18 This act modifies, limits and supersedes the Electronic
19 Signatures in Global and National Commerce Act (Public Law
20 106-229, 15 U.S.C. § 7001 et seq.), but does not modify, limit
21 or supersede section 101(c) or authorize electronic delivery of
22 any of the notices described in section 103(b) of the Electronic
23 Signatures in Global and National Commerce Act.

24 Section 2102. Transitional provisions.

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

30 Section 2103. Repeal.

1 Repeals are as follows:

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

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

6 Section 2104. Effective date.

7 This act shall take effect in 60 days.