
THE GENERAL ASSEMBLY OF PENNSYLVANIA

SENATE BILL

No. 622 Session of
2013

INTRODUCED BY WARD, WHITE, BOSCOLA, BROWNE, RAFFERTY, BREWSTER,
MENSCH, ERICKSON, SCHWANK, FERLO, HUGHES, SOLOBAY, WAUGH AND
BLAKE, MARCH 6, 2013

AS REPORTED FROM COMMITTEE ON COMMERCE, HOUSE OF
REPRESENTATIVES, AS AMENDED, JUNE 24, 2014

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 Securities and for enforcement; imposing civil penalties;
4 and making a related repeal.

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20 National Commerce Act.
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24 The General Assembly of the Commonwealth of Pennsylvania
25 hereby enacts as follows:
26
27 CHAPTER 1
28 PRELIMINARY PROVISIONS
29 Section 101. Short title.
30 This act shall be known and may be cited as the Debt
Settlement Services Act.

1 Section 102. Definitions.

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

5 "Affiliate." Any of the following:

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

8 (2) An officer of or individual performing similar
9 functions with respect to the licensee.

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

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

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

17 "Bank." A financial institution, including a commercial
18 bank, savings bank, savings and loan association, credit union,
19 ~~mortgage~~ bank and trust company, engaged in the business of <--
20 banking, chartered under Federal or State law and regulated by a
21 Federal or State banking regulatory authority.

22 "COMMISSION." THE BANKING AND SECURITIES COMMISSION. <--

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

26 "Debt settlement services." Services as an intermediary
27 between an individual and one or more unsecured creditors of the
28 individual for the purpose of obtaining concessions where the
29 contemplated concessions involve a reduction in principal of the
30 individual's unsecured debt OWED FOR PERSONAL, FAMILY OR <--

1 HOUSEHOLD EXPENSES TO AT LEAST ONE CREDITOR. The term does not
2 include:

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

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

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

12 "Department." The Department of Banking and Securities of
13 the Commonwealth.

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

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

24 "Provider." A person ~~required to be licensed under this act~~ <--
25 ~~and~~ that provides, MARKETS, SOLICITS, offers to provide or <--
26 agrees to provide debt settlement services.

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

30 ~~"Secretary." The Secretary of Banking and Securities of the~~ <--

1 ~~Commonwealth.~~

2 Section 103. Nonapplicability.

3 This act does not apply to the following persons or their
4 employees when the person or the employee is engaged in the
5 regular course of the person's business or profession:

6 (1) A judicial officer, a person acting under an order
7 of a court or an administrative agency or an assignee for the
8 benefit of creditors.

9 (2) A bank, bank holding company or the subsidiary,
10 agent or affiliate of either, or a credit union or other
11 financial institution ~~licensed~~ CHARTERED under Federal or <--
12 State law.

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

17 (4) A LICENSEE UNDER THE ACT OF OCTOBER 9, 2008 <--
18 (P.L.1421, NO.117), KNOWN AS THE DEBT MANAGEMENT SERVICES
19 ACT, WHEN THE PROVISION OF DEBT SETTLEMENT SERVICES IS
20 INCIDENTAL TO THE PROVISION OF DEBT MANAGEMENT SERVICES.

21 (5) AN ATTORNEY NOT OTHERWISE ENGAGED IN OR HOLDING
22 HIMSELF OR HERSELF OUT TO THE PUBLIC AS BEING ENGAGED IN
23 DEBT SETTLEMENT SERVICES WHO ACTS AS AN INTERMEDIARY BETWEEN
24 AN INDIVIDUAL AND ONE OR MORE OF THE INDIVIDUAL'S CREDITORS
25 IN THE NORMAL COURSE OF LEGAL PRACTICE. THIS PARAGRAPH SHALL
26 NOT APPLY IF THE ATTORNEY IS COMPENSATED BY A PROVIDER.

27 CHAPTER 3

28 LICENSURE

29 Section 301. Requirements.

30 (a) General rule.--Except as provided under subsection (b)

1 and on or after the effective date of this section, a provider
2 may not MARKET, SOLICIT, OFFER TO PROVIDE OR provide debt <--
3 settlement services FOR A FEE OR OTHER CONSIDERATION to an <--
4 individual who ~~it reasonably should know~~ resides in this <--
5 Commonwealth at the time it agrees to provide the services,
6 unless the provider is licensed under this act.

7 (b) Nonapplicability.--If a provider is licensed under this
8 act, subsection (a) shall not apply to an employee ~~or agent~~ of <--
9 the provider ACTING ON BEHALF OF THE PROVIDER. <--

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

12 Section 302. Application and required documentation.

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

15 (b) Fee and documentation.--An application for licensure as
16 a provider must be accompanied by:

17 (1) A licensing fee established by the department.

18 (2) ~~One of the following:~~ <--

19 ~~(i) Evidence of minimum insurance in an amount of~~
20 ~~\$25,000.~~

21 ~~(ii) A surety bond filed with the department, in a~~
22 ~~form approved by the department, for a term no less than~~
23 ~~the expiration of the license and in the amount of~~
24 ~~\$25,000. The surety bond must run to the Commonwealth for~~
25 ~~the benefit of the Commonwealth and of an individual who~~
26 ~~resides in this Commonwealth that agrees to receive debt~~
27 ~~settlement services from the provider. Payment of surety~~
28 ~~bond must be conditioned upon noncompliance of the~~
29 ~~provider or its agent with this act. A BOND THAT COMPLIES <--~~
30 WITH SECTION 305.

1 (3) Proof that the provider is authorized by the laws of
2 this Commonwealth to conduct business in this Commonwealth.
3 Section 303. Required information for application.

4 An application for a license under this act shall be
5 submitted to the department in the form required by the
6 department and shall include the following:

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

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

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

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

15 (5) A description of the ownership interest of an
16 officer, director, agent or employee of the applicant in an
17 affiliate or subsidiary of the applicant or in another
18 business entity that will provide any service to the
19 applicant or to a consumer relating to the applicant's
20 provision of debt settlement services.

21 (6) A list of other states in which the applicant is
22 licensed or registered for the provision of debt settlement
23 services, including a relevant license or registration number
24 and information regarding whether a license or registration
25 in another state has ever been suspended or revoked.

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

30 (8) A copy of the applicant's standard debt settlement

1 services agreement.

2 (9) A penal bond meeting the requirements of section
3 305.

4 (10) Any other reasonable requests for information that
5 the department determines to be necessary to its review of a
6 license application.

7 Section 304. Not-for-profit license fees.

8 Notwithstanding any other provision of this act, a domestic
9 or foreign not-for-profit corporation or association registered
10 under 15 Pa.C.S. Pt. II Subpt. C (relating to nonprofit
11 corporations) with the Secretary of the Commonwealth which has
12 annual gross revenues from debt settlement services fees and
13 charges of less than \$3,000,000 annually shall pay an initial
14 license fee of \$500 and an annual renewal fee of \$350.

15 Section 305. Penal bond.

16 (a) Issuance.--

17 (1) The department shall issue a license under this act
18 if, prior to the issuance of the license, the applicant
19 obtains and maintains a bond that meets all of the following:

20 (i) Is from a surety company authorized to do
21 business in this Commonwealth.

22 (ii) Is in an amount equal to \$25,000.

23 (iii) The licensee will hold directly ~~or in trust~~. <--

24 (iv) Is in a form acceptable to the department.

25 (2) The bond shall meet all of the following:

26 (i) Be a penal bond conditioned on compliance with
27 this act and subject to forfeiture by the department.

28 (ii) Run to the Commonwealth for its use.

29 (iii) Be for the use of a person against the
30 licensee for the benefit of a consumer who is injured by

1 a violation of this act or regulation promulgated under
2 this act.

3 (iv) Contains a cancellation provision as provided
4 under subsection (d).

5 (b) Right of aggrieved person.--

6 (1) If a person is aggrieved, the person may do one of
7 the following:

8 (i) With the written consent of the department,
9 recover fees and costs from a bond by filing a claim with
10 the surety company or maintaining an action on the bond.

11 (ii) Recover fees and costs by filing a formal
12 complaint against the licensee with the department which
13 shall adjudicate the matter. The adjudication shall be
14 binding upon the surety company and enforceable by the
15 department in Commonwealth Court and by an aggrieved
16 person in any court.

17 (2) An aggrieved person seeking to recover from a bond
18 that has already been forfeited by the department or which
19 the department is in the process of forfeiting may recover
20 payment on the bond if, after filing a petition with the
21 department, the department consents to the aggrieved person's
22 requested payment or portion of the payment. The department
23 may pay the aggrieved person from the bond proceeds it
24 recovers.

25 (c) Additional relief.--

26 (1) Nothing under this section shall be construed to
27 limit the ability of a court or magisterial district judge to
28 award to an aggrieved person other damages, court costs and
29 attorney fees, except that claims that are not fees or
30 related costs may not be recovered from the bond.

1 (2) The department may consent to or order pro rata or
2 other recovery on the bond for an aggrieved person if claims
3 against the bond may or shall exceed its full monetary
4 amount.

5 (d) Cancellation of bonds.--A bond shall contain a provision
6 that it may not be canceled for cause unless notice of intention
7 to cancel is given to the department at least 30 days before the
8 day upon which cancellation takes effect. Cancellation of the
9 bond shall not invalidate the bond regarding the period of time
10 it was in effect.

11 Section 306. Application information.

12 An applicant or licensed provider must notify the department
13 within ~~60~~ 30 days after a change in the information required <--
14 under section 302(b)(2)(i) or 303(1), (3) or (5).

15 Section 307. Public availability of application information.

16 Except for the addresses required under section 303(3) and
17 the proprietary information required under section 303(5), the
18 department shall make the information in an application for
19 licensure and renewal of licensure as a provider available to
20 the public.

21 Section 308. ~~Certificate of licensure~~ ISSUANCE OF LICENSE. <--

22 (a) Time for issuance.--The department shall decide whether
23 to issue a license to an applicant within 60 days of receiving
24 the applicant's completed application. The department may extend
25 the time period for 30 days and shall notify the applicant of
26 the extended time period, including a final decision date, in
27 writing.

28 (b) Investigation.--Upon receipt of a completed application
29 the department may conduct an investigation of the applicant,
30 including its owners, officers, directors, principals or agents,

1 in order to decide whether to issue the license.

2 (B.1) COVERED LICENSE.--A LICENSE UNDER THIS CHAPTER SHALL <--
3 BE DEEMED TO BE A COVERED LICENSE WITHIN THE MEANING OF SECTION
4 405 OF THE ACT OF MAY 15, 1933 (P.L.565, NO.111), KNOWN AS THE
5 DEPARTMENT OF BANKING AND SECURITIES CODE. THE DEPARTMENT SHALL
6 NOTIFY A LICENSEE IF A COVERED INDIVIDUAL WITHIN THE MEANING OF
7 SECTION 405 OF THE DEPARTMENT OF BANKING AND SECURITIES CODE
8 THAT IS OR WILL BE EMPLOYED OR CONTRACTED BY THE LICENSEE HAS
9 CRIMINAL BACKGROUND THAT RENDERS THE INDIVIDUAL UNFIT FOR THE
10 DEBT SETTLEMENT SERVICES BUSINESS.

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

16 (d) Duration.--A license shall be issued for a period ~~of one~~ <--
17 ~~year~~ NOT TO EXCEED 14 MONTHS on a schedule determined by the <--
18 department, except that if a license is issued prior to the
19 beginning of a licensing year, the license shall only be valid
20 until the end of that licensing year, at which time it may be
21 renewed subject to this act. If a license is denied, canceled,
22 surrendered, revoked or suspended, no part of the license fee or
23 license renewal fee shall be subject to rebate.

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

28 ~~(f) Display. The license must be displayed prominently at~~
29 ~~the licensee's business locations.~~

30 ~~(g)~~ (E) Transfer prohibited.-- <--

1 (1) Except as provided for under this subsection, the
2 license may not be transferred, assigned or pledged.

3 (2) A licensee may, upon notice to the department,
4 transfer up to ~~50%~~ 49% of the ~~securities~~ OWNERSHIP of a <--
5 licensee to another entity without affecting the validity of
6 a license granted under this act.

7 ~~(h)~~ (F) Conditional licenses.--The department may impose <--
8 conditions on the issuance of a license under this act. If the
9 department determines that conditions imposed upon a license
10 have not been fulfilled, the department may take action
11 authorized under this act against the licensee. For applicants,
12 the department may issue licenses effective immediately upon
13 receipt of an application, which shall be conditional licenses
14 issued under this subsection.

15 ~~(i)~~ (G) Transitional license.-- <--

16 ~~(1)~~ A person that is providing debt settlement services <--
17 before the effective date of this section and that seeks to
18 continue providing the services after the effective date of
19 this section shall submit ~~an~~ A COMPLETED application for a <--
20 license under this act within ~~ten~~ 30 days of the effective <--
21 date of this section. The applicant may continue to provide
22 debt settlement services, according to this act, while the
23 department processes the COMPLETED application for licensure. <--

24 ~~(2) A person providing debt settlement services before~~ <--
25 ~~the effective date of this section who does not submit an~~
26 ~~application for a license within ten days of the effective~~
27 ~~date of this section must cease operations until it has met~~
28 ~~the conditions for licensure under this act.~~

29 Section 309. Renewal of license.

30 (a) Procedure.--An application for renewal of a license

1 shall be submitted to the department in the manner determined by
2 the department. The application for renewal shall be accompanied
3 by a fee of \$1,250.

4 (b) Required condition.--The department shall determine the
5 information and documentation that shall be provided in the
6 application for renewal of a license in a manner sufficient to
7 establish that the licensee will continue to conduct its
8 business in accordance with this act.

9 Section 310. Grounds for ~~denial~~ DENYING, SUSPENDING, REVOKING <--
10 OR REFUSING TO RENEW.

11 (a) Reasons.--The department may deny, suspend, revoke or
12 refuse to renew a license if the applicant or one of its owners,
13 officers, directors, principals, EMPLOYEES or agents did any of <--
14 the following:

15 (1) Made a material misstatement in the license
16 application or a submission required under this act or by the
17 department.

18 (2) Failed to comply with or violated a provision of
19 this act or a regulation, order or statement of policy issued
20 by the department under this act.

21 (3) Engaged in unfair or unethical conduct in connection
22 with the debt settlement services business in this
23 Commonwealth.

24 (4) Does not possess the financial responsibility,
25 character, reputation, integrity and general fitness
26 sufficient to warrant the belief that the debt settlement
27 services business will be conducted lawfully, honestly and in
28 the public interest.

29 (5) Has been convicted of or pleaded guilty or nolo
30 contendere to a crime of moral turpitude or to an offense

1 graded as a felony.

2 (6) Is currently enjoined by a court of competent
3 jurisdiction from engaging in the business of debt settlement
4 services in this Commonwealth.

5 (7) Has had a license issued by the department OR <--
6 ANOTHER STATE denied, not renewed, suspended or revoked.

7 (8) Has become the subject of a United States Postal
8 Service fraud order.

9 (9) Has an outstanding debt to the Commonwealth or a
10 Commonwealth agency.

11 (10) Has failed to maintain the bond required under
12 section 305.

13 (11) Becomes insolvent.

14 (b) Definitions.--As used in this section the following
15 words and phrases shall have the meanings given to them in this
16 subsection:

17 "Insolvent." As follows:

18 (1) The liabilities of the applicant or licensee exceed
19 the assets of the applicant or licensee.

20 (2) The applicant or licensee cannot meet the
21 obligations of the applicant or licensee as they mature or is
22 in a financial condition that the applicant or licensee
23 cannot continue in business in a safe manner to the customers
24 of the applicant or licensee.

25 Section 311. (Reserved).

26 Section 312. Reinstatement.

27 The department may reinstate a license that was previously
28 suspended, revoked or denied renewal, if all of the following
29 exist:

30 (1) A condition that warranted the original action has

1 been corrected to the department's satisfaction.

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

4 (3) The licensee satisfies all other requirements of
5 this act.

6 Section 313. Limitations.

7 (a) Name or address.--A licensee may not conduct business
8 under this act under a name or at an address different from that
9 contained on the licensee's license. If a licensee changes its
10 name or its business address, it shall notify the department
11 within ten days of the change and the department shall issue a
12 new license specifying the licensee's new name or address.

13 (b) Other businesses.--A licensee may not conduct a business
14 other than the debt settlement service business licensed by the
15 department under this act unless it notifies the department in
16 writing at least 30 days before beginning to conduct that
17 business.

18 CHAPTER 5

19 PROVIDER RESPONSIBILITIES

20 Section 501. Good faith.

21 A provider must act in good faith in all matters under this
22 act.

23 Section 502. Prerequisites for providing debt settlement
24 services.

25 (a) Disclosure.--Before an individual consents to pay for
26 goods or services offered by a provider, the provider must
27 disclose truthfully, in a clear and conspicuous manner IN A <--
28 WRITTEN AGREEMENT SIGNED BY THE PROVIDER AND THE INDIVIDUAL FOR
29 WHOM DEBT SETTLEMENT SERVICES WILL BE RENDERED, the following
30 material information:

1 (1) All of the following:

2 (i) The amount of time necessary to achieve the
3 represented results.

4 (ii) The extent to which the debt settlement
5 services may include a settlement offer to any of the
6 individual's creditors or debt collectors, including
7 the time by which the provider will make a bona fide
8 settlement offer to each of the individual's creditors or
9 debt collectors.

10 (iii) The cost to the individual for providing debt
11 settlement services; AND THE METHOD BY WHICH ANY FEE FOR <--
12 CONSIDERATION FOR SETTLING EACH INDIVIDUAL DEBT WILL BE
13 CALCULATED.

14 (IV) THE TOTAL ESTIMATED PROGRAM COSTS IF THE
15 INDIVIDUAL MEETS ALL PROGRAM OBLIGATIONS AND COMPLETES
16 THE PROGRAM.

17 (2) If the debt settlement service includes a settlement
18 offer to any of the individual's creditors or debt
19 collectors, the amount of money or the percentage of each
20 outstanding debt that the individual shall accumulate before
21 the provider will make a bona fide settlement offer to each
22 of them.

23 (3) TO THE EXTENT THAT ANY ASPECT OF THE DEBT SETTLEMENT <--
24 SERVICE RELIES UPON OR RESULTS IN THE CUSTOMER'S FAILURE TO
25 MAKE TIMELY PAYMENTS TO CREDITORS OR DEBT COLLECTORS, THAT
26 THE USE OF DEBT SETTLEMENT SERVICES WILL LIKELY AFFECT THE
27 INDIVIDUAL'S CREDITWORTHINESS, MAY RESULT IN THE INDIVIDUAL
28 BEING SUBJECT TO COLLECTIONS OR SUED BY CREDITORS OR DEBT
29 COLLECTORS AND MAY INCREASE THE AMOUNT OF MONEY THE
30 INDIVIDUAL OWES DUE TO THE ACCRUAL OF FEES AND INTEREST.

1 ~~(3)~~ (4) If an aspect of the debt settlement services <--
2 relies upon or results in the individual's failure to make
3 timely payments to creditors or debt collectors, that the use
4 of the debt settlement services will likely adversely affect
5 the individual's creditworthiness, may result in the
6 individual being subject to collection actions or sued by
7 creditors or debt collectors and may increase the amount of
8 money the individual owes due to the accrual of fees and
9 interest.

10 ~~(4)~~ (5) If the provider requests or requires the <--
11 individual to place funds in an account at a bank, that the
12 individual owns the funds held in the account, the individual
13 may withdraw from the debt settlement services at any time
14 without penalty and, if the individual withdraws, that the
15 individual shall receive all funds in the account, other than
16 funds earned by the provider, within seven business days of
17 the individual's request.

18 (6) THAT THE INDIVIDUAL MAY TERMINATE THE DEBT <--
19 SETTLEMENT SERVICES AGREEMENT UPON THREE DAYS' WRITTEN NOTICE
20 TO THE DEBT SETTLEMENT PROVIDER.

21 (7) THAT THE DEBT SETTLEMENT SERVICES AGREEMENT MAY HAVE
22 TAX IMPLICATIONS TO THE INDIVIDUAL.

23 (b) Prohibition.--A provider may not misrepresent, directly
24 or by implication, any material aspect of any debt settlement
25 services, including:

26 (1) The amount of money or the percentage of the debt
27 amount that an individual may save by using the service.

28 (2) The amount of time necessary to achieve the
29 represented result.

30 (3) The amount of money or the percentage of each

1 outstanding debt that the individual shall accumulate before
2 the provider will initiate attempts with the individual's
3 creditors or debt collectors or make a bona fide offer to
4 negotiate, settle or modify the terms of the individual's
5 debt.

6 (4) The effect of the service on the individual's
7 creditworthiness.

8 (5) The effect of the service on collection efforts of
9 the individual's creditors or debt collectors.

10 (6) The percentage or number of individuals who attain
11 the represented results.

12 (7) Whether debt settlement services are offered or
13 provided by a nonprofit entity.

14 (8) THE TOTAL ESTIMATED PROGRAM COSTS IF THE INDIVIDUAL <--
15 MEETS ALL PROGRAM OBLIGATIONS AND COMPLETES THE PROGRAM.

16 (c) Payment or consideration.--A provider may not receive
17 payment of a fee or consideration for debt settlement services
18 unless:

19 (1) ~~The~~ THE provider has renegotiated, settled, reduced <--
20 or otherwise altered the terms of at least one debt under a
21 debt settlement plan; <--

22 (2) ~~The~~ THE individual has made at least one payment <--
23 under the debt settlement plan; AND <--

24 (3) ~~The~~ THE fee or consideration for settling each <--
25 individual debt enrolled in a debt settlement plan meets one
26 of the following:

27 (i) Bears the same proportional relationship to the
28 total fee for settling the entire debt balance as the
29 individual renegotiated, settled, reduced or otherwise
30 altered debt amount bears to the entire debt amount. For

1 purposes of this subparagraph, the individual debt amount
2 and the entire debt amount shall be amounts owed at the
3 time the debt was enrolled in the debt settlement
4 service.

5 (ii) Is a percentage of the amount saved as a result
6 of the settlement. The percentage charged may not change
7 from one individual renegotiated, settled, reduced or
8 otherwise altered debt to another. For purposes of this
9 subparagraph, the amount saved shall be the difference
10 between the amount owed at the time the debt was enrolled
11 in the debt settlement service and the amount actually
12 paid to satisfy the debt.

13 (d) Construction.--Nothing under this section shall prohibit
14 requesting or requiring the individual to place funds in an
15 account to be used for the provider's fees for payments to
16 creditors or debt collectors in connection with the
17 renegotiation, settlement, reduction or other alteration of the
18 terms of payment or other terms of debt, if:

19 (1) The funds are held in an account at a bank SOLELY IN <--
20 THE NAME OF THE CLIENT.

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

24 (3) If the provider does not administer the account, the
25 entity administering the account is not owned, controlled by
26 or affiliated with the provider.

27 (4) The entity administering the account does not give
28 or accept any money or other compensation in exchange for
29 referrals of business by the provider.

30 (5) The individual may withdraw from the debt settlement

1 services at any time without penalty and shall receive all
2 funds in the account, other than funds earned by the provider
3 in compliance with this section, within seven days of the
4 individual's request.

5 (e) Nonlicensed provider.--If a provider is not licensed as
6 required under this act when an individual assents to an
7 agreement, the agreement shall be voidable by the individual.

8 CHAPTER 7

9 ADMINISTRATION AND ENFORCEMENT

10 Section 701. Powers and duties.

11 The department shall have the authority to:

12 (1) As follows:

13 (i) Examine an instrument, document, account, book,
14 record or file of a licensee or a person having a
15 connection to the licensee or make other investigations
16 as may be necessary to administer this act. The
17 examination may include documents, accounts, books or
18 records that relate to the operation of the licensee that
19 are in the possession of an affiliate, subsidiary or
20 other business entity.

21 (ii) Under the authority of this paragraph, the
22 department may remove an instrument, document, account,
23 book, record or file of a licensee or person to a
24 location outside of the licensee's or person's office
25 location.

26 (iii) The examination may be conducted without prior
27 notice to the licensee or person and the costs of the
28 examination shall be paid by the licensee or person
29 subject to the examination.

30 (2) Conduct administrative hearings on a matter

1 pertaining to this act and issue subpoenas to compel the
2 attendance of witnesses or the production of documents,
3 accounts, books or records at a hearing. A document, account,
4 book or record subject to subpoena may be retained by the
5 department until the proceeding in connection with which it
6 was subpoenaed is completed. A department official may
7 administer oaths or affirmations to a person whose testimony
8 is required.

9 (3) Request and receive information or records,
10 including reports of criminal history record information,
11 from a Federal, State, local or foreign government entity
12 regarding an applicant, a licensee or a person related to the
13 business of debt settlement services. The cost associated
14 with the request shall be paid by the applicant or licensee.

15 (4) Promulgate regulations or issue statements of policy
16 or orders to ensure the proper administration or enforcement
17 of this act and the proper conduct of licensees under this
18 act.

19 (5) Prohibit a person or licensee that violates this act
20 from working in a capacity related to activities regulated by
21 the department.

22 (6) Order a person or licensee to make restitution for
23 actual damages to consumers caused by a violation of this act
24 or to refund fees collected in violation of this act.

25 (7) Issue a cease and desist order that takes effect
26 immediately and is subject to a hearing within 14 days of the
27 issuance of the order.

28 (8) Impose other conditions or take other actions as the
29 department deems appropriate to administer or enforce this
30 act.

- 1 (9) Provide the following on its Internet website:
- 2 (i) Information for licensees on the provisions of
- 3 this act.
- 4 (ii) Information for consumers regarding the
- 5 protections of this act.
- 6 (iii) Information on filing consumer complaints,
- 7 including a toll-free telephone number.
- 8 (iv) A list of current licensees.

9 Section 702. Administrative proceedings.

10 (a) Hearings.--A person aggrieved by a decision of the

11 department may appeal the decision to the ~~secretary~~ COMMISSION. <--

12 The appeal shall be conducted under 2 Pa.C.S. Ch. 5 Subch. A

13 (relating to practice and procedure of Commonwealth agencies).

14 (b) Injunctions.--The department may maintain an action for

15 an injunction or other process against a person to restrain or

16 prevent the person from violating this act.

17 (c) Final orders.--

18 (1) A decision of the ~~secretary~~ COMMISSION, OR AN <--

19 UNAPPEALED ORDER OF THE DEPARTMENT, shall be a final order of

20 the department and shall be enforceable in a court of

21 competent jurisdiction.

22 (2) The department may publish final adjudications

23 issued under this section, subject to redaction or

24 modification to preserve confidentiality.

25 (d) Appeals.--A person aggrieved by a decision of the

26 ~~secretary~~ COMMISSION may appeal the decision under 2 Pa.C.S. Ch. <--

27 7 Subch. A (relating to judicial review of Commonwealth agency

28 action).

29 Section 703. Reports to department.

30 (a) ~~Annual~~ PERIODIC report.--A licensee shall file ~~an annual~~ <--

1 A PERIODIC report with the department on a date determined by
2 the department setting forth information as the department shall
3 require concerning the debt settlement services business
4 conducted by the licensee during the preceding calendar year.
5 The report shall be on a form provided by the department.

6 (b) Report of enforcement action.--A licensee shall report
7 to the department a final, nonappealable order finding a
8 licensee guilty or liable in any enforcement action taken
9 against the licensee by any Federal or State agency. The report
10 must be filed no later than seven days after the licensee is
11 made aware of the final order. The licensee shall provide
12 updates to the department as to the status of an enforcement
13 action as required by the department.

14 (c) Penalty.--A licensee who fails to file an annual report
15 with the department as required under subsection (a) may be
16 subject to a penalty of \$100 for each day after the date that
17 the annual report was required to be filed.

18 Section 704. Violations.

19 (a) Imposition.--The department may impose a civil penalty
20 of up to \$10,000 for each violation of this act.

21 (b) Unfair trade practices.--A person who is in violation of
22 this act shall be in violation of the act of December 17, 1968
23 (P.L.1224, No.387), known as the Unfair Trade Practices and
24 Consumer Protection Law.

25 Section 705. Banking Fund.

26 A fee or penalty collected by the department under this act
27 shall be deposited into the Banking Fund.

28 CHAPTER 21

29 MISCELLANEOUS PROVISIONS

30 Section 2101. Relation to Electronic Signatures in Global and

1 National Commerce Act.

2 This act modifies, limits and supersedes the Electronic
3 Signatures in Global and National Commerce Act (Public Law 106-
4 229, 15 U.S.C. § 7001 et seq.), but does not modify, limit or
5 supersede section 101(c) of the Electronic Signatures in Global
6 and National Commerce Act or authorize electronic delivery of
7 any of the notices described in section 103(b) of the Electronic
8 Signatures in Global and National Commerce Act.

9 Section 2102. Transitional provisions.

10 Transactions entered into before the effective date of this
11 section and the rights, duties and interests resulting from the
12 transactions may be completed, terminated or enforced as
13 required or permitted by a law repealed or modified under this
14 act as though the repeal or modification had not occurred.

15 Section 2103. Repeal.

16 (a) Intent.--The General Assembly declares that the repeal
17 under subsection (b) is necessary to effectuate the purposes of
18 this act.

19 (b) Provision.--The act of October 9, 2008 (P.L.1421,
20 No.117), known as the Debt Management Services Act, is repealed
21 insofar as it applies to debt settlement services.

22 Section 2104. Effective date.

23 This act shall take effect ~~in 60 days~~. AS FOLLOWS:

<--

24 (1) THIS SECTION SHALL TAKE EFFECT IMMEDIATELY.

25 (2) THE FOLLOWING PROVISIONS SHALL TAKE EFFECT NOVEMBER
26 1, 2014:

27 (I) CHAPTERS 1, 7 AND 21.

28 (II) SECTIONS 302, 303, 304, 305, 306, 307, 308, 310
29 AND 313.

30 (3) THE REMAINDER OF THIS ACT SHALL TAKE EFFECT JANUARY 1,

1 2015.