

No. 2008-117

## AN ACT

HB 2294

Providing for the licensure of persons providing debt management services and for the powers and duties of the Department of Banking; requiring surety bonds; prohibiting certain fees and costs; providing for debt management plans; and prohibiting certain acts by persons providing debt management services.

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

Section 1. Short title.

This act shall be known and may be cited as the Debt Management Services Act.

Section 2. Definitions.

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

“Applicant.” A person who applies for a license under this act.

“Banking institution.” A State-chartered bank, bank and trust company, savings bank or private bank, a national bank, a federally chartered or State-chartered savings association or a subsidiary of any of the foregoing.

“Consumer.” An individual who owes money for personal, family or household expenses to at least one creditor.

“Consumer education program.” A detailed and customized education program that:

(1) Is provided to a consumer prior to offering a consumer a debt management services agreement.

(2) Is designed to improve a consumer’s ability to manage the consumer’s personal and household finances and to otherwise improve the financial literacy of the consumer.

(3) Includes the following, tailored to the needs of the consumer: budgeting, saving, investing, managing debt and maintaining creditworthiness.

(4) Is not limited to determining whether a consumer will benefit from debt management services, but includes various options and strategies for addressing the consumer’s debt problems and may include the provision of services for the purpose of improving a consumer’s credit record, credit history or credit rating, but only to the extent that such services are incidental to providing the other elements of the consumer education program.

“Credit counseling agency.” A person that provides debt management plan services to consumers for a fee, contribution or other consideration.

“Debt management services.” The service of receiving funds periodically from a consumer and then distributing those funds to creditors of the consumer in partial or full payment of the consumer’s personal debts.

“Debt settlement services.” An action or negotiation made on behalf of a consumer with that consumer’s creditors for the purpose of the creditor forgiving part or all of the principal of the debt incurred or credit extended to that consumer. The term shall not include any action taken to convince a creditor to waive any fees or charges.

“Department.” The Department of Banking of the Commonwealth.

“Licensee.” A person licensed under the provisions of this act.

“Payday loan.” A short-term cash advance of \$3,000 or less that is secured or facilitated by a consumer’s personal check that is held for future deposit or by electronic access to the consumer’s bank account. The term includes any form of this lending, notwithstanding the presence of some other element introduced to disguise the true nature of the transaction, such as the sale or provision of a good, service or commodity incidental to the advance of funds and notwithstanding the fact that the transaction is conducted in person, by mail, Internet or telephone, or through any other means.

“Person.” An individual, corporation, partnership or other entity legally recognized by the Commonwealth for business purposes.

“Secretary.” The Secretary of Banking of the Commonwealth.

### Section 3. License required.

(a) Debt management services.—No person may advertise, solicit, state or represent that it can offer, obtain or procure debt management services to or for a consumer or provide debt management 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 4. Nonapplicability.

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

(1) A banking institution or a federally chartered or State-chartered credit union, if the primary regulator of the banking institution or federally chartered or State-chartered credit union supervises the banking institution or federally chartered or State-chartered credit union.

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

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

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

(5) Attorneys who are admitted to the bar of this Commonwealth and provide legal services within an attorney-client relationship who engage in

debt management services or debt settlement services within the normal course of legal practice.

(b) Exemption from licensing.—The following persons are not required to be licensed under this act, but must comply with the provisions of this act if they offer, obtain or provide debt management services or 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).

#### Section 5. Application for licensure.

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

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

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

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

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

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

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

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

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

(9) A copy of the applicant's standard debt management services agreement.

(10) Information regarding the applicant's trust account, including the name and address of the FDIC-insured depository institution where the account is located and the number of the account.

(11) Information regarding the number of the applicant's credit counselors and supervisors or managers with direct supervisory duties of credit counselors who perform the consumer education program who are certified by an independent certifying organization acceptable to the department and a plan to ensure that any of the credit counselors and supervisors or managers with direct supervisory duties of credit counselors who perform the consumer education program who are not certified become certified within six months of the issuance date of the license. A licensee shall notify the department of any change in status regarding the licensee's certified credit counselors, supervisor or managers with direct supervisory duties of credit counselors within ten days of the change.

(12) Evidence that the applicant is accredited by an independent accrediting organization acceptable to the department.

(13) A penal bond meeting the requirements of section 7.

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

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

(16) Any other information that the department requires.

#### Section 6. License fees for certain entities.

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

#### Section 7. Penal bond.

(a) General rule.—The department shall issue a license under this act if the applicant obtains and maintains a bond in an amount greater than the total amount of Pennsylvania consumer funds that the licensee will hold directly or in trust at any time, in a form acceptable to the department, prior to the issuance of the license, from a surety company authorized to do business in this Commonwealth. The bond shall be a penal bond conditioned on compliance with this act and subject to forfeiture by the department and shall run to the Commonwealth for its use. The bond shall also be for the use of any person against the licensee for the benefit of any consumer who is injured by a violation of this act or regulation promulgated under this act.

(b) Rights of aggrieved persons.—

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

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

(3) Any aggrieved person seeking to recover from a bond that has already been forfeited by the department or which the department is in the process of forfeiting may recover payment on the bond if, after filing a petition with the department, the department consents to the aggrieved person's requested payment or portion thereof. The department may pay the aggrieved person from the bond proceeds it recovers.

(c) Other relief.—

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

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

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

#### Section 8. Issuance of license.

(a) Time for issuance.—The department shall decide whether to issue a license to an applicant within 60 days of receiving the applicant's completed application. If the department needs longer than 60 days to make a decision, it may extend the time period for 30 days. The department shall notify the applicant of the extended time period, including a final decision date, in writing.

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

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

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

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

(f) **Display.**—The license shall be displayed prominently at the licensee's business locations.

(g) **Transfer prohibited.**—The license shall not be transferred, assigned or pledged.

(h) **Conditional licenses.**—The department may impose conditions on the issuance of any license under this act. If the department determines that conditions imposed upon a license have not been fulfilled, the department may take any action authorized under this act against the licensee that the department deems necessary. In the case of applicants, the department may issue licenses effective immediately upon receipt of an application, which licenses shall be conditional licenses issued under this subsection.

#### Section 9. Renewal of license.

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

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

(c) **Continuing education.**—In order to maintain its license, a licensee shall demonstrate to the satisfaction of the department that its credit counselors, supervisors and managers participate in continuing education as required by the department by regulation. The department shall delineate the requirements for such continuing education by regulation within three years after the effective date of this act.

#### Section 10. Reasons for denial, suspension, revocation or refusal.

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

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

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

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

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

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

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

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

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

(9) Demonstrated negligence or incompetence in performing an act for which the applicant is required to hold a license under this act.

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

(11) Has failed to maintain the bond required under section 7.

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

(13) Has failed to disburse a consumer's payments to creditors in a timely manner as agreed to under a debt management services agreement for any reason other than the consumer's failure to make the agreed-to payments to the licensee or because such disbursement would constitute a violation of applicable law or an order issued by a court or administrative body of competent jurisdiction.

#### Section 10.1. Payday loans.

The department shall deny a license under this act to an applicant that offers payday loans.

#### Section 11. Reinstatement.

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

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

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

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

#### Section 12. Limitations on license.

(a) Name or address.—A licensee shall not conduct business under this act under a name or at an address different from that contained on the licensee's license. When a licensee changes its name or its business address,

it shall notify the department within ten days of the change and the department may issue a new license specifying the licensee's new name or address.

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

(c) Consumer funds.—A licensee may not hold money from Pennsylvania consumers, either directly or in any trust, in an amount in excess of the bond required under section 7.

#### Section 13. Reports to department.

(a) Annual report.—A licensee shall file an annual report with the department on a date determined by the department setting forth such information as the department shall require concerning the debt management services business conducted by the licensee during the preceding calendar year. The report shall be on a form provided by the department.

(b) Report of enforcement action.—A licensee shall report to the department any enforcement action taken against the licensee by any Federal or State agency. The report shall be filed no later than seven days after the licensee becomes aware of the enforcement action. The licensee shall provide updates to the department as to the status of any enforcement action as required by the department.

(c) Report of failure to remit payments.—In the event that a licensee believes that it may not be able to remit a consumer's payment to a creditor for any reason other than the consumer's failure to provide funds to the licensee, the licensee shall notify the department. The notification shall be filed within one business day of the licensee becoming aware of its inability to make the payment. The notification shall contain any pertinent facts, including the reason the licensee believes it may not be able to make the payment and what steps the licensee will take to resolve the situation. The licensee shall provide updates to the department as to the status of the reported matter as required by the department.

(d) Penalty for noncompliance.—A licensee who fails to file an annual report with the department as required by subsection (a) may be subject to a penalty of \$100 for each day after the date that the annual report was required to be filed.

#### Section 14. Requirements for providing debt management services.

A licensee shall provide debt management services in accordance with the following requirements:

(1) The licensee shall provide each consumer for whom it provides debt management services with a consumer education program at no cost to the consumer.

(2) (i) A licensee may only provide debt management services in accordance with a written debt management services agreement entered into between the licensee and the consumer. Before the licensee and



consumer enter into a debt management services agreement, the licensee shall prepare an analysis of the consumer's financial situation and a budget for the consumer. The analysis shall include a good faith determination whether the consumer will benefit from debt management services and an explanation of that benefit. If the analysis determines that the consumer will not benefit from debt management services, the licensee shall not offer debt management services to the consumer.

(ii) The licensee may communicate with the consumer by electronic mail or the Internet, but shall not enter into a debt management services agreement unless a certified credit counselor employed by the licensee and the consumer have orally reviewed the analysis, the budget and the debt management services agreement through a person-to-person discussion. The licensee shall provide copies of the analysis, budget and debt management services agreement to the consumer.

(3) A debt management services agreement shall be in writing, signed by the licensee and the consumer, in plain English and printed in at least 12-point type. It shall contain at least the following information:

(i) The name, address and telephone number of the consumer and of the licensee.

(ii) The license number of the licensee.

(iii) A description of the debt management services to be provided to the consumer.

(iv) A description of the fees that will be charged to the consumer.

(v) The name and address of the depository institution where the trust account into which the consumer's funds, paid to the licensee for disbursement to the consumer's creditors, is located.

(vi) A list of each of the consumer's creditors that the licensee in good faith reasonably expects to participate in the licensee's management of the consumer's debt, including the amount owed to each creditor and the schedule of payments to be made to each creditor.

(vii) A list of each of the consumer's creditors that the licensee in good faith reasonably expects not to participate in the licensee's management of the consumer's debt.

(viii) A schedule of the payments that the consumer must make to the licensee, including the amount of each payment, the date it is due and the form in which it must be made.

(ix) Disclosure of any fees that either the consumer must make to the licensee or that the licensee will retain from each of the consumer's payments to the licensee.

(x) A notice, in bold print, that the consumer's participation in the debt management services agreement may negatively impact the consumer's credit rating or credit score.

(xi) Disclosure that the licensee may receive compensation from the consumer's creditors for providing debt management services to the consumer.

(xii) Notice that either party may terminate the debt management services agreement upon ten days' written notice to the other party.

(xiii) Notice that if the debt management services agreement is terminated, the consumer is entitled to a prompt refund of any payments made that have not yet been disbursed to the consumer's creditors.

(xiv) An explanation of the way in which disputes that arise under the debt management services agreement will be resolved.

(xv) An explanation of applicable privacy laws.

(4) The licensee shall provide each consumer participating in a debt management services agreement with at least quarterly statements setting forth the payments received from the consumer and the disbursements made to the consumer's creditors.

(5) Within two business days of receiving any payment, the licensee shall deposit all payments received from consumers under debt management services agreements into a trust account established for the benefit of the consumers to whom the licensee is furnishing debt management services. All money paid to a licensee by or on behalf of a consumer for distribution to creditors pursuant to a debt management services agreement is held in trust. Any interest earned from money held in trust on behalf of a consumer shall be used for the benefit of the consumer. The trust account shall be in a federally insured depository institution and is subject to the following:

(i) Except as provided in subparagraph (iii), money held in trust by a licensee is not property of the licensee or any designee. The money shall not be available to creditors of the licensee, except for a consumer from whom or on whose behalf the licensee received the money, to the extent the money has not been disbursed to creditors on behalf of the consumer.

(ii) In connection with the trust account, a licensee shall:

(A) maintain separate records of accounts for each individual to whom the provider is furnishing debt management services; and

(B) disburse money paid by or on behalf of the individual to creditors of the individual as disclosed in the debt management services agreement, except that:

(I) The licensee may delay payment to the extent that a payment by the consumer does not comply with the terms of the debt management services agreement because it is not sufficient to pay designated creditors.

(II) If the debt management services agreement provides for regular periodic payments to creditors, the licensee shall make

payments to comply with the due dates established by each creditor.

(III) The licensee may promptly correct any payments that are not made or that are misdirected as a result of an error by the licensee or any person in control of the trust account and reimburse the consumer for any costs or fees imposed by a creditor as a result of the licensee's failure to pay a creditor in a timely manner.

(iii) A licensee may commingle money in a trust account established for the benefit of the consumers who have a debt management services agreement or debt settlement services agreement with the licensee and to whom the licensee is furnishing debt management services or debt settlement services. In the event a licensee deposits a consumer's entire payment to the licensee, including both money for disbursement to creditors and fees owed to the licensee, the licensee may accept payment of fees owed to it from the trust. All money in the trust account established for the benefit of consumers however, shall be accounted for separately, including an accounting for fees owed to the licensee. No other money shall be deposited into the trust account and the money in the account may only be used for the purposes expressed in this subparagraph.

(iv) A trust account shall at all times have a cash balance equal to the total amount held in all consumer accounts.

(v) The licensee shall reconcile the trust account at least once a month, which shall include reconciling the cash balance in the trust account with the sum of the balances in each consumer account. If the licensee has more than one trust account, each trust account must be individually reconciled.

(vi) If a licensee discovers, or has reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the licensee shall immediately notify the department.

(vii) If a consumer terminates a debt management services agreement with a licensee, the licensee shall promptly refund to the consumer all money paid by or on behalf of the consumer which has not been paid to creditors and interest accrued thereon, less fees that are payable to the licensee as authorized by this act.

(6) The licensee shall disburse a consumer's funds to the consumer's creditors in a timely manner based on the availability of the funds pursuant to the consumer's debt management services agreement. In the event that a consumer makes only a partial payment as required by a debt management services agreement, the licensee shall disburse the available funds to creditors prior to the licensee collecting its own fees from the consumer's partial payment. In the event that a consumer fails to resolve any scheduled payment deficiency within 45 days of the deficiency

occurring, a licensee may terminate the debt management services agreement in accordance with the agreement.

(7) The licensee or any business entity in which any director, owner, officer, employee or principal of the licensee, or any member of such person's immediate family as defined in 65 Pa.C.S. § 1102 (relating to definitions), has an equitable, beneficial or other ownership interest shall not purchase any debt or obligation of a consumer.

(8) The licensee or any business entity in which any director, owner, officer, employee or principal of the licensee, or any member of such person's immediate family as defined in 65 Pa.C.S. § 1102, has an equitable, beneficial or other ownership interest shall not lend money or provide credit to a consumer.

(9) The licensee or any business entity in which any director, owner, officer, employee or principal of the licensee, or any member of such person's immediate family as defined in 65 Pa.C.S. § 1102, has an equitable, beneficial or other ownership interest shall not offer or provide credit insurance to a consumer.

(10) The licensee or any business entity in which any director, owner, officer, employee or principal of the licensee, or any member of such person's immediate family as defined in 65 Pa.C.S. § 1102, has an equitable, beneficial or other ownership interest shall not obtain a mortgage or other security interest in the property of a consumer.

(11) The licensee shall not operate as a collection agency or debt collector.

(12) The licensee shall not structure a consumer's debt management services agreement in a way that results in the negative amortization of any of the consumer's debts.

(13) The licensee shall not compromise any debt of a consumer unless the compromise benefits the consumer and the consumer has approved the proposed compromise in writing.

(14) The licensee shall have written policies describing its safeguards against conflicts of interest in the conducting of its business.

(15) The licensee shall not disseminate information, including by advertising, regarding its debt management services in any way that is false, misleading or deceptive.

(16) The licensee or any business entity in which any director, owner, officer, employee or principal of the licensee, or any member of such person's immediate family as defined in 65 Pa.C.S. § 1102, has an equitable, beneficial or other ownership interest, shall not offer, pay or give a gift, bonus, premium, reward or any other compensation to a person for referring a consumer to the licensee.

(17) The licensee shall not directly or indirectly accept, offer, pay, provide, give or receive any gift, bonus, premium, reward or any other compensation to or from any person, including, but not limited to, any for-profit parent, subsidiary or the affiliate of any licensee and any entity

whether or not legally recognized by the Commonwealth for business purposes that provide debt management services for referring a consumer to the licensee or to another licensee or person.

(18) The licensee or any business entity in which any director, owner, officer, employee or principal of the licensee, or any member of such person's immediate family as defined in 65 Pa.C.S. § 1102, has an equitable, beneficial or other ownership interest, shall not offer or pay an incentive, including a gift, bonus, premium, reward or any other compensation to a consumer for executing a debt management services agreement with the licensee.

(19) A licensee shall not, except as provided in this section, initiate a transfer to or from an individual's account at a financial institution or with another person unless the transfer is one of the following:

(i) a return of money to the individual's account; or

(ii) before termination of debt management services, properly authorized by the debt management services agreement and this section and for either of the following:

(A) payment to one or more creditors pursuant to a debt management services agreement; or

(B) payment of a fee permitted by this act and as part of a debt management services agreement.

(20) The licensee shall not disclose the identity or identifying information of a consumer or the identity of the consumer's creditors except as permitted by Federal law. Disclosure may be made:

(i) to the department;

(ii) to a creditor of the consumer, to the extent necessary to secure the cooperation of the creditor in the debt management services agreement; or

(iii) as is necessary to administer the debt management services agreement.

(21) The licensee that primarily communicates with a consumer in a language other than English shall provide the debt management services agreement and any other documents or disclosures required by this act to the consumer in that other language.

(22) The licensee shall not delegate any of its duties or obligations under this act or a debt management services agreement to any person who is not licensed pursuant to this act and to whom this act is applicable.

(23) The licensee shall have a toll-free telephone number that shall be prominently displayed on the licensee's literature and advertising.

(24) The licensee shall not compensate its employees on the basis of a formula that incorporates the number of consumers the employee induces to enter into debt management services agreements or the amount of debt included in a debt management services agreement.

(25) A licensee shall maintain a communications system, staffed at a level that reasonably permits inquiring persons and clients to individually

Speak and discuss with counselors or a customer services representative of the licensee during regular business hours.

Section 15. Fees.

(a) **Limitation.**—A licensee may charge a fee of not more than \$50 for an initial consultation with a consumer, provided that the consultation includes a consumer education program.

(b) **Monthly maintenance fee.**—When a consumer and a licensee have entered into a debt management services agreement, the licensee may charge the consumer a monthly maintenance fee not to exceed \$10 times the number of accounts initially included under the agreement, provided that the total monthly fee may not exceed \$50.

(c) **Insufficient funds fee.**—A licensee may collect a fee for a subsequent dishonored check or instrument taken in payment, not to exceed the service charge permitted to be imposed under 18 Pa.C.S. § 4105 (relating to bad checks).

(d) **Actual cost.**—A licensee may charge a consumer for the actual cost in requesting the consumer's credit report.

(e) **Contributions prohibited.**—A licensee shall not require or accept any contribution from a consumer on a debt management plan for services regulated pursuant to this act unless otherwise restricted by regulations promulgated by the department pursuant to this act.

(f) **Education or counseling fee.**—A licensee may not charge a consumer who enters into a debt management services agreement any fee for providing education or counseling. In the event that a consumer receives education or counseling from a licensee subject to a fee or charge without entering into a debt management services agreement and subsequently enters into a debt management services agreement with the licensee within four months of beginning the education or counseling, the licensee shall refund the fee charged for the education or counseling.

(g) **Fees subject to debt management plan agreement.**—A licensee may not impose charges or receive payment for debt management services until the licensee and the consumer have signed a debt management services agreement.

(h) **No other fees permitted.**—A licensee shall not charge a consumer any fees other than those described in this section or by regulation promulgated by the department for services regulated pursuant to this act.

(i) **Fee limits.**—For the 12-month period beginning with the effective date of this act, and annually thereafter, the fee limits provided in this section shall be increased by the percentage of change, if any, in the Consumer Price Index for All Urban Consumers for the Pennsylvania, New Jersey, Delaware and Maryland area for the most recent 12-month period for which figures are officially reported by the United States Department of Labor, Bureau of Labor Statistics, immediately prior to the date the adjustment is due to take effect, but in no event shall deflation result in a negative cost-of-living adjustment.

**Section 16. Violations.**

(a) General rule.—The department may impose a civil penalty up to \$10,000 for each violation of this act.

(b) Criminal liability.—A licensee who acts in accordance with the provisions of this act does not engage in “debt pooling” for purposes of 18 Pa.C.S. § 7312 (relating to debt pooling) and shall not be subject to criminal liability under 18 Pa.C.S. § 7312 unless the license is denied, suspended or revoked or its renewal is refused.

(c) Unfair trade practices.—A person who engages in the business of offering, soliciting or providing debt management services or debt settlement services without being licensed under or exempt from the licensing provisions of this act, or is otherwise in violation of this act in any way, shall be in violation of the act of December 17, 1968 (P.L.1224, No.387), known as the Unfair Trade Practices and Consumer Protection Law.

**Section 17. Powers and duties of department.**

The department shall have the authority to:

(1) Examine any instrument, document, account, book, record or file of a licensee or any person having a connection to the licensee or make other investigations as may be necessary to administer the provisions of this act. The examination may include documents, accounts, books or records that relate to the operation of the licensee that are in the possession of an affiliate, subsidiary or other business entity. Pursuant to this authority, the department may remove any instrument, document, account, book, record or file of a licensee or person to a location outside of the licensee’s or person’s office location. The examination may be conducted without prior notice to the licensee or person and the costs of the examination shall be borne by the licensee or person subject to the examination.

(2) Conduct administrative hearings on any matter pertaining to this act, issue subpoenas to compel the attendance of witnesses or the production of documents, accounts, books or records at a hearing. A document, account, book or record subject to subpoena may be retained by the department until the proceeding in connection with which it was subpoenaed is completed. A department official may administer oaths or affirmations to a person whose testimony is required.

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

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

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

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

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

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

(9) Provide the following on its Internet website:

(i) Information for licensees on the provisions of this act.

(ii) Information for consumers regarding the protections of this act.

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

(iv) A list of current licensees.

(10) Except for the information specified in section 5(7), make the information collected under section 5 available to the public upon request to the department pursuant to the act of February 14, 2008 (P.L.6, No.3), known as the Right-to-Know Law.

#### Section 18. Administrative proceedings.

(a) Hearings.—A person aggrieved by a decision of the department may appeal the decision to the secretary. The appeal shall be conducted under 2 Pa.C.S. Ch. 5 Subch. A (relating to practice and procedure of Commonwealth agencies).

(b) Injunctions.—The department may maintain an action for an injunction or other process against a person to restrain or prevent the person from violating this act.

(c) Final orders.—

(1) A decision of the secretary shall be a final order of the department and shall be enforceable in a court of competent jurisdiction.

(2) The department may publish final adjudications issued under this section, subject to redaction or modification to preserve confidentiality.

(d) Appeals.—A person aggrieved by a decision of the secretary may appeal the decision under 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

#### Section 19. Banking Department Fund.

All fees or penalties collected by the department under this act shall be deposited into the Banking Department Fund.

#### Section 20. Transition.

A person that provides debt management services before the effective date of this section, that is not then acting in violation of 18 Pa.C.S. § 7312 (relating to debt pooling) and that seeks to continue providing such services must submit an application for a license under this act within 45 days of the effective date of this section. The applicant may continue to provide debt management services provisionally, according to the requirements of this act, while the department processes the application for licensure.

#### Section 21. Exemption from other statutes.



A licensee under this act shall not be subject to the provisions of the act of September 2, 1965 (P.L.490, No.249), referred to as the Money Transmission Business Licensing Law, to the extent that the licensee transmits money pursuant to the terms of a debt management services or debt settlement services agreement.

**Section 48. Applicability.**

The provisions of this act shall apply to:

(1) Any debt management services agreement or debt settlement services agreement which is:

(i) negotiated, offered or otherwise transacted within this Commonwealth, in whole or in part, whether by the licensee or any other person;

(ii) made or executed within this Commonwealth after the effective date of this act; or

(iii) notwithstanding the place of execution, entered into with a resident of this Commonwealth.

(2) Any person who engages in debt management services or debt settlement services in this Commonwealth.

**Section 49. Repeal.**

The act of December 16, 1992 (P.L.1144, No.150), known as the Credit Services Act, is repealed insofar as it is inconsistent with this act.

**Section 50. Effective date.**

This act shall take effect in 120 days.

APPROVED—The 9th day of October, A.D. 2008.

EDWARD G. RENDELL