

No. 2014-118

AN ACT

SB 622

Providing for the licensure of persons providing debt settlement services, for powers and duties of the Department of Banking and Securities and for enforcement; imposing civil penalties; and making a related repeal.

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

CHAPTER 1  
PRELIMINARY PROVISIONS

Section 101. Short title.

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

Section 102. 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:

"Affiliate." Any of the following:

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

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

(3) A director of or 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 provider 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, 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.

"Commission." The Banking and Securities Commission.

"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 where the contemplated concessions involve a reduction in principal of the individual's unsecured debt owed for personal, family or household expenses to at least one creditor. The term 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 provide accounting services in this Commonwealth.

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

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

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

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

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

"Provider." A person that provides, markets, solicits, offers to provide or agrees to provide debt settlement services.

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

### Section 103. Nonapplicability.

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

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

(2) A bank, bank holding company or the subsidiary, agent or affiliate of either, or a credit union or other financial institution chartered under Federal or State law.

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

(4) A licensee under the act of October 9, 2008 (P.L.1421, No.117), known as the Debt Management Services Act, when the provision of debt settlement services is incidental to the provision of debt management services.

(5) An attorney not otherwise engaged in or holding himself or herself out to the public as being engaged in debt settlement services who acts as an intermediary between an individual and one or more of the individual's creditors in the normal course of legal practice. This paragraph shall not apply if the attorney is compensated by a provider.

## CHAPTER 3 LICENSURE

### Section 301. Requirements.

(a) General rule.—Except as provided under subsection (b) and on or after the effective date of this section, a provider may not market, solicit, offer to provide or provide debt settlement services for a fee or other consideration to an individual who resides in this Commonwealth at the time it agrees to provide the services, unless the provider is licensed under this act.

(b) Nonapplicability.—If a provider is licensed under this act, subsection (a) shall not apply to an employee of the provider acting on behalf of the provider.

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

Section 302. Application and required documentation.

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

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

(1) A licensing fee established by the department.

(2) A bond that complies with section 305.

(3) Proof that the provider is authorized by the laws of this Commonwealth to conduct business in this Commonwealth.

Section 303. Required information for application.

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 settlement 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 an officer, director, agent or employee of the applicant in an affiliate or subsidiary of the applicant or in another business entity that will provide any service to the applicant or to a consumer relating to the applicant's provision of debt settlement services.

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

(7) 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.

(8) A copy of the applicant's standard debt settlement services agreement.

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

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

Section 304. Not-for-profit license fees.

Notwithstanding any other provision of this act, a domestic or foreign not-for-profit corporation or association registered 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 settlement services fees and charges of less than \$3,000,000 annually shall pay an initial license fee of \$500 and an annual renewal fee of \$350.

## Section 305. Penal bond.

## (a) Issuance.—

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

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

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

(iii) The licensee will hold directly.

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

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

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

(ii) Run to the Commonwealth for its use.

(iii) Be for the use of a person against the licensee for the benefit of a consumer who is injured by a violation of this act or regulation promulgated under this act.

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

## (b) Right of aggrieved person.—

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

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

(ii) 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.

(2) An 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 of the payment. The department may pay the aggrieved person from the bond proceeds it recovers.

## (c) Additional relief.—

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

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

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

## Section 306. Application information.

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

**Section 307. Public availability of application information.**

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

**Section 308. 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. The department may extend the time period for 30 days and 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.

(b.1) **Covered license.**—A license under this chapter shall be deemed to be a covered license within the meaning of section 405 of the act of May 15, 1933 (P.L.565, No.111), known as the Department of Banking and Securities Code. The department shall notify a licensee if a covered individual within the meaning of section 405 of the Department of Banking and Securities Code that is or will be employed or contracted by the licensee has criminal background that renders the individual unfit for the debt settlement services business.

(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 commission within 30 days.

(d) **Duration.**—A license shall be issued for a period not to exceed 14 months on a schedule determined by the department, except 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 this act. If a license is denied, canceled, surrendered, revoked or suspended, no part of the license fee or license renewal fee shall be subject to rebate.

(e) **Transfer prohibited.**—

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

(2) A licensee may, upon notice to the department, transfer up to 49% of the ownership of a licensee to another entity without affecting the validity of a license granted under this act.

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

(g) Transitional license.—A person that is providing debt settlement services before the effective date of this section and that seeks to continue providing the services after the effective date of this section shall submit a completed application for a license under this act within 30 days of the effective date of this section. The applicant may continue to provide debt settlement services, according to this act, while the department processes the completed application for licensure.

Section 309. Renewal of license.

(a) Procedure.—An application for renewal of a license shall be submitted to the department in the manner determined by the department. The 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 in a manner sufficient to establish that the licensee will continue to conduct its business in accordance with this act.

Section 310. Grounds for denying, suspending, revoking or refusing to renew.

(a) Reasons.—The department may deny, suspend, revoke or refuse to renew a license if the applicant or one of its owners, officers, directors, principals, employees or agents did any of the following:

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

(2) Failed to comply with or violated a provision of this act or a 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 settlement services business in this Commonwealth.

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

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

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

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

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

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

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

(11) Becomes insolvent.

(b) Definitions.—As used in this section, the following words and phrases shall have the meanings given to them in this subsection:

"Insolvent." As follows:

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

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

Section 311. (Reserved).

Section 312. 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 313. Limitations.

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

(b) Other businesses.—A licensee may not conduct a business other than the debt settlement 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.

## CHAPTER 5 PROVIDER RESPONSIBILITIES

Section 501. Good faith.

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

Section 502. Prerequisites for providing debt settlement services.

(a) Disclosure.—Before an individual consents to pay for goods or services offered by a provider, the provider must disclose truthfully, in a clear and conspicuous manner in a written agreement signed by the provider and the individual for whom debt settlement services will be rendered, the following material information:

(1) All of the following:

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

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

(iii) The cost to the individual for providing debt settlement services and the method by which any fee for consideration for settling each individual debt will be calculated.

(iv) The total estimated program costs if the individual meets all program obligations and completes the program.

(2) To the extent that any aspect of the debt settlement service relies upon or results in the customer's failure to make timely payments to creditors or debt collectors, that the use of debt settlement services will likely affect the individual's creditworthiness, may result in the individual being subject to collections or sued by creditors or debt collectors and may increase the amount of money the individual owes due to the accrual of fees and interest.

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

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

(5) That the individual may terminate the debt settlement services agreement upon three days' written notice to the debt settlement provider.

(6) That the amount of a debt that is forgiven or canceled by a creditor may be considered income of the individual for tax purposes.

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

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

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

(3) The amount of money or the percentage of each outstanding debt that the individual shall accumulate before the provider will initiate attempts with the individual's creditors or debt collectors or make a bona fide offer to negotiate, settle or modify the terms of the individual's debt.

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

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

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

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

(8) The total estimated program costs if the individual meets all program obligations and completes the program.

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

(1) the provider has renegotiated, settled, reduced or otherwise altered the terms of at least one debt under a debt settlement plan;

(2) the individual has made at least one payment under the debt settlement plan; and

(3) the fee or consideration for settling each individual debt enrolled in a debt settlement plan meets one of the following:

(i) Bears the same proportional relationship to the total fee for settling the entire debt balance as the individual renegotiated, settled, reduced or otherwise altered debt amount bears to the entire debt amount. For purposes of this subparagraph, the individual debt amount and the entire debt amount shall be amounts owed at the time the debt was enrolled in the debt settlement service.

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

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

(1) The funds are held in an account at a bank solely in the name of the client.

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

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

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

(5) The individual may withdraw from the debt settlement services at any time without penalty and shall receive all funds in the account, other than funds earned by the provider in compliance with this section, within seven days of the individual's request.

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

## CHAPTER 7 ADMINISTRATION AND ENFORCEMENT

### Section 701. Powers and duties.

The department shall have the authority to:

(1) As follows:

(i) Examine an instrument, document, account, book, record or file of a licensee or a person having a connection to the licensee or make other investigations as may be necessary to administer 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.

(ii) Under the authority of this paragraph, the department may remove an 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.

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

(2) Conduct administrative hearings on a matter pertaining to this act and 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, including reports of criminal history record information, from a Federal, State, local or foreign government entity regarding an applicant, a licensee or a person related to the business of debt settlement 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 a 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 and 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.

#### Section 702. Administrative proceedings.

(a) Hearings.—A person aggrieved by a decision of the department may appeal the decision to the commission. 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 commission or an unappealed order of the department 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 commission may appeal the decision under 2 Pa.C.S. Ch. 7 Subch. A (relating to judicial review of Commonwealth agency action).

Section 703. Reports to department.

(a) Periodic report.—A licensee shall file a periodic report with the department on a date determined by the department setting forth information as the department shall require concerning the debt settlement 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 a final, nonappealable order finding a licensee guilty or liable in any enforcement action taken against the licensee by any Federal or State agency. The report must be filed no later than seven days after the licensee is made aware of the final order. The licensee shall provide updates to the department as to the status of an enforcement action as required by the department.

(c) Penalty.—A licensee who fails to file an annual report with the department as required under 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 704. Violations.

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

(b) Unfair trade practices.—A person who is in violation of this act 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 705. Banking Fund.

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

## CHAPTER 21 MISCELLANEOUS PROVISIONS

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

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

Section 2102. Transitional provisions.

Transactions entered into before the effective date of this section and the rights, duties and interests resulting from the transactions may be completed,

terminated or enforced as required or permitted by a law repealed or modified under this act as though the repeal or modification had not occurred.

Section 2103. Repeal.

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

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

Section 2104. Effective date.

This act shall take effect as follows:

- (1) This section shall take effect immediately.
- (2) The following provisions shall take effect November 1, 2014:
  - (i) Chapters 1, 7 and 21.
  - (ii) Sections 302, 303, 304, 305, 306, 307, 308, 310 and 313.
- (3) The remainder of this act shall take effect January 1, 2015.

APPROVED—The 9th day of July, A.D. 2014

TOM CORBETT