HOUSE DOCKET, NO. 538 FILED ON: 1/18/2011

HOUSE . . . . . No. 291

The Commonwealth of Massachusetts

PRESENTED BY:

Peter J. Koutoujian

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the passage of the accompanying:

An Act relative to the Division of Banks' licensing and supervision of debt management services.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Peter J. Koutoujian	*10th Middlesex*

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HOUSE . . . . . No. 291

By Mr. Koutoujian of Waltham, a petition (accompanied by bill, House, No. 291) of Peter J. Koutoujian relative to the Division of Banks licensing and supervision of debt management services. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *4913* OF 2009-2010.]

The Commonwealth of Massachusetts

An Act relative to the Division of Banks' licensing and supervision of debt management services.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

SECTION 1. The General Laws are hereby amended by inserting after chapter 255F the following chapter:--

Chapter 255G.

Regulating Debt Management Services in the Commonwealth.

Section 1. Definitions.

As used in this chapter, the following words have the following meanings, unless the context requires otherwise:

"Agreement" means a contract between a provider and an individual for the performance of debt management services.

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

"Business day" means a calendar day, except for Sundays and the following holidays: New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day,

14 Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and Christmas
15 Day.

16 "Commissioner" means the commissioner of banks for the Commonwealth of
17 Massachusetts.

18 "Consumer" means an individual who has secured or unsecured debt, which arises out of
19 personal, family or household obligations, and who has executed an agreement with a provider.

20 "Creditor" means a person that has extended credit to an individual.

21 "Debt management services" means directly or indirectly receiving an individual's
22 money to distribute it to 1 or more of an individual's creditors in partial or full satisfaction of the
23 individual's secured or unsecured debts; arranging the distribution or assisting an individual in
24 the distribution of an individual's money to 1 or more of an individual's creditors in partial or
25 full satisfaction of the individual's secured or unsecured debts; or acting or offering to act as an
26 intermediary between an individual and 1 or more of the individual's creditors to reduce, defer,
27 discharge or in any other way modify the terms and conditions of an individual's obligation to
28 repay secured or unsecured debts.

29 "Individual" means a natural person.

30 "Licensee" means a provider that possesses a valid license.

31 "Provider" means a person that performs debt management services for compensation or
32 gain, or in the expectation of compensation or gain.

33 "Statement of accounting" means a written or electronic document that a provider
34 prepares for consumers, which contains the following information:

35 the amount of money that the consumer has paid to the provider since the provider
36 prepared the last statement;

37 the amounts, dates and creditors that the provider paid on the consumer's behalf, since
38 the provider prepared the last statement;

39 the amounts of money that the provider collected as compensation from the consumer's
40 payments;

41 the amount of money that the provider holds in trust for the consumer;

42 if, since the last statement date, the consumer's creditor accepted a payment from the
43 provider in full or partial satisfaction of the consumer's debt with that creditor:

44 the total amount of money that the provider paid the creditor to settle a consumer's debt;

45 the amount of the debt at the time the provider and a consumer entered their agreement;

46 the amount of a debt at the time a consumer's creditor agreed to settle a debt with a
47 provider; and

48 the amount of compensation that the provider receives to settle a debt.

49 Section 2. License and Bond Required; Terms.

50 No person shall engage in or advertise for debt management services in Massachusetts
51 unless the commissioner issues it a license.

52 A provider shall obtain a license for each of its business addresses.

53 A license shall not be transferable or assignable.

54 A licensee shall file a surety bond in an amount and form that the commissioner
55 determines before it may conduct business in Massachusetts.

56 A licensee shall not conduct business in Massachusetts under a business name other than
57 the business name that is listed on its license.

58 If a licensee intends to conduct business at a business address in addition to the business
59 address on the license, it shall notify the commissioner in writing at least thirty days before the
60 date on which the addition is effective, and it shall pay a reasonable fee that the commissioner of
61 administration shall determine under chapter 7, section 3B.

62 The commissioner shall promulgate regulations to administer and enforce this chapter.

63 Section 3. Exempt Persons.

64 The following persons are exempt from this chapter:

65 A provider's employees who perform debt management services on the provider's behalf
66 in the regular course of their employment.

67 A person organized under section 501(c) of the Internal Revenue Code that receives no
68 compensation or gain for the debt management services that it provides to or on behalf of
69 individuals.

70 Judicial officers, individuals acting under the direction of a court, or assignees for
71 creditors' benefit.

72 A commercial bank, savings bank, cooperative bank, savings and loan association,
73 national banking association, credit union, trust company engaged in the business of banking or a

74 subsidiary of any of the above that is chartered under federal or state law and subject to federal
75 or state banking regulatory supervision.

76 Licensed Massachusetts attorneys at law who do not provide debt management services
77 as their primary business.

78 Persons that provide bill paying services if those persons do not perform debt
79 management service.

80 Creditors or the creditors' employees who negotiate debt settlement with individuals or
81 providers, acting on an individual's or consumer's behalf.

82 Officers or employees of the United States or a state of the United States who perform
83 debt management services for individuals on behalf of the federal government, the
84 Commonwealth of Massachusetts, a Massachusetts municipality or a Massachusetts state agency,
85 and receive compensation solely from these governmental entities.

86 Section 4. License Application.

87 The application for the license and the application for the license renewal shall be in a
88 form that the commissioner shall prescribe, shall be signed under oath and shall contain
89 information as the commissioner shall determine.

90 Applicants shall pay an investigation fee that the commissioner of administration shall
91 determine under chapter 7, section 3B.

92 The commissioner shall evaluate the applicant's financial responsibility, character,
93 reputation, integrity and general fitness to determine whether the applicant will act lawfully,
94 honestly, fairly, soundly and efficiently in the public interest.

95 The license shall be for a period of 1 year as of a date that the commissioner determines.
96 The commissioner of administration shall determine the license fee annually under chapter 7,
97 section 3B.

98 Section 5. License Issuance or Denial; Timing.

99 The commissioner may deny a license if:

100 the applicant does not satisfy the criteria set forth in section 4(c).

101 the application contains information that is materially erroneous or incomplete;

102 the applicant fails to provide information that the commissioner may request, in a timely
103 manner;

104 an officer, director, member or principal of the applicant's business has been (i)
105 convicted of or pled nolo contendere to a felony, or (ii) committed an act involving fraud, deceit
106 or dishonesty;

107 an officer, director, member or principal of the applicant has had a professional license
108 revoked, suspended or subjected to administrative action in any jurisdiction;

109 the applicant or any of its an officers, directors, members or principals has defaulted in
110 the payment of money collected for others; or

111 the applicant's license was revoked or suspended in another jurisdiction or the applicant
112 has been issued a regulatory action in another jurisdiction.

113 On or before the twentieth day after a license application denial, the commissioner shall
114 enter upon the records a written decision and findings containing the reasons supporting a license
115 denial, and shall send a notice to the applicant via certified mail. On or before the thirtieth day
116 after the date of the notice, the applicant may appeal the denial to the superior court for Suffolk
117 County, sitting in equity. The court shall hear the relevant evidence, determine the facts, affirm
118 the denial or order the commissioner to issue the license, as justice and equity may require.

119 Section 6. Suspension, Revocation, or Non-Renewal of License.

120 The commissioner may suspend, revoke or deny renewal of a license if:

121 a licensee has violated this chapter or any rule or regulation adopted hereunder or any
122 other law applicable to the conduct of its business;

123 a fact or condition exists that, if it had existed when the licensee applied for a license,
124 would have warranted the commissioner refusing to issue a license;

125 the licensee does not satisfy criteria required under section 4(c);

126 the licensee has refused to permit the commissioner to examine the licensee's books and
127 records under this chapter, failed to comply with section 13 or made a material misrepresentation
128 or omission in complying with section 13; or

129 the licensee has not responded within a reasonable time and in an appropriate manner to
130 the commissioner's communications.

131 If the commissioner suspends, revokes, or denies renewal of a license, the commissioner
132 may seek a court order to seize the licensee's books, records, accounts, property or money in a
133 trust account.

134 Except as provided in section 7, a licensee shall receive notice and a hearing under
135 chapter 30A before the commissioner revokes or suspends a license.

136 A licensee may deliver a written notice to the commissioner to surrender its license, but if
137 a licensee surrenders its license, its civil or criminal liability for acts committed before the
138 surrender is not affected.

139 Section 7. Commissioner's Order to Cease and Desist from Unlawful Acts or Practices;
140 Prior Notice and Opportunity for Hearing; Temporary Order.

141 (a) If the commissioner determines, after giving notice of and opportunity for a hearing,
142 that a licensee has acted in a manner that has violated or would violate this chapter, or a rule,
143 regulation or order hereunder, the commissioner may order the licensee to cease and desist from
144 unlawful acts or practices and take affirmative action to enforce this chapter.

145 (b) If the commissioner finds that delay in issuing an order under subsection (a) will
146 irreparably harm the public interest, the commissioner may issue a temporary cease and desist
147 order. Upon the entry of a temporary cease and desist order, the commissioner shall promptly
148 notify the affected licensee in writing that the order has been entered, the reasons for the order
149 and that on or before the twentieth day after the receipt of a written request from the licensee, the
150 matter will be scheduled for hearing to determine whether or not such temporary order shall
151 become permanent. If the commissioner does not order a hearing and a licensee does not request
152 a hearing, the order shall remain in effect until the commissioner modifies or vacates it. If a
153 hearing is requested or ordered, the commissioner shall vacate, modify or make the order
154 permanent, by written findings of fact and conclusions of law, after giving the licensee subject to
155 the order notice of and opportunity for a hearing.

156 (c) The commissioner shall not issue an order under this section, except an order issued
157 pursuant to subsection (b), without prior notice of and opportunity for a hearing. The
158 commissioner may vacate or modify an order under this section upon finding that the conditions
159 that required the order have changed and that it is in the public interest to vacate or modify the
160 order.

161 (d) An order issued under this section shall be subject to the review process that chapter
162 30A provides.

163 Section 8. Commissioner's Examination; Business Records; Records of Examination.

164 (a) The commissioner may examine the books and records of a licensee and have full
165 access to the records related to its business. A licensee shall keep and use its business records in
166 a form, at a location and for a retention period as the commissioner shall promulgate in a
167 regulation, which shall enable the commissioner to determine whether the licensee is complying
168 with this chapter and the rules and regulations promulgated hereunder, and any other law, rule or
169 regulation applicable to its business.

170 (b) In connection with the examination, the commissioner may:

171 (1) oblige a licensee to pay expenses on or before the thirtieth day after the licensee
172 receives an invoice, which the Massachusetts Division of Banks incurs in conducting an
173 examination, including expenses for travel outside Massachusetts;

174 (2) require or permit a licensee to file a statement under oath as to the facts and
175 circumstances of a matter to aid in an examination; and

176 (3) seek a court order to seize the following items from the federally insured bank that a
177 licensee maintains its trust account at: money, books, records, accounts and other property that
178 the licensee keeps under the federally insured bank's control.

179 (c) The commissioner shall preserve a full record of a licensee's examination, including a
180 statement of its condition. Examination records and reports, including work papers, information
181 derived from reports or in response to reports and any copies thereof in a licensee's possession
182 shall be confidential and privileged communications, shall not be subject to subpoena and shall
183 not be a public record under chapter 4, section 7, clause 26. For the purpose of this paragraph,
184 examination records and reports shall include examination records and reports that any bank
185 regulatory agency of a state, federal or foreign government conducted, which that agency or
186 government considers confidential, and which are in possession of the commissioner. In any
187 proceeding before a court, the court may issue a protective order to seal the record protecting the
188 confidentiality of a record, other than a record on file with the court or filed in connection with
189 the court proceeding, and the court may exclude the public from any portion of a proceeding at
190 which a record may be disclosed. The commissioner shall distribute copies of examination
191 reports to a licensee for its use only and the licensee shall not publish these reports to any person
192 or agency without the commissioner's prior written approval. The commissioner may distribute
193 any information, report, examination or statement relating to a licensee to any regulatory or law
194 enforcement agency.

195 Section 9. Violations of this Chapter; Commissioner Investigations.

196 The commissioner may investigate the books, accounts, records and files of a person that
197 the commissioner has reason to believe is conducting the business of a provider in
198 Massachusetts, whether the person acts or claims to act as a principal or agent, or under or
199 without the authority of this chapter.

200 Section 10. Agreements.

201 A licensee shall complete and furnish a written budget analysis to an individual before an
202 individual may execute an agreement. A licensee shall not execute an agreement unless the
203 budget analysis indicates that an individual can reasonably afford the payments established under
204 the stated agreement. The commissioner shall determine the information that a budget analysis
205 shall require.

206 A licensee shall not accept compensation or gain, directly or indirectly, for performing
207 debt management services before an individual executes an agreement. The agreement shall
208 contain information that the commissioner shall determine. A licensee shall, at the time the
209 agreement is executed, distribute a copy to the consumer.

210 In addition to other items as the commissioner may require, the agreement shall:

211 (1) disclose the debt management services that the licensee will perform;

212 (2) disclose the fees that the licensee will charge the consumer;

213 (3) disclose that agreements may not be suitable for all individuals;

214 (4) if applicable, disclose that the agreement does not cover secured debt; and

215 (5) disclose the list of debts that the agreement covers and the interest rate of those
216 debts at the time.

217 Section 11. Rescission

218 A consumer may rescind an agreement on or before the third business day after the
219 consumer executed the agreement. Rescission occurs when written notice of rescission is given
220 to the licensee. Notice is effective on the date the consumer mails the notice.

221 A licensee shall furnish a notice of rescission in a form and shall contain conditions as the
222 commissioner shall determine, at the time the agreement is signed.

223 All fees and payments that the consumer made shall be refunded in full on or before the
224 tenth business day after a licensee receives a rescission notice.

225 Section 12. Termination of Agreement.

226 If a consumer fails to make a payment to a licensee on or before the sixtieth day after the
227 consumer was required to pay under an agreement, then the licensee may terminate the
228 agreement with the consumer.

229 If a licensee terminates an agreement, the licensee shall immediately return to the
230 consumer any money that the licensee held in trust for the consumer.

231 A consumer may terminate an agreement at any time without a termination penalty.

232 Section 13. Annual Report; Failure to File; Penalties.

233 A licensee shall file with the commissioner on an annual or periodic basis a report in a
234 form that the commissioner shall prescribe. The report shall be in writing, under oath, and
235 contain information related to the conduct of a licensee's business. If a licensee neglects to file

236 an annual report or fails to amend the same on or before the fifteenth day after the commissioner
237 provides notice to the licensee, then the licensee shall pay to the Commonwealth of
238 Massachusetts $50 per day during which the neglect or failure to amend the same continues.

239 Section 14. Trust Account Required.

240 (a) A licensee shall maintain a separate trust account at a federally insured bank to
241 deposit money that it receives from consumers. Trust accounts shall comply with regulations
242 that the commissioner promulgates hereunder.

243 (b) A licensee shall not commingle money collected for a creditor with the licensee's own
244 funds or use any part of a consumer's money in the conduct of the licensee's business.

245 Section 15. Permissible Fees.

246 (a) A licensee shall not impose directly or indirectly a fee or other charge on a consumer
247 or receive money from or on behalf of a consumer for performing debt management services
248 except as this section or a regulation that the commissioner promulgates under this chapter
249 permits.

250 (b) A licensee shall not impose charges or receive payment for debt management
251 services until the licensee and the individual have signed an agreement that complies with
252 section 10 and the regulations promulgated hereunder

253 Section 16. Statement of Accounting.

254 A licensee shall distribute a statement of accounting to a consumer:

255 while an agreement is in effect:

256 at least once per month; and

257 on or before the fifth business day after a consumer demands a statement of accounting
258 from a licensee; however, a licensee may refuse to comply with more than 1 request for a
259 statement of accounting per month; and

260 on the day on which a consumer or a licensee rescinds or terminates an agreement.

261 Section 17. Advertising.

262 A person shall not advertise, announce, broadcast, display, distribute, print, publish,
263 televise or permit any other person to advertise, announce, broadcast, display, distribute, print,
264 publish or televise on its behalf a statement or representation that is deceptive, false or
265 misleading.

266 Advertisements that a licensee authorizes shall clearly state its licensed business name
267 and its Massachusetts license number.

268 Section 18. Liability for the Conduct of Other Persons.

269 If a licensee delegates a duty or obligation that this chapter mandates to another person,
270 including an independent contractor, the licensee is liable for the other person's conduct that
271 violates an agreement, this chapter or any of the Massachusetts Division of Banks' regulations.

272 Section 19. Criminal Penalties.

273 A person that violates section 2 or any rule or regulation promulgated thereunder shall:
274 pay a fine of not more than $2,000, be imprisoned in a house of correction for not more than 2
275 1/2 years, be imprisoned in state prison for not more than 5 years, or both a fine and
276 imprisonment. Each day a violation occurs or continues shall be deemed a separate offense. This
277 section's penalty provision shall be in addition to, and not in lieu of, the penalty provisions under
278 any other law applicable to providers for violating section 2 or any rule or regulation made
279 thereunder.

280 Section 20. Civil Penalties; Review.

281 If the commissioner finds that a person has violated this chapter, a rule or regulation
282 adopted thereunder or any other Massachusetts law applicable to the conduct of a provider, the
283 commissioner may order or impose a penalty upon the person, which shall not exceed $5,000 per
284 violation of law, rule or regulation, up to a maximum of $100,000 plus the costs of investigation.

285 Nothing in this section limits an individual's right to bring an action against a provider
286 that injured the individual to recover damages or restitution in a court of competent jurisdiction.

287 A finding or order that the commissioner issues under this section shall be reviewable
288 under chapter 30A.

289 Section 21. Violation of Chapter 93A.

290 A violation of this chapter is also a violation of chapter 93A, and an aggrieved individual
291 may recover damages from a provider under this chapter and chapter 93A.

292 SECTION 2. Effective Date.

293 This Chapter shall take effect 180 days after its passage, provided, however, subsection
294 (g) of section 2 of chapter 255G of the General Laws, inserted by section 1, shall take effect
295 upon its passage.