

The Commonwealth of Massachusetts

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In the Year Two Thousand Twelve  
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An Act relative to the licensing and supervision of debt management services in the Commonwealth.

*Whereas*, The deferred operation of this act would tend to defeat its purpose, which is to protect consumer debtors from debt management services providers, therefore, it is hereby declared to be an emergency law, necessary for the immediate preservation of the public convenience.

□

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

1           SECTION 1. Chapter 180 of the General Laws is hereby amended by striking out  
2 section 4A, as appearing in the 2010 of the Official Edition, and inserting in place thereof the  
3 following section:--

4           Section 4A. Credit counseling services as used in this chapter shall mean (a) the  
5 providing of financial and budgetary advice and judgment to individuals in connection with the  
6 creation of a budgetary plan; or (b) the creation of a plan whereby an individual turns over an  
7 agreed amount of his income to a nonprofit credit counseling corporation which distributes it to  
8 his creditors in accordance with a plan which they have approved and which may provide for  
9 smaller payments or a longer term than the original contract; or (c) the providing of educational  
10 services relating to the use of credit; or (d) any combination of these. An attorney authorized to  
11 practice law in the commonwealth may render those credit counseling services specified in  
12 clause (b), within the attorney-client relationship. Such attorney may not solicit debt  
13 management services business. Each such corporation shall comply with the provisions of  
14 section eight F of chapter twelve.

15           Such corporation shall not engage in the practice of law. If it appears that an individual  
16 receiving credit counseling services needs legal advice or counsel, he shall be referred to an  
17 attorney of his own choice, the local bar association referral service, or a local legal aid program,  
18 whichever course may seem most appropriate.

19 Any such corporation formed for credit counseling purposes under this chapter which  
20 provides debt management services for compensation or gain from or on behalf of the  
21 individuals to whom it provides the services or from their creditors shall obtain a license under  
22 chapter 255G of the General Laws.

23 SECTION 2. The General Laws are hereby amended by inserting after chapter 255F the  
24 following chapter:--

25 Chapter 255G.

26 Regulating Debt Management Services in the Commonwealth.

27 Section 1. Definitions.

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

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

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

34 "Business day" means a calendar day, except for Sundays and the following holidays:  
35 New Year's Day, Birthday of Martin Luther King, Jr., Washington's Birthday, Memorial Day,  
36 Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and Christmas  
37 Day.

38 "Commissioner" means the commissioner of banks for the Commonwealth of  
39 Massachusetts.

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

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

43 "Debt management services" means directly or indirectly receiving an individual's  
44 money to distribute it to 1 or more of an individual's creditors in partial or full satisfaction of the  
45 individual's secured or unsecured debts; arranging the distribution or assisting an individual in  
46 the distribution of an individual's money to 1 or more of an individual's creditors in partial or  
47 full satisfaction of the individual's secured or unsecured debts; or acting or offering to act as an  
48 intermediary between an individual and 1 or more of the individual's creditors to reduce, defer,  
49 discharge or in any other way modify the terms and conditions of an individual's obligation to  
50 repay secured or unsecured debts.

51 “Individual” means a natural person.

52 “Licensee” means a provider that possesses a valid license.

53 “Provider” means a person that performs debt management services for compensation or  
54 gain, or in the expectation of compensation or gain.

55 “Statement of accounting” means a written or electronic document that a provider  
56 prepares for a consumer in accordance with section 16.

57 “Third party payment processor” means any entity that holds, or has access to, or can  
58 effectuate procession of, by any means, the monies of a licensee’s debtors, or distributes, or is in  
59 the chain of distribution of such monies, to the creditors of such debtors, pursuant to an  
60 agreement or contract with the licensee.

61 Section 2. License and Bond Required; Terms.

62 (a) No person shall engage in or advertise for debt management services in  
63 Massachusetts unless the commissioner issues it a license.

64 (b) A provider shall obtain a license for each of its business addresses.

65 (c) A license shall not be transferable or assignable.

66 (d) A licensee shall file a surety bond in an amount and form that the commissioner  
67 determines before it may conduct business in Massachusetts.

68 (e) A licensee shall not conduct business in Massachusetts under a business name  
69 other than the business name that is listed on its license.

70 (f) The commissioner shall promulgate regulations to administer and enforce this  
71 chapter.

72 Section 3. Exempt Persons.

73 The following persons are exempt from this chapter:

74 (a) A provider’s employees who perform debt management services on the provider’s  
75 behalf in the regular course of their employment.

76 (b) A person organized under section 501(c) of the Internal Revenue Code that  
77 receives no compensation or gain for the debt management services from or on behalf of the  
78 individuals to whom it provides the services or from their creditors.

79 (c) Judicial officers, individuals acting under the direction of a court, or assignees for  
80 creditors’ benefit.

81 (d) A bank as defined in section one of chapter one hundred and sixty-seven, a  
82 national banking association, a federally chartered credit union, a federal savings and loan  
83 association, a federal savings bank, or any subsidiary of the above, or any bank, trust company,  
84 savings bank, savings and loan association, or credit union organized under the laws of any other  
85 state, or any subsidiary of the above.

86 (e) Attorneys licensed to practice law in the commonwealth who provide debt  
87 management services to consumers with whom the attorney also provides legal services within  
88 an attorney-client relationship to, and who do not solicit debt management services business.

89 (f) Persons that provide bill paying services if those persons do not perform debt  
90 management service.

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92 (g) Creditors or the creditors' employees who negotiate debt settlement with  
93 individuals or providers, acting on an individual's or consumer's behalf.

94 (h) Officers or employees of the United States or a state of the United States who  
95 perform debt management services for individuals on behalf of the federal government, the  
96 Commonwealth of Massachusetts, a Massachusetts municipality or a Massachusetts state agency,  
97 and receive compensation solely from these governmental entities.

98 (i) Certified Public Accountants licensed in Massachusetts who provide debt  
99 management services to consumers with whom the Certified Public Accountant also provides  
100 accounting services within an accountant-client relationship to, and who do not solicit debt  
101 management services business.

102 (j) A third party payment processor which does not provide debt management  
103 services.

104 Section 4. License Application.

105 (a) The application for the license and the application for the license renewal shall be in a  
106 form that the commissioner shall prescribe, shall be signed under oath and shall contain  
107 information as the commissioner shall determine. Applicants shall pay an investigation fee that  
108 the commissioner of administration shall determine under chapter 7, section 3B. The  
109 commissioner shall evaluate the applicant's financial responsibility, character, reputation,  
110 integrity and general fitness to determine whether the applicant will act lawfully, honestly, fairly,  
111 soundly and efficiently in the public interest. The license shall be for a period of 1 year as of a  
112 date that the commissioner determines. The commissioner of administration shall determine the  
113 license fee annually under chapter 7, section 3B.

114 (b) The commissioner may participate in a multi-state licensing system for the  
115 sharing of regulatory information and the licensing and application processes, by electronic or  
116 other means, for entities engaged in the business of debt management services. The  
117 commissioner may establish requirements for participation by an applicant in a multi-state  
118 licensing system which may vary from the provisions set out in this section and section 2. The  
119 commissioner may require a background investigation of each applicant for a license to engage  
120 in debt management services by means of fingerprint and state and national criminal history  
121 record checks by the Department of Criminal Justice Information Services pursuant to section  
122 172 of chapter 6, and the Federal Bureau of Investigation. If the applicant is a partnership,  
123 association, corporation or other form of business organization, the commissioner may require  
124 such background investigation by means of fingerprint checks on each member, director,  
125 principal officer of such applicant, and any individual acting as a manager of an office location.  
126 The applicant shall pay directly to such multi-state licensing system any additional fee relating to  
127 participation in such multi-state licensing system.

128 Section 5. License Issuance or Denial; Timing.

129 (a) The commissioner may deny a license if:

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

131 (2) the application contains information that is materially erroneous or incomplete;

132 (3) the applicant fails to provide information that the commissioner may request, in a  
133 timely manner;

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

137 (5) an officer, director, member or principal of the applicant has had a professional  
138 license revoked, suspended or subjected to administrative action in any jurisdiction;

139 (6) the applicant or any of its an officers, directors, members or principals has  
140 defaulted in the payment of money collected for others; or

141 (7) the applicant's license was revoked or suspended in another jurisdiction or the  
142 applicant has been issued a regulatory action in another jurisdiction.

143 (b) On or before the twentieth day after a license application denial, the  
144 commissioner shall enter upon the records a written decision and findings containing the reasons  
145 supporting a license denial, and shall send a notice to the applicant via certified mail. On or  
146 before the thirtieth day after the date of the notice, the applicant may appeal the denial to the  
147 superior court for Suffolk County, sitting in equity. The court shall hear the relevant evidence,

148 determine the facts, affirm the denial or order the commissioner to issue the license, as justice  
149 and equity may require.

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

151 (a) The commissioner may suspend, revoke or deny renewal of a license if:

152 (1) a licensee has violated this chapter or any rule or regulation adopted hereunder or  
153 any other law applicable to the conduct of its business;

154 (2) a fact or condition exists that, if it had existed when the licensee applied for a  
155 license, would have warranted the commissioner refusing to issue a license;

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

157 (4) the licensee has refused to permit the commissioner to examine the licensee's  
158 books and records under this chapter, failed to comply with section 13 or made a material  
159 misrepresentation or omission in complying with section 13; or

160 (5) the licensee has not responded within a reasonable time and in an appropriate  
161 manner to the commissioner's communications.

162 (b) If the commissioner suspends, revokes, or denies renewal of a license, the  
163 commissioner may seek a court order to seize the licensee's books, records, accounts, property or  
164 money in a trust account maintained by the provider.

165 (c) Except as provided in section 7, a licensee shall receive notice and a hearing  
166 under chapter 30A before the commissioner revokes or suspends a license.

167 (d) A licensee may deliver a written notice to the commissioner to surrender its  
168 license, but if a licensee surrenders its license, its civil or criminal liability for acts committed  
169 before the surrender is not affected.

170

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

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

177 (b) If the commissioner finds that delay in issuing an order under subsection (a) will  
178 irreparably harm the public interest, the commissioner may issue a temporary cease and desist  
179 order. Upon the entry of a temporary cease and desist order, the commissioner shall promptly

180 notify the affected licensee in writing that the order has been entered, the reasons for the order  
181 and that on or before the twentieth day after the receipt of a written request from the licensee, the  
182 matter will be scheduled for hearing to determine whether or not such temporary order shall  
183 become permanent. If the commissioner does not order a hearing and a licensee does not request  
184 a hearing, the order shall remain in effect until the commissioner modifies or vacates it. If a  
185 hearing is requested or ordered, the commissioner shall vacate, modify or make the order  
186 permanent, by written findings of fact and conclusions of law, after giving the licensee subject to  
187 the order notice of and opportunity for a hearing.

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

193 (d) Any order issued pursuant to this section shall be subject to review as provided in  
194 chapter thirty A.

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

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

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

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

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

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

211 (c) The commissioner shall preserve a full record of a licensee's examination, including a  
212 statement of its condition. Examination records and reports, including work papers, information  
213 derived from reports or in response to reports and any copies thereof in a licensee's possession  
214 shall be confidential and privileged communications, shall not be subject to subpoena and shall

215 not be a public record under chapter 4, section 7, clause 26. For the purpose of this paragraph,  
216 examination records and reports shall include examination records and reports that any bank  
217 regulatory agency of a state, federal or foreign government conducted, which that agency or  
218 government considers confidential, and which are in possession of the commissioner. In any  
219 proceeding before a court, the court may issue a protective order to seal the record protecting the  
220 confidentiality of a record, other than a record on file with the court or filed in connection with  
221 the court proceeding, and the court may exclude the public from any portion of a proceeding at  
222 which a record may be disclosed. The commissioner shall distribute copies of examination  
223 reports to a licensee for its use only and the licensee shall not publish these reports to any person  
224 or agency without the commissioner's prior written approval. The commissioner may distribute  
225 any information, report, examination or statement relating to a licensee to any regulatory or law  
226 enforcement agency.

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

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

232           Section 10. Agreements.

233           (a)       A licensee shall complete and furnish a written budget analysis to an individual  
234 before an individual may execute an agreement. A licensee shall not execute an agreement  
235 unless the budget analysis indicates that an individual can reasonably afford the payments  
236 established under the stated agreement. The commissioner shall determine the information that a  
237 budget analysis shall require.

238           (b)       A licensee shall not accept compensation or gain, directly or indirectly, for  
239 performing debt management services before an individual executes an agreement. The  
240 agreement shall contain information that the commissioner shall determine. A licensee shall, at  
241 the time the agreement is executed, distribute a copy to the consumer.

242           (c)       In addition to other items as the commissioner may require, the agreement shall:

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

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

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

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

247                   (5) disclose the list of debts that the agreement covers and the interest rate of those  
248 debts at the time as provided to the licensee by the consumer at the time of the agreement.

249 Section 11. Rescission

250 (a) A consumer may rescind an agreement until midnight of the third business day after  
251 the consumer executed the agreement by notifying the licensee in writing of his intention to do  
252 so. Notice is deemed effective on the date the consumer mails the notice.

253

254 (b) A licensee shall furnish a notice of rescission at the time the agreement is signed in a  
255 form and shall contain conditions as the commissioner shall determine.

256

257 (c) All fees and payments that the consumer made shall be refunded in full on or before  
258 the tenth business day after a licensee receives a rescission notice.

259 Section 12. Termination of Agreement.

260 (a) If a consumer fails to honor his or her contractual obligations on or before the  
261 sixtieth day after the consumer was required to perform under an agreement, then the licensee  
262 may terminate the agreement with the consumer. Notwithstanding the foregoing, if a consumer  
263 refuses to pay any fee to a licensee after such payment has been earned by the licensee, then the  
264 licensee may terminate its agreement with the consumer immediately.

265 (b) If a licensee terminates an agreement, the licensee shall immediately return to the  
266 consumer any money that the licensee held in trust for the consumer.

267 (c) A consumer may terminate an agreement at any time without a termination  
268 penalty.

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

270 A licensee shall file with the commissioner on an annual or periodic basis a report in a  
271 form that the commissioner shall prescribe. The report shall be in writing, under oath, and  
272 contain information related to the conduct of a licensee's business. If a licensee neglects to file  
273 an annual report or fails to amend the same on or before the fifteenth day after the commissioner  
274 provides notice to the licensee, then the licensee shall pay to the Commonwealth of  
275 Massachusetts \$50 per day during which the neglect or failure to amend the same continues.

276 Section 14. Trust Account Required of Providers that Receive Consumer Funds.

277 (a) A licensee shall maintain a separate trust account at a federally insured bank to hold  
278 funds that it receives from consumers. Trust accounts shall comply with regulations that the  
279 commissioner promulgates hereunder.

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

282 Section 15. Permissible Fees.

283 (a) A licensee shall not impose, directly or indirectly, a fee or other charge on a  
284 consumer or receive payment from or on behalf of a consumer for performing debt management  
285 services except as provided in regulations promulgated by the commissioner. Such regulation  
286 shall include the maximum fee that a licensee may charge for debt management services in the  
287 commonwealth and may contain such classifications, differentiations, or other provisions, and  
288 may provide for such adjustments and exceptions for any class of transactions, as in the  
289 judgment of the commissioner are necessary or proper to carry out the purposes of this chapter,  
290 to prevent circumvention or evasion thereof, or to facilitate compliance therewith.

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

294 Section 16. Statement of Accounting.

295 (a) A statement of accounting shall contain the following information:

296 (1) the amount of money that the consumer has paid to the provider since the provider  
297 prepared the last statement;

298 (2) the amounts, dates and creditors that the provider paid on the consumer's behalf, since  
299 the provider prepared the last statement;

300 (3) the amounts of money that the provider collected as compensation from the  
301 consumer's payments;

302 (4) the amount of money that the provider holds in trust for the consumer;

303 (5) if, since the last statement date, the consumer's creditor accepted a payment from the  
304 provider in full or partial satisfaction of the consumer's debt with that creditor:

305 (i) the total amount of money that the provider paid the creditor to settle a consumer's  
306 debt;

307 (ii) the amount of the debt at the time the provider and a consumer entered their  
308 agreement;

309 (iii) the amount of a debt at the time a consumer's creditor agreed to settle a debt with a  
310 provider; and

311 (iv) the amount of compensation that the provider receives to settle a debt.

312 (b) A licensee shall distribute a statement of accounting to a consumer:  
313 (1) while an agreement is in effect:  
314 (i) at least once per month; and  
315 (ii) on or before the fifth business day after a consumer demands a statement of  
316 accounting from a licensee; however, a licensee may refuse to comply with more than 1 request  
317 for a statement of accounting per month; and

318 (2 ) on the day on which a consumer or a licensee rescinds or terminates an  
319 agreement.

320 (c) Notwithstanding the requirement set forth in clauses (1) and (2) of subsection (b),  
321 a provider that enables, or arranges to enable, twenty-four hours a day, seven days a week,  
322 electronic access by a consumer to all of the consumer's deposit account transaction information,  
323 including but not necessarily limited to all deposit and withdrawal activity, and electronic access  
324 by a consumer to debt management account activity, including but not necessarily limited to  
325 such settlement information as account status, settlement date(s), settlement amount(s) and fee(s)  
326 paid, shall be deemed to have satisfied the statement of account distribution requirements in  
327 subsection (b).

#### 328 Section 17. Advertising.

329 (a) A person shall not advertise, announce, broadcast, display, distribute, print, publish,  
330 televise or permit any other person to advertise, announce, broadcast, display, distribute, print,  
331 publish or televise on its behalf a statement or representation that is deceptive, false or  
332 misleading.

333 (b) Advertisements that a licensee authorizes shall clearly state its licensed business name  
334 and its Massachusetts license number.

#### 335 Section 18. Liability for the Conduct of Other Persons.

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

#### 339 Section 19. Criminal Penalties.

340 A person that violates section 2 or any rule or regulation promulgated thereunder shall:  
341 pay a fine of not more than \$2,000, be imprisoned in a house of correction for not more than 2  
342 1/2 years, be imprisoned in state prison for not more than 5 years, or both a fine and  
343 imprisonment. Each day a violation occurs or continues shall be deemed a separate offense. This  
344 section's penalty provision shall be in addition to, and not in lieu of, the penalty provisions under

345 any other law applicable to providers for violating section 2 or any rule or regulation made  
346 thereunder.

347 Section 20. Civil Penalties; Review.

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

352 (b) Nothing in this section limits an individual's right to bring an action against a  
353 provider that injured the individual to recover damages or restitution in a court of competent  
354 jurisdiction.

355 (c) A finding or order that the commissioner issues under this section shall be reviewable  
356 under chapter 30A.

357 Section 21. Violation of Chapter 93A.

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

360 SECTION 3. Effective Date.

361 This Act shall take effect 180 days after its passage, provided, however, that the authority  
362 for the commissioner to promulgate regulations in section 2 of chapter 255G of the General  
363 Laws, as appearing in section 2, shall take effect upon passage.