HOUSE DOCKET, NO. 1083 FILED ON: 1/16/2013

HOUSE . . . . . No. 875

The Commonwealth of Massachusetts

PRESENTED BY:

Michael A. Costello

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 licensing and supervision of debt management services in the Commonwealth.

PETITION OF:

NAME:	DISTRICT/ADDRESS:
Michael A. Costello	*1st Essex*

HOUSE DOCKET, NO. 1083 FILED ON: 1/16/2013

HOUSE . . . . . No. 875

By Mr. Costello of Newburyport, a petition (accompanied by bill, House, No. 875) of Michael A. Costello relative to Division of Banks licensing and supervision of debt management services. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
HOUSE
, NO. *4303* OF 2011-2012.]

The Commonwealth of Massachusetts

An Act relative to the licensing and supervision of debt management services in the Commonwealth.

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

Section 4A. (a) As used in this chapter, credit counseling services shall mean: (1) the providing of financial and budgetary advice and judgment to individuals in connection with the creation of a budgetary plan; (2) the creation of a plan whereby an individual turns over an agreed amount of his income to a nonprofit credit counseling corporation which distributes it to the creditors of that individual in accordance with a plan which they have approved and which may provide for smaller payments or a longer term than the original contract; (3) the providing of educational services relating to the use of credit; or (4) any combination of clauses (1), (2) or (3).

(b) An attorney authorized to practice law in the commonwealth may render credit counseling services, as specified in clause (2) of subsection (a), within the attorney-client relationship. An attorney may not solicit debt management services business. Each such corporation shall comply with the provisions of section 8F of chapter 12. Such corporation shall not engage in the practice of law. If a person receiving credit counseling services requires legal

17 advice or counsel, they shall be referred to an attorney of their choice, the local bar association
18 referral service, or a local legal aid program.

19 (c) Any 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.

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

25 Chapter 255G.

26 Section 1. As used in this chapter, the following words shall have the following
27 meanings, unless the context requires otherwise:

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

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

32 "Business day", a calendar day, except for Sundays and legal holidays as listed in the first
33 sentence of clause eighteenth of section 4 of chapter 4.

34 "Commissioner", the commissioner of banks.

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

37 "Creditor", a person that has extended credit to an individual.

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

46 "Division", the division of banks.

47 "Individual", a natural person.

48 "Licensee", a provider that possesses a valid license issued pursuant to section 2.

49 “Person”, an individual, corporation, association, operation, firm, partnership, trust or
50 other form of business association.

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

53 “Statement of accounting”, a written or electronic document that a provider prepares for a
54 consumer in accordance with section 16.

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

59 Section 2. (a) No person shall engage in or advertise for debt management services in the
60 commonwealth unless such person has first obtained a debt management services license from
61 the commissioner.

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

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

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

66 (e) A licensee shall not conduct business in the commonwealth under a business name
67 other than the business name that is listed on its license.

68 (f) The commissioner shall promulgate rules and regulations for the administration and
69 enforcement of this chapter.

70 Section 3. The following persons shall be exempt from this chapter:

71 (1) a provider’s employees who perform debt management services on the provider’s
72 behalf 69 in the regular course of their employment;

73 (2) a person organized under section 501(c) of the Internal Revenue Code that receives
74 no compensation or gain for the debt management services from or on behalf of the individuals
75 to whom it provides the services or from their creditors;

76 (3) judicial officers, individuals acting under the direction of a court, or assignees for
77 creditors’ benefit;

78 (4) a bank as defined in section 1 of chapter 167, a national banking association, a
79 federally chartered credit union, a federal savings and loan association, a federal savings bank, or
80 any subsidiary of the above, or any bank, trust company, savings bank, savings and loan

81 association, or credit union organized under the laws of any other state, or any subsidiary of the
82 above;

83 (5) attorneys licensed to practice law in the commonwealth who provide debt
84 management services to consumers with whom the attorney also provides legal services within
85 an attorney-client relationship to, and who do not solicit debt management services business;

86 (6) persons that provide bill paying services if such persons do not perform debt
87 management service;

88 (7) creditors or the creditors' employees who negotiate debt settlement with individuals
89 or providers, acting on an individual's or consumer's behalf;

90 (8) officers or employees of the United States or a state of the United States who perform
91 debt management services for individuals on behalf of the federal government, the
92 commonwealth, a municipality or a state agency, and receive compensation solely from such
93 governmental entities;

94 (9) certified public accountants licensed in the commonwealth who provide debt
95 management services to consumers with whom the certified public accountant also provides
96 accounting services within an accountant-client relationship to, and who do not solicit debt
97 management services business; and

98 (10) a third party payment processor which does not provide debt management services.

99 Section 4. (a) The application for the license and the application for the license renewal
100 shall be in a form prescribed by the commissioner, signed under oath and containing information
101 as the commissioner shall determine. Applicants shall pay an investigation fee that the secretary
102 of administration and finance shall determine under section 3B of chapter 7. The commissioner
103 shall evaluate the applicant's financial responsibility, character, reputation, integrity and general
104 fitness to determine whether the applicant will act lawfully, honestly, fairly, soundly and
105 efficiently in the public interest. The license shall be for a period of 1 year. The secretary of
106 administration and finance shall determine the license fee annually under section 3B of chapter
107 7.

108 (b) The commissioner may participate in a multi-state licensing system for the sharing of
109 regulatory information and for the licensing and application, by electronic or other means, of
110 entities engaged in the business of debt management services. The commissioner may establish
111 requirements for participation by an applicant in a multi-state licensing system which may vary
112 from the provisions set out in this section and section 2. The commissioner may require a
113 background investigation of each applicant for a license to engage in debt management services
114 by means of fingerprint and state and national criminal history record checks by the department
115 of criminal justice information services pursuant to section 172 of chapter 6 and the Federal

116 Bureau of Investigation. If the applicant is a partnership, association, corporation or other form
117 of business organization, the commissioner may require such background investigation by means
118 of fingerprint checks on each member, director, principal officer of such applicant, and any
119 individual acting as a manager of an office location. The applicant shall pay directly to such
120 multi-state licensing system any additional fee relating to participation in such multi-state
121 licensing system.

122 Section 5. (a) The commissioner may deny a license if:

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

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

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

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

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

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

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

136 (b) On or before the 20th day after a license application denial, the commissioner shall
137 enter upon the records a written decision and findings containing the reasons supporting a license
138 denial, and shall send a notice to the applicant via certified mail. On or before the 30th day after
139 the date of the notice, the applicant may appeal the denial to the superior court for Suffolk
140 County, sitting in equity.

141 Section 6. (a) The commissioner may suspend, revoke or deny renewal of a license if:

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

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

146 (3) the licensee does not satisfy the criteria required under subsection (c) of section 4;

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

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

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

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

157 (d) A licensee may deliver a written notice to the commissioner to surrender its license,
158 provided, however, that if a licensee surrenders its license, its civil or criminal liability for acts
159 committed before the surrender is not affected.

160 Section 7. (a) If the commissioner determines, after giving notice of and opportunity for a
161 hearing, that a licensee has acted in a manner that has violated or would violate this chapter, or a
162 rule, regulation or order hereunder, the commissioner may order the licensee to cease and desist
163 from unlawful acts or practices and take affirmative action to enforce this chapter.

164 (b) If the commissioner finds that a delay in issuing an order under subsection (a) will
165 irreparably harm the public interest, the commissioner may issue a temporary cease and desist
166 order. Upon the entry of a temporary cease and desist order, the commissioner shall promptly
167 notify the affected licensee in writing that the order has been entered, the reasons for the order
168 and that on or before the 20th day after the receipt of a written request from the licensee, the
169 matter will be scheduled for hearing to determine whether or not such temporary order shall
170 become permanent. If the commissioner does not order a hearing and a licensee does not request
171 a hearing, the order shall remain in effect until the commissioner modifies or vacates it. If a
172 hearing is requested or ordered, the commissioner shall vacate, modify or make the order
173 permanent, by written findings of fact and conclusions of law, after giving the licensee subject to
174 the order notice of and opportunity for a hearing.

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

180 (d) Any order issued pursuant to this section shall be subject to review as provided in
181 chapter 176 30A.

182 Section 8. (a) The commissioner may examine the books and records of a licensee and
183 have full access to the records related to its business. A licensee shall keep and use its business
184 records in a form, at a location and for a retention period as the commissioner shall promulgate
185 in a regulation, which shall enable the commissioner to determine whether the licensee is
186 complying with this chapter and the rules and regulations promulgated hereunder, and any other
187 law, rule or regulation applicable to its business.

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

189 (1) oblige a licensee to pay expenses on or before the thirtieth day after the licensee
190 receives an invoice, which the division incurs in conducting an examination, including expenses
191 for travel outside the commonwealth;

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

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

197 (c) The commissioner shall preserve a full record of a licensee's examination, including a
198 statement of its condition. Examination records and reports, including work papers, information
199 derived from reports or in response to reports and any copies thereof in a licensee's possession
200 shall be confidential and privileged communications, shall not be subject to subpoena and shall
201 not be a public record under clause 26 of section 7 of chapter 4. For the purpose of this
202 paragraph, examination records and reports shall include examination records and reports that
203 any bank regulatory agency of a state, federal or foreign government conducted, which that
204 agency or government considers confidential, and which are in possession of the commissioner.
205 In any proceeding before a court, the court may issue a protective order to seal the record
206 protecting the confidentiality of a record, other than a record on file with the court or filed in
207 connection with the court proceeding, and the court may exclude the public from any portion of a
208 proceeding at which a record may be disclosed. The commissioner shall distribute copies of
209 examination reports to a licensee for its use only and the licensee shall not publish these reports
210 to any person or agency without the commissioner's prior written approval. The commissioner
211 may distribute any information, report, examination or statement relating to a licensee to any
212 regulatory or law enforcement agency.

213 Section 9.The commissioner may investigate the books, accounts, records and files of a
214 person that the commissioner has reason to believe is conducting the business of a provider in the
215 commonwealth, whether the person acts or claims to act as a principal or agent, or under or
216 without the authority of this chapter.

217 Section 10. (a) A licensee shall complete and furnish a written budget analysis to an
218 individual before an individual may execute an agreement. A licensee shall not execute an
219 agreement unless the budget analysis indicates that an individual can reasonably afford the
220 payments established under the stated agreement. The commissioner shall determine the
221 information that a budget analysis shall require.

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

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

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

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

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

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

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

233 Section 11. (a) A consumer may rescind an agreement until midnight of the third business
234 day after the consumer executed the agreement by notifying the licensee in writing of his
235 intention to rescind the agreement. Notice is deemed effective on the date the consumer mails
236 such notice.

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

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

241 Section 12. (a) If a consumer fails to honor the consumer's contractual obligations on or
242 before the 60th day after the consumer was required to perform under an agreement, then the
243 licensee may terminate the agreement with the consumer. Notwithstanding the foregoing, if a
244 consumer refuses to pay any fee to a licensee after such payment has been earned by the licensee,
245 then the licensee may terminate its agreement with the consumer immediately.

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

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

249 Section 13. A licensee shall file with the commissioner an annual report in a form that the
250 commissioner shall prescribe. The report shall be in writing, under oath, and contain information
251 related to the conduct of a licensee's business. If a licensee neglects to file an annual report or
252 fails to amend the same on or before the fifteenth day after the commissioner provides notice to
253 the licensee, then the licensee shall pay a fine of $50 per day during which the neglect or failure
254 to amend the same continues.

255 Section 14. (a) A licensee shall maintain a separate trust account at a federally insured
256 bank to hold funds that it receives from consumers. Trust accounts shall comply with regulations
257 that the commissioner promulgates hereunder.

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

260 Section 15. A licensee shall not impose charges or receive payment for debt management
261 services until the licensee and the individual have signed an agreement that complies with
262 section 10 and the regulations promulgated hereunder

263 Section 16. (a) A statement of accounting shall contain the following information:

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

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

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

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

271 (5) if, since the last statement date, the consumer's creditor accepted a payment from the
272 provider in full or partial satisfaction of the consumer's debt with that creditor: (i) the total
273 amount of money that the provider paid the creditor to settle a consumer's debt; (ii) the amount
274 of the debt at the time the provider and a consumer entered their agreement; (iii) the amount of a
275 debt at the time a consumer's creditor agreed to settle a debt with a provider; and (iv) the amount
276 of compensation that the provider receives to settle a debt.

277 (b) A licensee shall distribute a statement of accounting to a consumer:

278 (1) while an agreement is in effect: (i) at least once per month; and (ii) on or before the
279 fifth business day after a consumer demands a statement of accounting from a licensee; provided,
280 however, a licensee may refuse to comply with more than 1 request for a statement of accounting
281 per month; and

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

283 (c) Notwithstanding the requirement set forth in clauses (1) and (2) of subsection (b), a
284 provider that enables, or arranges to enable, 24 hours a day, 7 days a week, electronic access by a
285 consumer to all of the consumer's deposit account transaction information, including, but not
286 limited to, all deposit and withdrawal activity, and electronic access by a consumer to debt
287 management account activity, including, but not limited to, such settlement information as
288 account status, settlement dates, settlement amounts and fees paid, shall be deemed to have
289 satisfied the statement of account distribution requirements in subsection (b).

290 Section 17. (a) A person shall not advertise, announce, broadcast, display, distribute,
291 print, publish, televise or permit any other person to advertise, announce, broadcast, display,
292 distribute, print, publish or televise on its behalf a statement or representation that is deceptive,
293 false or misleading.

294 (b) Advertisements that a licensee authorizes shall clearly state its licensed business name
295 and its license number.

296 Section 18. If a licensee delegates a duty or obligation that this chapter mandates to
297 another person, including an independent contractor, the licensee is liable for the other person's
298 conduct that violates an agreement, this chapter or any of regulation of the division.

299 Section 19. A person that violates section 2 or any rule or regulation promulgated
300 thereunder shall pay a fine of not more than $2,000 or be imprisoned in a house of correction for
301 not more than 2 1/2 years or be imprisoned in state prison for not more than 5 years, or both a
302 fine and imprisonment. Each day a violation occurs or continues shall be deemed a separate
303 offense. This section's penalty provision shall be in addition to, and not in lieu of, the penalty
304 provisions under any other law applicable to providers for violating section 2 or any rule or
305 regulation made thereunder.

306 Section 20. (a) If the commissioner finds that a person has violated this chapter, a rule or
307 regulation adopted thereunder or any other law applicable to the conduct of a provider, the
308 commissioner may order or impose a penalty upon the person, which shall not exceed $5,000 per
309 violation of law, rule or regulation, up to a maximum of $100,000 plus the costs of investigation.

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

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

315 Section 21. A violation of this chapter shall be a violation of chapter 93A and an
316 aggrieved individual may recover damages from a provider under this chapter and chapter 93A.

317 SECTION 3. This act shall take effect 180 days after its passage, provided, however, that
318 the authority for the commissioner to promulgate regulations in section 2 of chapter 255G of the
319 312 General Laws, as appearing in section 2, shall take effect upon passage.