

# HOUSE . . . . . No. 04074

By Mr. Costello of Newburyport, for the committee on Financial Services, on House, No. 291, a Bill relative to the licensing and supervision of debt management services in the Commonwealth (House, No. 4074). May 9, 2012.

## The Commonwealth of Massachusetts

In the Year Two Thousand Twelve

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 forthwith 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 section 4A,
- 2 as appearing in the 2010 of the Official Edition, and inserting in place thereof the following
- 3 section:--
- 4 Section 4A. Credit counseling services as used in this chapter shall mean (a) the providing of
- 5 financial and budgetary advice and judgment to individuals in connection with the creation of a

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

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

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

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

24 Chapter 255G.

25 Regulating Debt Management Services in the Commonwealth.

26 Section 1. Definitions.

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

29 “Agreement” means a contract between a provider and an individual for the performance of debt  
30 management services.

31 “Business address” means the physical location of a business, including the name and number of  
32 a street.

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

37 “Commissioner” means the commissioner of banks for the Commonwealth of Massachusetts.

38 “Consumer” means an individual who has secured or unsecured debt, which arises out of  
39 personal, family or household obligations, and who has executed an agreement with a provider.

40 “Creditor” means a person that has extended credit to an individual.

41 “Debt management services” means directly or indirectly receiving an individual’s money to  
42 distribute it to 1 or more of an individual’s creditors in partial or full satisfaction of the  
43 individual’s secured or unsecured debts; arranging the distribution or assisting an individual in  
44 the distribution of an individual’s money to 1 or more of an individual’s creditors in partial or  
45 full satisfaction of the individual’s secured or unsecured debts; or acting or offering to act as an  
46 intermediary between an individual and 1 or more of the individual’s creditors to reduce, defer,

47 discharge or in any other way modify the terms and conditions of an individual's obligation to  
48 repay secured or unsecured debts.

49 "Individual" means a natural person.

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

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

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

55 "Third party payment processor" means any 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. License and Bond Required; Terms.

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

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 Massachusetts.

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

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

69 Section 3. Exempt Persons.

70 The following persons are exempt from this chapter:

71 (a) A provider's employees who perform debt management services on the provider's behalf  
72 in the regular course of their employment.

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

76 (c) Judicial officers, individuals acting under the direction of a court, or assignees for  
77 creditors' benefit.

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

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

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

88

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

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

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

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

#### 100 Section 4. License Application.

101 (a) The application for the license and the application for the license renewal shall be in a form  
102 that the commissioner shall prescribe, shall be signed under oath and shall contain information as  
103 the commissioner shall determine. Applicants shall pay an investigation fee that the  
104 commissioner of administration shall determine under chapter 7, section 3B. The commissioner  
105 shall evaluate the applicant's financial responsibility, character, reputation, integrity and general  
106 fitness to determine whether the applicant will act lawfully, honestly, fairly, soundly and

107 efficiently in the public interest. The license shall be for a period of 1 year as of a date that the  
108 commissioner determines. The commissioner of administration shall determine the license fee  
109 annually under chapter 7, section 3B.

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

124 Section 5. License Issuance or Denial; Timing.

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

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

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

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

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

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

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

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

139 (b) On or before the twentieth day after a license application denial, the commissioner shall  
140 enter upon the records a written decision and findings containing the reasons supporting a license  
141 denial, and shall send a notice to the applicant via certified mail. On or before the thirtieth day  
142 after the date of the notice, the applicant may appeal the denial to the superior court for Suffolk  
143 County, sitting in equity. The court shall hear the relevant evidence, determine the facts, affirm  
144 the denial or order the commissioner to issue the license, as justice and equity may require.

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

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

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



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

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

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

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

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

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

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

165

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

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

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

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

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

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

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

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

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

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

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

205 (c) The commissioner shall preserve a full record of a licensee's examination, including a  
206 statement of its condition. Examination records and reports, including work papers, information  
207 derived from reports or in response to reports and any copies thereof in a licensee's possession  
208 shall be confidential and privileged communications, shall not be subject to subpoena and shall  
209 not be a public record under chapter 4, section 7, clause 26. For the purpose of this paragraph,  
210 examination records and reports shall include examination records and reports that any bank  
211 regulatory agency of a state, federal or foreign government conducted, which that agency or

212 government considers confidential, and which are in possession of the commissioner. In any  
213 proceeding before a court, the court may issue a protective order to seal the record protecting the  
214 confidentiality of a record, other than a record on file with the court or filed in connection with  
215 the court proceeding, and the court may exclude the public from any portion of a proceeding at  
216 which a record may be disclosed. The commissioner shall distribute copies of examination  
217 reports to a licensee for its use only and the licensee shall not publish these reports to any person  
218 or agency without the commissioner's prior written approval. The commissioner may distribute  
219 any information, report, examination or statement relating to a licensee to any regulatory or law  
220 enforcement agency.

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

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

226 Section 10. Agreements.

227 (a) A licensee shall complete and furnish a written budget analysis to an individual before an  
228 individual may execute an agreement. A licensee shall not execute an agreement unless the  
229 budget analysis indicates that an individual can reasonably afford the payments established under  
230 the stated agreement. The commissioner shall determine the information that a budget analysis  
231 shall require.

232 (b) A licensee shall not accept compensation or gain, directly or indirectly, for performing  
233 debt management services before an individual executes an agreement. The agreement shall

234 contain information that the commissioner shall determine. A licensee shall, at the time the  
235 agreement is executed, distribute a copy to the consumer.

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

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

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

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

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

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

243 Section 11. Rescission

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

247

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

250

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

253 Section 12. Termination of Agreement.

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

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

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

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

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

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

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

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

275 Section 15. Permissible Fees.

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

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

287 Section 16. Statement of Accounting.

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

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

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

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

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

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

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

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

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

301 and

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

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

304 (1) while an agreement is in effect:

305 (i) at least once per month; and

306 (ii) on or before the fifth business day after a consumer demands a statement of accounting

307 from a licensee; however, a licensee may refuse to comply with more than 1 request for a

308 statement of accounting per month; and

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

310 (c) Notwithstanding the requirement set forth in clauses (1) and (2) of subsection (b), a

311 provider that enables, or arranges to enable, twenty-four hours a day, seven days a week,



312 electronic access by a consumer to all of the consumer's deposit account transaction information,  
313 including but not necessarily limited to all deposit and withdrawal activity, and electronic access  
314 by a consumer to debt management account activity, including but not necessarily limited to  
315 such settlement information as account status, settlement date(s), settlement amount(s) and fee(s)  
316 paid, shall be deemed to have satisfied the statement of account distribution requirements in  
317 subsection (b).

318 Section 17. Advertising.

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

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

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

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

328 Section 19. Criminal Penalties.

329 A person that violates section 2 or any rule or regulation promulgated thereunder shall: pay a  
330 fine of not more than \$2,000, be imprisoned in a house of correction for not more than 2 1/2  
331 years, be imprisoned in state prison for not more than 5 years, or both a fine and imprisonment.  
332 Each day a violation occurs or continues shall be deemed a separate offense. This section's

333 penalty provision shall be in addition to, and not in lieu of, the penalty provisions under any  
334 other law applicable to providers for violating section 2 or any rule or regulation made  
335 thereunder.

336 Section 20. Civil Penalties; Review.

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

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

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

345 Section 21. Violation of Chapter 93A.

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

348 SECTION 3. Effective Date.

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