

HOUSE BILL 374

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HB 1385/06 – ECM

71r0847

By: **Delegates Feldman, Miller, Aumann, Bates, Haddaway, Harrison, Impallaria, Jameson, Kirk, Krebs, Krysiak, Love, Manno, Minnick, Taylor, F. Turner, Vaughn, and Walkup**

Introduced and read first time: February 2, 2007

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Credit Regulation – Debt Management Services**

3 FOR the purpose of authorizing a person that is not a nonprofit organization to
4 provide debt management services in the State; requiring a person that is
5 licensed to provide debt management services to make certain determinations
6 before providing debt management services for a consumer; altering certain
7 definitions; repealing a certain defined term; making conforming changes; and
8 generally relating to debt management services.

9 BY repealing and reenacting, with amendments,
10 Article – Financial Institutions
11 Section 12–901, 12–905(a), 12–908(b)(11), and 12–916(a)(1)
12 Annotated Code of Maryland
13 (2003 Replacement Volume and 2006 Supplement)

14 BY repealing and reenacting, without amendments,
15 Article – Financial Institutions
16 Section 12–908(a)
17 Annotated Code of Maryland
18 (2003 Replacement Volume and 2006 Supplement)

19 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
20 MARYLAND, That the Laws of Maryland read as follows:

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



Article – Financial Institutions

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12–901.

(a) In this subtitle the following words have the meanings indicated.

(b) “Annual gross revenue” means income or revenue from all sources, before any expenses or taxes, computed according to generally accepted accounting principles for the preceding fiscal year.

(c) “Consultation fee” means a fee paid by a consumer to a debt management services provider in connection with the processing of any application that the consumer makes for debt management services.

(d) “Consumer” means an individual who:

(1) Resides in the State; and

(2) Is seeking debt management services or has entered into a debt management services agreement.

(e) “Consumer education program” means a program or plan that seeks to improve the financial literacy of consumers.

(f) “Debt management counselor” means a permanent, temporary, or contractual employee of a debt management services provider or its agent who provides counseling to consumers on behalf of the debt management services provider.

(g) “Debt management services” means receiving funds periodically from a consumer under an agreement with the consumer for the purpose of distributing the funds among the consumer’s creditors in full or partial payment of the consumer’s debts.

(h) “Debt management services agreement” means a written contract, plan, or agreement between a debt management services provider and a consumer for the performance of debt management services.

(i) “Debt management services provider” means [an organization] **A PERSON** that provides or offers to provide debt management services to a consumer.

(j) “Fund” means the Debt Management Services Fund established under § 12–905 of this subtitle.

1 (k) "Licensee" means [an organization] **A PERSON** licensed under this
2 subtitle to provide debt management services.

3 (l) "Maintenance fee" means a fee paid by a consumer to a debt management
4 services provider for the maintenance or servicing of the consumer's accounts with the
5 consumer's creditors in accordance with a debt management services agreement.

6 [(m) "Organization" means a nonprofit organization that is exempt from
7 taxation under § 501(c) of the Internal Revenue Code.]

8 [(n)] **(M)** "Relative" means any of the following who are related to an
9 individual by blood, marriage, or adoption:

- 10 (1) A spouse;
- 11 (2) A child;
- 12 (3) A sibling;
- 13 (4) A parent;
- 14 (5) A grandparent;
- 15 (6) A grandchild;
- 16 (7) A stepparent;
- 17 (8) A stepchild;
- 18 (9) A stepsibling;
- 19 (10) An aunt; or
- 20 (11) An uncle.

21 [(o)] **(N)** "Resident agent" means an individual residing in the State or a
22 Maryland corporation whose name, address, and designation as a resident agent are
23 filed or recorded with the State Department of Assessments and Taxation in
24 accordance with the provisions of the Corporations and Associations Article.

25 [(p)] **(O)** "Trust account" means an account that is:

- 1 (1) Established in a financial institution that is federally insured;
- 2 (2) Separate from the debt management services provider's operating
3 account;
- 4 (3) Designated as a "trust account" or by another appropriate
5 designation indicating that the funds in the account are not the funds of the licensee
6 or its officers, employees, or agents;
- 7 (4) Unavailable to creditors of the debt management services provider;
8 and
- 9 (5) Used to hold funds paid by consumers to a debt management
10 services provider for disbursement to creditors of the consumers.

11 12-905.

12 (a) There is a Debt Management Services Fund that consists of:

- 13 (1) All revenue received for the licensing of [organizations] **PERSONS**
14 that provide debt management services under this subtitle;
- 15 (2) Income from investments that the Treasurer makes for the Fund;
16 and
- 17 (3) Except as provided in subsection (b) of this section, any other fee or
18 revenue received by the Commissioner under this subtitle.

19 12-908.

20 (a) To apply for a license, an applicant shall submit to the Commissioner an
21 application on the form that the Commissioner provides.

22 (b) The application shall include:

- 23 (11) [Evidence] **IF APPLICABLE, EVIDENCE** of nonprofit status under
24 § 501(c) of the Internal Revenue Code;

25 12-916.

1 (a) (1) A licensee may not perform debt management services for a
2 consumer unless:

3 (i) The licensee provides the consumer with a consumer
4 education program;

5 (ii) The licensee, through a debt management counselor certified
6 by an independent organization, has:

7 1. Prepared a financial analysis of and an initial budget
8 plan for the consumer's debt obligations;

9 2. Provided a copy of the financial analysis and the
10 initial budget plan to the consumer; and

11 3. Provided to the consumer, for all creditors identified
12 by the consumer, a list of:

13 A. The creditors that the licensee reasonably expects to
14 participate in the management of the consumer's debt under the debt management
15 services agreement; and

16 B. The creditors that the licensee reasonably expects not
17 to participate in the management of the consumer's debt under the debt management
18 services agreement;

19 (iii) The licensee and the consumer have executed a debt
20 management services agreement that describes the debt management services to be
21 provided by the licensee to the consumer;

22 (iv) The licensee has a reasonable expectation based on the
23 licensee's past experience that each creditor of the consumer that is listed as a
24 participating creditor in the consumer's debt management services agreement will
25 accept payment of the consumer's debts owed to the creditor as provided in the
26 consumer's debt management services agreement; [and]

27 **(V) THE LICENSEE HAS MADE A DETERMINATION, BASED ON**
28 **THE LICENSEE'S ANALYSIS OF THE INFORMATION PROVIDED BY THE CONSUMER**
29 **AND OTHERWISE AVAILABLE TO THE LICENSEE, THAT:**

30 **1. THE DEBT MANAGEMENT SERVICES ARE**
31 **SUITABLE FOR THE CONSUMER; AND**

1 **2. THE CONSUMER WILL BE ABLE TO MEET THE**
2 **PAYMENT OBLIGATIONS UNDER THE DEBT MANAGEMENT SERVICES**
3 **AGREEMENT; AND**

4 [(v)] (VI) A copy of the completed debt management services
5 agreement has been provided to the consumer.

6 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
7 June 1, 2007.