
By: **Delegate D. Davis**

Introduced and read first time: February 9, 2005

Assigned to: Economic Matters

A BILL ENTITLED

1 AN ACT concerning

2 **Financial Regulation - Debt Management Services**

3 FOR the purpose of clarifying that a person who provides debt management services
4 is subject to licensure whether or not the person maintains an office in the
5 State; requiring an applicant for licensure as a debt management services
6 provider to provide certain information to the Commissioner of Financial
7 Regulation and to satisfy the Commissioner as to certain matters; prohibiting
8 certain contracts or agreements between certain persons, prohibiting certain
9 advertising and related acts, and prohibiting certain incentives relating to debt
10 management services, subject to certain penalties; altering certain licensing fees
11 for debt management services providers; altering the maximum amount of a
12 certain surety bond filed by a debt management services provider; defining a
13 certain term; including a crime under the Maryland Debt Management Services
14 Act in certain definitions for certain purposes; and generally relating to debt
15 management services.

16 BY renumbering

17 Article - Courts and Judicial Proceedings
18 Section 7-409(a)(2)(ix) through (xix), respectively
19 to be Section 7-409(a)(2)(x) through (xx), respectively
20 Annotated Code of Maryland
21 (2002 Replacement Volume and 2004 Supplement)

22 BY repealing and reenacting, with amendments,

23 Article - Financial Institutions
24 Section 12-901, 12-904, 12-906, 12-907(a), 12-908, 12-914, and 12-920
25 Annotated Code of Maryland
26 (2003 Replacement Volume and 2004 Supplement)

27 BY repealing and reenacting, without amendments,

28 Article - Financial Institutions
29 Section 12-929
30 Annotated Code of Maryland

1 (2003 Replacement Volume and 2004 Supplement)

2 BY adding to

3 Article - Courts and Judicial Proceedings

4 Section 7-409(a)(2)(ix)

5 Annotated Code of Maryland

6 (2002 Replacement Volume and 2004 Supplement)

7 BY repealing and reenacting, with amendments,

8 Article - Insurance

9 Section 2-401(c)(4)

10 Annotated Code of Maryland

11 (2003 Replacement Volume and 2004 Supplement)

12 BY repealing and reenacting, with amendments,

13 Article - Insurance

14 Section 27-801(c)(3)

15 Annotated Code of Maryland

16 (2002 Replacement Volume and 2004 Supplement)

17 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF
18 MARYLAND, That Section(s) 7-409(a)(2)(ix) through (xix), respectively, of Article -
19 Courts and Judicial Proceedings of the Annotated Code of Maryland be renumbered to
20 be Section(s) 7-409(a)(2)(x) through (xx), respectively.

21 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland
22 read as follows:

23 **Article - Financial Institutions**

24 12-901.

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

26 (b) "Consultation fee" means a fee paid by a consumer to a debt management
27 services provider in connection with the processing of any application that the
28 consumer makes for debt management services.

29 (c) "Consumer" means an individual who:

30 (1) Resides in the State; and

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

33 (d) "Consumer education program" means a program or plan that seeks to
34 improve the financial literacy of consumers.

1 (e) "Debt management counselor" means a permanent, temporary, or
2 contractual employee of a debt management services provider or its agent who
3 provides counseling to consumers on behalf of the debt management services provider.

4 (f) "Debt management services" means receiving funds periodically from a
5 consumer under an agreement with the consumer for the purpose of distributing the
6 funds among the consumer's creditors in full or partial payment of the consumer's
7 debts.

8 (g) "Debt management services agreement" means a written contract, plan, or
9 agreement between a debt management services provider and a consumer for the
10 performance of debt management services.

11 (h) "Debt management services provider" means an organization that provides
12 or offers to provide debt management services to a consumer.

13 (i) "Fund" means the Debt Management Services Fund established under §
14 12-905 of this subtitle.

15 (j) "Licensee" means an organization licensed under this subtitle to provide
16 debt management services.

17 (k) "Maintenance fee" means a fee paid by a consumer to a debt management
18 services provider for the maintenance or servicing of the consumer's accounts with
19 the consumer's creditors in accordance with a debt management services agreement.

20 (l) "Organization" means a nonprofit organization that is exempt from
21 taxation under § 501(c) of the Internal Revenue Code.

22 (M) "RELATIVE" MEANS ANY OF THE FOLLOWING WHO ARE RELATED TO AN
23 INDIVIDUAL BY BLOOD, MARRIAGE, OR ADOPTION:

24 (1) A SPOUSE;

25 (2) A CHILD;

26 (3) A SIBLING;

27 (4) A PARENT;

28 (5) A GRANDPARENT;

29 (6) A GRANDCHILD;

30 (7) A STEPPARENT;

31 (8) A STEPCHILD;

32 (9) A STEPSIBLING;

33 (10) AN AUNT; OR

1 (11) AN UNCLE.

2 [(m)] (N) "Resident agent" means an individual residing in the State or a
3 Maryland corporation whose name, address, and designation as a resident agent are
4 filed or recorded with the State Department of Assessments and Taxation in
5 accordance with the provisions of the Corporations and Associations Article.

6 [(n)] (O) "Trust account" means an account that is:

7 (1) Established in a financial institution that is federally insured;

8 (2) Separate from the debt management services provider's operating
9 account;

10 (3) Designated as a "trust account" or by another appropriate
11 designation indicating that the funds in the account are not the funds of the licensee
12 or its officers, employees, or agents;

13 (4) Unavailable to creditors of the debt management services provider;
14 and

15 (5) Used to hold funds paid by consumers to a debt management services
16 provider for disbursement to creditors of the consumers.

17 12-904.

18 (a) The Commissioner by regulation shall establish:

19 (1) (i) A fee, not exceeding [\$2,000] \$4,000, for the issuance of a license
20 under this subtitle in an even-numbered year; and

21 (ii) A fee, not exceeding [\$1,000] \$2,000, for the issuance of a license
22 under this subtitle in an odd-numbered year;

23 (2) A fee, not exceeding [\$2,000] \$4,000, for renewal of a license issued
24 under this subtitle;

25 (3) A fee, not exceeding \$100, for each location in the State at which a
26 licensee provides debt management services under this subtitle, payable at the time
27 of issuance of an initial license and at each renewal of a license; and

28 (4) A fee, not exceeding \$1,000, for an investigation of an applicant or
29 licensee under this subtitle.

30 (b) Any fees charged by the Commissioner under this subtitle shall
31 approximate the direct and indirect costs of administering and enforcing this subtitle.
32 12-906.

33 [A] WHETHER OR NOT THE PERSON MAINTAINS AN OFFICE IN THIS STATE, A
34 person may not provide debt management services to consumers unless the person:

1 (1) Is licensed by the Commissioner under this subtitle; or

2 (2) Is exempt from licensing under this subtitle.

3 12-907.

4 (a) To qualify for a license, an applicant shall satisfy the Commissioner that:

5 (1) The applicant is an organization;

6 (2) [Each] THE APPLICANT AND EACH of the owners, officers, directors,
7 and principals of the applicant has sufficient experience, character, financial
8 responsibility, and general fitness to:

9 (i) Engage in the business of providing debt management services;

10 (ii) Warrant the belief that the debt management services business
11 will be conducted lawfully, honestly, fairly, and efficiently; and

12 (iii) Command the confidence of the public;

13 (3) Each agent acting on behalf of the applicant to manage a trust
14 account required under § 12-917 of this subtitle has sufficient experience, character,
15 financial responsibility, and general fitness to:

16 (i) Engage in the business of managing a trust account;

17 (ii) Warrant the belief that the management of the trust account
18 will be conducted lawfully, honestly, fairly, and efficiently; and

19 (iii) Command the confidence of the public; and

20 (4) The applicant has a net worth computed according to generally
21 accepted accounting principles of at least \$50,000, plus an additional net worth of
22 \$10,000 for each location at which debt management services will be provided to
23 consumers, up to a maximum of \$500,000 as provided in subsection (b) of this section.
24 12-908.

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

27 (b) The application shall include:

28 (1) The applicant's name, business address, telephone number, electronic
29 mail address, if any, and website address, if any;

30 (2) The address of each location in the State at which the applicant will
31 provide debt management services;

- 1 (3) The name and address of each owner, officer, director, and principal
2 of the applicant;
- 3 (4) The name, address, and telephone number of the applicant's resident
4 agent in the State;
- 5 (5) A description of the ownership interest of any officer, director, agent,
6 or employee of the applicant in any affiliate or subsidiary of the applicant or in any
7 other business entity that provides any service to the applicant or any consumer
8 relating to the applicant's debt management services business;
- 9 (6) The name and address of any agent acting on behalf of the applicant
10 to manage a trust account required under § 12-917 of this subtitle;
- 11 (7) The applicant's federal employer identification number;
- 12 (8) A list of any state in which:
- 13 (i) The applicant engages in the business of providing debt
14 management services;
- 15 (ii) The applicant is registered or licensed to provide debt
16 management services; and
- 17 (iii) The applicant's registration or license has been suspended or
18 revoked;
- 19 (9) A statement of whether any pending judgment, tax lien, material
20 litigation, or administrative action by any government agency exists against the
21 applicant;
- 22 (10) The most recent, unconsolidated financial statement of the applicant
23 that:
- 24 (i) Is prepared in accordance with generally accepted accounting
25 principles applied on a consistent basis;
- 26 (ii) Includes a certified opinion audit prepared by an independent
27 certified public accountant; and
- 28 (iii) Was prepared no more than 12 months before the date of
29 application;
- 30 (11) Evidence of nonprofit status under § 501(c) of the Internal Revenue
31 Code;
- 32 (12) If the applicant is a corporation, a detailed description of the
33 applicant's corporate structure, including parent companies, subsidiaries, and
34 affiliates;
- 35 (13) The applicant's business credit report;

1 (14) Evidence of general liability or fidelity insurance that insures against
2 dishonesty, fraud, theft, or other malfeasance on the part of an employee of the
3 applicant;

4 (15) A description of the applicant's consumer education program that is
5 provided to consumers;

6 (16) A description of the applicant's financial analysis and initial budget
7 plan, including any form or electronic model, that are used to evaluate the financial
8 condition of consumers;

9 (17) A copy of the debt management services agreement that the applicant
10 will use in its debt management services business;

11 (18) A copy of the applicant's plan to ensure that each debt management
12 counselor is certified by an independent organization within 6 months after the debt
13 management counselor is hired, and that any employee who is a supervisor or
14 manager of a debt management counselor is certified by an independent organization
15 within 3 months after the employee is hired; [and]

16 (19) THE MOST RECENT FINANCIAL STATEMENT OF EACH AFFILIATE,
17 SUBSIDIARY, OR OTHER PERSON THAT PROVIDES SERVICES RELATED TO DEBT
18 MANAGEMENT SERVICES FOR THE APPLICANT OR FOR ANY CONSUMER;

19 (20) A COPY OF EACH CONTRACT OR FEE-FOR-SERVICE ARRANGEMENT
20 BETWEEN THE APPLICANT AND ANY PERSON THAT PROVIDES SERVICES RELATED TO
21 THE DEBT MANAGEMENT SERVICES BUSINESS; AND

22 [(19)] (21) Any other information that the Commissioner reasonably
23 requires.

24 (c) The Commissioner may refuse an application if it contains erroneous or
25 incomplete information.

26 (d) With the application, the applicant shall pay to the Commissioner:

27 (1) A license fee in the amount established under § 12-904 of this
28 subtitle; and

29 (2) A nonrefundable investigation fee in the amount established under §
30 12-904 of this subtitle.

31 (e) With the application, the applicant shall file a surety bond with the
32 Commissioner as provided in § 12-914 of this subtitle.

33 12-914.

34 (a) With the application for a new or renewal license, the applicant or licensee
35 shall file a surety bond or bond renewal certificate with the Commissioner as
36 provided in this section.

1 (b) (1) A surety bond filed under this section shall run to the State for the
2 benefit of any consumer who is injured by a violation of this subtitle or a regulation
3 adopted under this subtitle committed by a licensee or an agent of a licensee,
4 including an agent managing a trust account.

5 (2) The surety bond shall be:

6 (i) In an amount not less than \$10,000 and not more than
7 [\$350,000] \$1,000,000, as set by the Commissioner;

8 (ii) Issued by a bonding, surety, or insurance company that is
9 authorized to do business in the State; and

10 (iii) Conditioned so that the licensee and its agent shall comply with
11 all State and federal laws and regulations governing the business of providing debt
12 management services.

13 (3) The liability of a surety:

14 (i) Is not affected by the insolvency or bankruptcy of the licensee or
15 its agent or by any misrepresentation, breach of warranty, failure to pay a premium,
16 or other act or omission of the licensee or its agent; and

17 (ii) Continues as to all transactions of the licensee, and
18 transactions of its agent on behalf of the licensee, for no longer than 2 years after the
19 licensee ceases, for any reason, to be licensed.

20 (4) The Commissioner may allow the amount of the surety bond to be
21 reduced if the amount of the licensee's outstanding debt management services
22 liabilities in the State is reduced.

23 (5) In setting the amount of the surety bond, the Commissioner shall
24 consider:

25 (i) The financial condition and business experience of the applicant
26 or licensee and the agent of the applicant or licensee;

27 (ii) For an applicant, the projected monthly and annual volume of
28 debt management services to be provided in the State;

29 (iii) For a licensee, the average monthly and annual volume of debt
30 management services provided in the State during the previous 12-month period;

31 (iv) The potential loss to consumers who remit funds to the
32 applicant or licensee if the applicant or licensee becomes financially impaired; and

33 (v) Any other factor the Commissioner considers appropriate.

34 (c) If the principal amount of a surety bond is reduced by payment of a claim
35 or judgment, the licensee shall file with the Commissioner any new or additional
36 surety bond in the amount that the Commissioner sets.

1 (d) The Commissioner may waive the surety bond requirement under this
2 section if the Commissioner determines that the volume of debt management services
3 provided by the applicant or licensee does not warrant the need for a surety bond.

4 (e) A penalty imposed under § 12-928 or § 12-929 of this subtitle may be paid
5 and collected from the proceeds of a surety bond required under this section.

6 12-920.

7 (a) A licensee may not:

8 (1) Purchase any debt or obligation of a consumer;

9 (2) Lend money or provide credit to a consumer;

10 (3) Obtain a mortgage or other security interest in property owned by a
11 consumer;

12 (4) Operate as a collection agency, as defined in § 7-101 of the Business
13 Regulation Article;

14 (5) Structure a debt management services agreement in a manner that
15 would result in a negative amortization of any of the consumer's debts;

16 (6) Make any false, misleading, or deceptive representations or
17 omissions of information in connection with the offer, sale, or performance of any
18 service;

19 (7) Offer, pay, or give a substantial gift, bonus, premium, reward, or
20 other compensation to a person for referring a prospective customer to the licensee;

21 (8) Offer an incentive, including a gift, bonus, premium, reward, or other
22 compensation, to a consumer for executing a debt management services agreement
23 with the licensee;

24 (9) Charge for or provide credit insurance; [or]

25 (10) Compromise any debts of a consumer unless the licensee has
26 obtained the prior written approval of the consumer, and the compromise benefits the
27 consumer;

28 (11) ENTER INTO A CONTRACT OR FEE-FOR-SERVICE ARRANGEMENT
29 WITH A PERSON OWNED, CONTROLLED BY, OR AFFILIATED WITH AN OFFICER, A
30 DIRECTOR, OR AN EMPLOYEE OF THE DEBT MANAGEMENT SERVICE PROVIDER, OR
31 WITH A RELATIVE OF AN OFFICER, A DIRECTOR, OR AN EMPLOYEE, THAT BENEFITS
32 AN OFFICER, A DIRECTOR, OR AN EMPLOYEE OF THE DEBT MANAGEMENT SERVICE
33 PROVIDER;

34 (12) ADVERTISE, DISPLAY, DISTRIBUTE, BROADCAST, TELEVISION, OR
35 OTHERWISE PUBLISH DEBT MANAGEMENT SERVICE RATES, TERMS, OR SERVICES IN
36 A FALSE, MISLEADING, OR DECEPTIVE MANNER; OR

1 (13) PAY AN INCENTIVE TO AN EMPLOYEE FOR ENROLLING A CONSUMER
2 IN A DEBT MANAGEMENT SERVICES PLAN OR AGREEMENT.

3 (b) (1) Notwithstanding any other provision of State law, a licensee may not,
4 directly or indirectly, collect any fee for referring, advising, procuring, arranging, or
5 assisting a consumer in obtaining any extension of credit or other consumer service
6 from a lender or service provider if the licensee, or any owner, officer, director,
7 principal, or employee of the licensee, is an owner, partner, director, officer, or
8 employee of the lender or service provider.

9 (2) This subsection does not prohibit a licensee from referring, advising,
10 procuring, arranging, or assisting a consumer in obtaining any extension of credit or
11 other consumer service from a lender or service provider of which the licensee, or any
12 owner, officer, director, principal, or employee of the licensee, is an owner, partner,
13 director, officer, or employee, if:

14 (i) The licensee does not directly or indirectly collect any fee; and

15 (ii) The consumer is provided with a written disclosure of the
16 relationship.

17 12-929.

18 A person who knowingly and willfully violates any provision of this subtitle is
19 guilty of a felony and on conviction is subject to a fine not exceeding \$1,000 for the
20 first violation and not exceeding \$5,000 for each subsequent violation or
21 imprisonment not exceeding 5 years or both.

22 **Article - Courts and Judicial Proceedings**

23 7-409.

24 (a) (2) "Crime" means an act committed by a person in the State that is:

25 (IX) A CRIME UNDER TITLE 12, SUBTITLE 9 OF THE FINANCIAL
26 INSTITUTIONS ARTICLE;

27 **Article - Insurance**

28 2-401.

29 (c) "Insurance fraud" means:

30 (4) any other fraudulent activity that is committed by or against a
31 person regulated under this article and is a violation of:

32 (i) Title 1, Subtitle 3 of the Agriculture Article;

33 (ii) Title 19, Subtitle 2 or Subtitle 3 of the Business Regulation
34 Article;

- 1 (iii) Title 14, Subtitle 29, § 11-810, or § 14-1317 of the Commercial
- 2 Law Article;
- 3 (iv) the Criminal Law Article other than Title 8, Subtitle 2, Part II
- 4 or § 10-614;
- 5 (V) TITLE 12, SUBTITLE 9 OF THE FINANCIAL INSTITUTIONS
- 6 ARTICLE;
- 7 [(v)] (VI) § 14-127 of the Real Property Article;
- 8 [(vi)] (VII) Article 2B, Title 22 of the Code;
- 9 [(vii)] (VIII) § 109 of the Code of Public Local Laws of Caroline County;
- 10 [(viii)] (IX) § 4-103 of the Code of Public Local Laws of Carroll
- 11 County; or
- 12 [(ix)] (X) § 8A-1 of the Code of Public Local Laws of Talbot County.
- 13 27-801.

14 (c) "Insurance fraud" means:

15 (3) any other fraudulent activity that is committed by or against a
16 person regulated under this article and is a violation of:

- 17 (i) Title 1, Subtitle 3 of the Agriculture Article;
- 18 (ii) Title 19, Subtitle 2 or Subtitle 3 of the Business Regulation
- 19 Article;
- 20 (iii) Title 14, Subtitle 29, § 11-810 or § 14-1317 of the Commercial
- 21 Law Article;
- 22 (iv) the Criminal Law Article other than Title 8, Subtitle 2, Part II
- 23 or § 10-614;
- 24 (V) TITLE 12, SUBTITLE 9 OF THE FINANCIAL INSTITUTIONS
- 25 ARTICLE;
- 26 [(v)] (VI) § 14-127 of the Real Property Article;
- 27 [(vi)] (VII) Article 2B, Title 22 of the Code;
- 28 [(vii)] (VIII) § 109 of the Code of Public Local Laws of Caroline
- 29 County;
- 30 [(viii)] (IX) § 4-103 of the Code of Public Local Laws of Carroll
- 31 County; or

1 [(ix)] (X) § 8A-1 of the Code of Public Local Laws of Talbot County.

2 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect
3 October 1, 2005.