
By: **Senator Astle**

Introduced and read first time: February 3, 2006

Assigned to: Finance

Committee Report: Favorable with amendments

Senate action: Adopted with floor amendments

Read second time: March 9, 2006

CHAPTER_____

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 provide a certain notice to a
6 consumer and make certain determinations before providing debt management
7 services for a consumer; altering a certain requirement for a debt management
8 services license; altering certain definitions; repealing a certain defined term;
9 making ~~a conforming change~~ conforming changes; and generally relating to debt
10 management services.

11 BY repealing and reenacting, with amendments,
12 Article - Financial Institutions
13 Section 12-901, 12-905(a), 12-907(a), 12-908(b)(11), and 12-916(a)(1)
14 Annotated Code of Maryland
15 (2003 Replacement Volume and 2005 Supplement)

16 BY repealing and reenacting, without amendments,
17 Article - Financial Institutions
18 Section 12-908(a)
19 Annotated Code of Maryland
20 (2003 Replacement Volume and 2005 Supplement)

21 BY adding to
22 Article - Financial Institutions
23 Section 12-916(a)(3)

1 Annotated Code of Maryland
2 (2003 Replacement Volume and 2005 Supplement)

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

5 **Article - Financial Institutions**

6 12-901.

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

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

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

14 (d) "Consumer" means an individual who:

15 (1) Resides in the State; and

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

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

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

23 (g) "Debt management services" means receiving funds periodically from a
24 consumer under an agreement with the consumer for the purpose of distributing the
25 funds among the consumer's creditors in full or partial payment of the consumer's
26 debts.

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

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

32 (j) "Fund" means the Debt Management Services Fund established under §
33 12-905 of this subtitle.

1 (k) "Licensee" means [an organization] A PERSON licensed under this subtitle
2 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
5 the 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:

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

27 (2) Separate from the debt management services provider's operating
28 account;

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

1 (4) Unavailable to creditors of the debt management services provider;
2 and

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

5 12-905.

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

7 (1) All revenue received for the licensing of [organizations] PERSONS
8 that provide debt management services under this subtitle;

9 (2) Income from investments that the Treasurer makes for the Fund;
10 and

11 (3) Except as provided in subsection (b) of this section, any other fee or
12 revenue received by the Commissioner under this subtitle.

13 12-907.

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

15 (1) The applicant [is an organization];

16 (2) Each] AND EACH of the owners, officers, directors, and principals of
17 the applicant has sufficient experience, character, financial responsibility, and
18 general fitness to:

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

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

22 (iii) Command the confidence of the public;

23 [(3)] (2) Each agent acting on behalf of the applicant to manage a trust
24 account required under § 12-917 of this subtitle has sufficient experience, character,
25 financial responsibility, and general fitness to:

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

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

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

30 [(4)] (3) The applicant has a net worth computed according to generally
31 accepted accounting principles of at least \$50,000, plus an additional net worth of
32 \$10,000 for each location at which debt management services will be provided to
33 consumers, up to a maximum of \$500,000 as provided in subsection (b) of this section.

1 12-908.

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

4 (b) The application shall include:

5 (11) [Evidence] IF APPLICABLE, EVIDENCE of nonprofit status under §
6 501(c) of the Internal Revenue Code;

7 12-916.

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

10 (i) The licensee provides the consumer with a consumer education
11 program;

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

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

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

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

20 A. The creditors that the licensee reasonably expects to
21 participate in the management of the consumer's debt under the debt management
22 services agreement; and

23 B. The creditors that the licensee reasonably expects not to
24 participate in the management of the consumer's debt under the debt management
25 services agreement;

26 (iii) The licensee and the consumer have executed a debt
27 management services agreement that describes the debt management services to be
28 provided by the licensee to the consumer;

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

34 (V) THE LICENSEE HAS MADE A DETERMINATION, BASED ON THE
35 LICENSEE'S ANALYSIS OF THE INFORMATION PROVIDED BY THE CONSUMER AND
36 OTHERWISE AVAILABLE TO IT, THAT:

1 1. THE DEBT MANAGEMENT SERVICES ARE SUITABLE FOR
2 THE CONSUMER; AND

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

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

7 (3) IN ADDITION TO THE REQUIREMENTS UNDER PARAGRAPH (1) OF
8 THIS SUBSECTION, BEFORE PROVIDING DEBT MANAGEMENT SERVICES FOR A
9 CONSUMER, A DEBT MANAGEMENT SERVICES PROVIDER SHALL PROVIDE A WRITTEN
10 NOTICE TO THE CONSUMER STATING:

11 (I) THAT IF THE CONSUMER ELECTS TO FILE FOR BANKRUPTCY,
12 THE CONSUMER WILL BE REQUIRED UNDER FEDERAL BANKRUPTCY LAW TO
13 RECEIVE PRE-BANKRUPTCY CREDIT COUNSELING SERVICES FROM A NONPROFIT
14 CREDIT COUNSELING AGENCY THAT IS APPROVED BY THE UNITED STATES TRUSTEE
15 PROGRAM;

16 (II) WHETHER THE DEBT MANAGEMENT SERVICES PROVIDER IS
17 APPROVED BY THE UNITED STATES TRUSTEE PROGRAM TO PROVIDE
18 PRE-BANKRUPTCY CREDIT COUNSELING SERVICES; AND

19 (III) THAT THE CONSUMER SHOULD CONTACT A FEDERAL
20 BANKRUPTCY COURT TO OBTAIN A LIST OF CREDIT COUNSELING AGENCIES THAT
21 ARE APPROVED BY THE UNITED STATES TRUSTEE PROGRAM.

22 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
23 June 1, 2006.