

SENATE BILL 367

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SB 673/06 – FIN

71r1886

By: **Senators Astle, Edwards, Garagiola, Kelley, Kittleman, Klausmeier, Middleton, and Pugh**

Introduced and read first time: February 1, 2007

Assigned to: Finance

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 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 conforming changes; and generally relating to debt management
10 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 2006 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 2006 Supplement)

21 BY adding to
22 Article – Financial Institutions

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



1 Section 12-916(a)(3)
2 Annotated Code of Maryland
3 (2003 Replacement Volume and 2006 Supplement)

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

6 **Article – Financial Institutions**

7 12-901.

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

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

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

15 (d) “Consumer” means an individual who:

16 (1) Resides in the State; and

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

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

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

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

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

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

3 (j) “Fund” means the Debt Management Services Fund established under §
4 12–905 of this subtitle.

5 (k) “Licensee” means [an organization] A **PERSON** licensed under this
6 subtitle to provide debt management services.

7 (l) “Maintenance fee” means a fee paid by a consumer to a debt management
8 services provider for the maintenance or servicing of the consumer’s accounts with the
9 consumer’s creditors in accordance with a debt management services agreement.

10 [(m) “Organization” means a nonprofit organization that is exempt from
11 taxation under § 501(c) of the Internal Revenue Code.]

12 [(n)] **(M)** “Relative” means any of the following who are related to an
13 individual by blood, marriage, or adoption:

14 (1) A spouse;

15 (2) A child;

16 (3) A sibling;

17 (4) A parent;

18 (5) A grandparent;

19 (6) A grandchild;

20 (7) A stepparent;

21 (8) A stepchild;

22 (9) A stepsibling;

23 (10) An aunt; or

24 (11) An uncle.

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

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

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

8 (iii) Command the confidence of the public;

9 [(3)] **(2)** Each agent acting on behalf of the applicant to manage a
10 trust account required under § 12-917 of this subtitle has sufficient experience,
11 character, financial responsibility, and general fitness to:

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

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

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

16 [(4)] **(3)** The applicant has a net worth computed according to
17 generally accepted accounting principles of at least \$50,000, plus an additional net
18 worth of \$10,000 for each location at which debt management services will be provided
19 to consumers, up to a maximum of \$500,000 as provided in subsection (b) of this
20 section.

21 12-908.

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

24 (b) The application shall include:

25 (11) [Evidence] **IF APPLICABLE, EVIDENCE** of nonprofit status under
26 § 501(c) of the Internal Revenue Code;

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

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

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

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

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