

SENATE BILL 646

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SB 367/07 – FIN

8lr1833
CF 8lr2157

By: **Senators Astle, Garagiola, Kelley, Klausmeier, Middleton, and Pugh**
Introduced and read first time: February 1, 2008
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 to make certain determinations before providing debt
7 management services for a consumer; altering certain requirements for a debt
8 management services license; altering the information that must be included in
9 a certain annual report to the Commissioner of Financial Regulation; altering
10 the records that must be preserved by a licensee; altering certain definitions;
11 repealing a certain defined term; making conforming changes; and generally
12 relating to debt management services.

13 BY repealing and reenacting, with amendments,
14 Article – Financial Institutions
15 Section 12–901, 12–905(a), 12–907(a), 12–908(b)(11), 12–916(a)(1),
16 12–921(a), and 12–922(a)
17 Annotated Code of Maryland
18 (2003 Replacement Volume and 2007 Supplement)

19 BY repealing and reenacting, without amendments,
20 Article – Financial Institutions
21 Section 12–908(a)
22 Annotated Code of Maryland
23 (2003 Replacement Volume and 2007 Supplement)

24 BY adding to
25 Article – Financial Institutions
26 Section 12–916(a)(3)
27 Annotated Code of Maryland
28 (2003 Replacement Volume and 2007 Supplement)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.
[Brackets] indicate matter deleted from existing law.



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

3 **Article – Financial Institutions**

4 12–901.

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

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

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

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

13 (1) Resides in the State; and

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

16 (e) “Consumer education program” means a program or plan that [seeks]:

17 (1) **SEEKS** to improve the financial literacy of consumers **REGARDING**
18 **PERSONAL FINANCE, BUDGETING, AND CREDIT AND DEBT MANAGEMENT; AND**

19 (2) **PROVIDES COUNSELING TAILORED TO THE NEEDS AND**
20 **CIRCUMSTANCES OF THE CONSUMER WITH REGARD TO OPTIONS AND**
21 **STRATEGIES FOR ADDRESSING THE CONSUMER’S DEBT PROBLEMS, INCLUDING:**

22 (I) **CREATING AND MAINTAINING A BUDGET;**

23 (II) **ESTABLISHING DEBT MANAGEMENT PAYMENT PLANS**
24 **WITH CREDITORS;**

25 (III) **NEGOTIATING DIRECTLY WITH CREDITORS ON**
26 **PAYMENT OR INTEREST RATE RELIEF; AND**

27 (IV) **FILING FOR BANKRUPTCY.**

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

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

13 (j) “Fund” means the Debt Management Services Fund established under §
14 12–905 of this subtitle.

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

17 (l) “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 the
19 consumer’s creditors in accordance with a debt management services agreement.

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

22 [(n)] **(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;

1 (9) A stepsibling;

2 (10) An aunt; or

3 (11) An uncle.

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

8 [(p)] (O) “Trust account” means an account that is:

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

10 (2) Separate from the debt management services provider’s operating
11 account;

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

15 (4) Unavailable to creditors of the debt management services provider;
16 and

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

19 12–905.

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

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

23 (2) Income from investments that the Treasurer makes for the Fund;
24 and

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

27 12–907.

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

29 (1) The applicant [is an organization;

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; **AND**

21 **(4) WITHIN 3 MONTHS AFTER BEING HIRED, EACH DEBT**
 22 **MANAGEMENT COUNSELOR EMPLOYED BY THE APPLICANT OR THE APPLICANT'S**
 23 **AGENT WILL RECEIVE COMPREHENSIVE TRAINING IN COUNSELING SKILLS,**
 24 **PERSONAL FINANCE, BUDGETING, AND CREDIT AND DEBT MANAGEMENT.**

25 12-908.

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

28 (b) The application shall include:

29 (11) [Evidence] **IF APPLICABLE, EVIDENCE** of nonprofit status under
 30 § 501(c) of the Internal Revenue Code;

31 12-916.

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

3 (i) 1. The licensee provides the consumer with a consumer
4 education program;

5 2. **THE LICENSEE PROVIDES THE CONSUMER WITH A**
6 **WRITTEN SUMMARY OF THE COUNSELING OPTIONS AND STRATEGIES FOR**
7 **ADDRESSING THE CONSUMER'S DEBT PROBLEMS DEVELOPED UNDER §**
8 **12-901(E)(2) OF THIS SUBTITLE; AND**

9 3. **THE CONSUMER SIGNS AN ACKNOWLEDGMENT**
10 **STATING THAT THE CONSUMER HAS REVIEWED THE WRITTEN SUMMARY AND**
11 **HAS DECIDED TO PROCEED WITH ENTERING INTO A DEBT MANAGEMENT**
12 **SERVICES AGREEMENT WITH THE LICENSEE;**

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

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

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

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

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

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

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

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

1 **(v) THE LICENSEE HAS MADE A DETERMINATION, BASED ON**
2 **THE LICENSEE'S ANALYSIS OF THE INFORMATION PROVIDED BY THE CONSUMER**
3 **AND OTHERWISE AVAILABLE TO IT, THAT:**

4 **1. THE DEBT MANAGEMENT SERVICES ARE**
5 **SUITABLE FOR THE CONSUMER; AND**

6 **2. THE CONSUMER WILL BE ABLE TO MEET THE**
7 **PAYMENT OBLIGATIONS UNDER THE DEBT MANAGEMENT SERVICES**
8 **AGREEMENT; AND**

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

11 **(3) IN ADDITION TO THE REQUIREMENTS UNDER PARAGRAPH (1)**
12 **OF THIS SUBSECTION, BEFORE PROVIDING DEBT MANAGEMENT SERVICES FOR A**
13 **CONSUMER, A DEBT MANAGEMENT SERVICES PROVIDER SHALL PROVIDE A**
14 **WRITTEN NOTICE TO THE CONSUMER STATING:**

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

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

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

26 12-921.

27 (a) (1) On or before April 30 of each year, a licensee shall report to the
28 Commissioner on the debt management services business of the licensee conducted
29 during the preceding calendar year.

30 (2) The annual report shall be on the form that the Commissioner
31 requires.

32 (3) The report shall include:

1 (i) An audited financial statement that is prepared in
2 accordance with generally accepted accounting principles and includes a balance
3 sheet, income statement, statement of changes in fund balances, and statement of
4 cash flow;

5 (ii) An alphabetical list of all debt management counselors who
6 provided services for the licensee during the previous calendar year;

7 (iii) The number of consumers for whom the licensee provided
8 debt management services under a debt management services agreement during the
9 preceding calendar year;

10 (iv) The number of consumers who signed new debt
11 management services agreements with the licensee during the preceding calendar
12 year;

13 (v) The highest number of consumers for whom the licensee
14 provided debt management services under a debt management services agreement
15 during any month in the preceding calendar year; [and]

16 (vi) The amounts paid by consumers to the licensee, both in total
17 and for each month, during the preceding calendar year, broken down by:

18 1. Payments to be disbursed to creditors; and

19 2. Payments for the licensee's services;

20 **(VII) THE PERCENTAGE OF ALL CONSUMERS WHO RECEIVED**
21 **A CONSUMER EDUCATION PROGRAM AND SUBSEQUENTLY EXECUTED A DEBT**
22 **MANAGEMENT SERVICES AGREEMENT DURING THE PRECEDING CALENDAR**
23 **YEAR; AND**

24 **(VIII) A REPRESENTATIVE SAMPLE OF THE WRITTEN**
25 **SUMMARY REQUIRED UNDER § 12-916(A)(1)(I)2 OF THIS SUBTITLE.**

26 12-922.

27 (a) To enable the Commissioner to determine compliance with this subtitle, a
28 licensee shall make and preserve the following books, accounts, and records for a
29 period of at least 7 years:

30 (1) A general ledger containing all assets, liability, capital, income,
31 and expense accounts;

32 (2) Each debt management services agreement between the licensee
33 and a consumer;

1 (3) Books and records for each consumer with whom the licensee has a
2 debt management services agreement; [and]

3 (4) Bank statements and bank reconciliation records;

4 **(5) A COPY OF EACH WRITTEN SUMMARY REQUIRED UNDER §**
5 **12-916(A)(1)(I)2 OF THIS SUBTITLE; AND**

6 **(6) A COPY OF EACH SIGNED ACKNOWLEDGMENT REQUIRED**
7 **UNDER § 12-916(A)(1)(I)3 OF THIS SUBTITLE.**

8 SECTION 2. AND BE IT FURTHER ENACTED, That this Act shall take effect
9 June 1, 2008.