

HOUSE No. 1073

The Commonwealth of Massachusetts

PRESENTED BY:

David M. Nangle

To the Honorable Senate and House of Representatives of the Commonwealth of Massachusetts in General Court assembled:

The undersigned legislators and/or citizens respectfully petition for the adoption of the accompanying bill:

An Act relative to the licensing and supervision of debt management services in the Commonwealth.

PETITION OF:

NAME:

David M. Nangle

DISTRICT/ADDRESS:

17th Middlesex

HOUSE No. 1073

By Mr. Nangle of Lowell, a petition (accompanied by bill, House, No. 1073) of David M. Nangle relative to licensing and supervision of debt management services by the Division of Banks. Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE HOUSE, NO. 2192 OF 2017-2018.]

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-First General Court
(2019-2020)**

An Act relative to the licensing and supervision of debt management services in the Commonwealth.

Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:

1 SECTION 1. Chapter 180 of the General Laws is hereby amended by striking out section
2 4A, as appearing in the 2012 Official Edition, and inserting in place thereof the following
3 section:-
4

5 Section 4A. (a) As used in this chapter, credit counseling services shall mean: (1) the
6 providing of financial and budgetary advice and judgment to individuals for compensation or
7 gain in connection with the creation of a budgetary plan; (2) the creation of a plan whereby an
8 individual turns over an agreed amount of his income to a nonprofit credit counseling
9 corporation which distributes it to the creditors of that individual in accordance with a plan

10 which they have approved and which may provide for smaller payments or a longer term than the
11 original contract; (3) the providing of educational services relating to the use of credit; or (4) any
12 combination of clauses (1), (2) or (3).

13

14 (b) No person, other than an attorney or a nonprofit charitable corporation organized
15 under the provisions of this chapter may render credit counseling services, as specified in clause
16 (2) of subsection (a).

17

18 (c) Any corporation formed for credit counseling purposes which provides debt
19 management services for compensation or gain from or on behalf of the individuals to whom it
20 provides the services or from their creditors shall obtain a license under chapter 255G. Each such
21 corporation shall comply with the provisions of section 8F of chapter 12. No such corporation
22 shall engage in the practice of law. If a person receiving credit counseling services requires legal
23 advice or counsel, they shall be referred to an attorney of their choice, the local bar association
24 referral service, or a local legal aid program.

25

26 SECTION 2. The General Laws are hereby amended by inserting after chapter 255F the
27 following chapter:-

28

29 CHAPTER 255G

30

31 DEBT MANAGEMENT SERVICES

32

33 Section 1. As used in this chapter, the following words shall have the following
34 meanings, unless the context requires otherwise:

35

36 Agreement, a contract between a provider and an individual for the performance of debt
37 management services.

38

39 Business address, the physical location of a business, including the name and number of a
40 street.

41

42 Business day, a calendar day, except for Sundays and legal holidays as listed in the first
43 sentence of clause eighteenth of section 4 of chapter 4.

44

45 Commissioner, the commissioner of banks.

46

47 Consumer, an individual who has secured or unsecured debt, which arises out of
48 personal, family or household obligations, and who has executed an agreement with a provider.

49

50 Creditor, a person that has extended credit to an individual.

51

52 Debt management services, directly or indirectly receiving an individuals money to
53 distribute it to 1 or more of an individuals creditors in partial or full satisfaction of the
54 individuals secured or unsecured debts; arranging the distribution or assisting an individual in the
55 distribution of an individuals money to 1 or more of an individuals creditors in partial or full
56 satisfaction of the individuals secured or unsecured debts; or acting or offering to act as an
57 intermediary between an individual and 1 or more of the individuals creditors to reduce, defer,
58 discharge or in any other way modify the terms and conditions of an individuals obligation to
59 repay secured or unsecured debts.

60

61 Division, the division of banks.

62

63 Individual, a natural person.

64

65 Licensee, a provider that possesses a valid license issued pursuant to section 2.

66

67 Person, an individual, corporation, association, operation, firm, partnership, trust or other
68 form of business association.

69

70 Provider, a person that performs debt management services for compensation or gain, or
71 in the expectation of compensation or gain.

72

73 Statement of accounting, a written or electronic document that a provider prepares for a
74 consumer in accordance with section 16.

75

76 Third party payment processor, an entity that holds, or has access to, or can effectuate
77 procession of, by any means, the monies of a consumer, or distributes, or is in the chain of
78 distribution of such monies, to the creditors of such consumer, pursuant to an agreement or
79 contract with either the consumer or the licensee.

80 Trust Account, an account held by a provider that is: established by the provider in a
81 financial institution described in Section 3(4) of this chapter; separate from other accounts of the
82 provider or its designee; designated as a trust or other account such that it is clear that the money
83 in the trust account is not the money of the provider or its designee; and used to hold money of
84 one or more consumers for disbursement to the creditors of the consumers, in each case pursuant
85 to a debt management plan whereby consumers' funds are distributed, pro rata, on a periodic
86 basis to the consumers' creditors. An account established by a consumer that is both owned and

87 controlled by the consumer shall not be deemed to be a “trust account” for purposes of this
88 chapter.

89 Section 2. (a) No person shall engage in or advertise for debt management services in the
90 commonwealth unless such person has first obtained a debt management services license from
91 the commissioner.

92

93 (b) A provider shall obtain a license for its primary business address and for each of its
94 business addresses in the commonwealth.

95

96 (c) A license shall not be transferable or assignable.

97

98 (d) A licensee shall file a surety bond in an amount and form that the commissioner
99 determines before it may conduct business in the commonwealth.

100

101 (e) A licensee shall not conduct business in the commonwealth under a business name
102 other than the business name that is listed on its license. Notwithstanding the foregoing, a
103 provider may do business under a fictitious business name, provided that the provider has
104 registered such fictitious business name(s) with the Secretary of State and provided evidence of
105 such registration to the commissioner.

106

107 (f) The commissioner shall promulgate rules and regulations for the administration and
108 enforcement of this chapter.

109

110 Section 3. The following persons shall be exempt from this chapter:

111

112 (1) a providers employees who perform debt management services on the providers
113 behalf in the regular course of their employment;

114

115 (2) a person organized under section 501(c) of the Internal Revenue Code that receives no
116 compensation or gain for the debt management services from or on behalf of the individuals to
117 whom it provides the services or from their creditors;

118

119 (3) judicial officers, individuals acting under the direction of a court, or assignees for
120 creditors benefit;

121

122 (4) a bank as defined in section 1 of chapter 167, a national banking association, a
123 federally chartered credit union, a federal savings and loan association, a federal savings bank, or
124 any subsidiary of the above, or any bank, trust company, savings bank, savings and loan
125 association, or credit union organized under the laws of any other state, or any subsidiary of the
126 above;

127

128 (5) attorneys licensed to practice law in the commonwealth who provide debt
129 management services to consumers with whom the attorney also provides legal services within
130 an attorney-client relationship to, and who do not solicit debt management services business;

131

132 (6) persons that provide bill paying services if such persons do not perform debt
133 management service;

134

135 (7) creditors or the creditors employees who negotiate debt settlement with individuals or
136 providers, acting on an individuals or consumers behalf;

137

138 (8) officers or employees of the United States or a state of the United States who perform
139 debt management services for individuals on behalf of the federal government, the
140 commonwealth, a municipality or a state agency, and receive compensation solely from such
141 governmental entities;

142

143 (9) certified public accountants licensed in the commonwealth who provide debt
144 management services to consumers with whom the certified public accountant also provides
145 accounting services within an accountant-client relationship to, and who do not solicit debt
146 management services business; and

147

148 (10) a third party payment processor which does not otherwise provide debt management
149 services.

150

151 Section 4. (a) The application for the license and the application for the license renewal
152 shall be in a form prescribed by the commissioner, signed under oath and containing information
153 as the commissioner shall determine. Applicants shall pay an investigation fee that the secretary
154 of administration and finance shall determine under section 3B of chapter 7. The commissioner
155 shall evaluate the applicants financial responsibility, character, reputation, integrity and general
156 fitness to determine whether the applicant will act lawfully, honestly, fairly, soundly and
157 efficiently in the public interest. The license shall be for a period of 1 year. The secretary of
158 administration and finance shall determine the license fee annually under section 3B of chapter
159 7. The following items shall be required in any application for a license under this Chapter:

160 (1) proof of compliance with Section 15.01 et seq. of title XXII, chapter 156D, which
161 specifies the requirements for an entity to do business in the commonwealth.

162 (2) the applicant's name, principal business address and telephone number, all business
163 addresses in this state, all electronic mail addresses for the business and all internet web site
164 addresses to be used for the business;

165 (3) the name and home address of each officer and director of the applicant and each
166 person that owns, directly or indirectly, more than fifteen percent of the voting interests of the
167 applicant;

168 (4) a statement describing, to the extent it is known or should be known by the applicant,
169 any material civil or criminal judgment relating to financial fraud or misuse and any material
170 administrative or enforcement action relating to financial fraud or misuse by a governmental
171 agency in any jurisdiction against the applicant, any of its officers, directors, owners, or agents;
172 and

173 (5) a copy of each form of agreement and the schedule of fees and charges that the
174 applicant will use with individuals who reside in the commonwealth.

175

176 (b) The commissioner may participate in a multi-state licensing system for the sharing of
177 regulatory information and for the licensing and application, by electronic or other means, of
178 entities engaged in the business of debt management services. The commissioner may establish
179 requirements for participation by an applicant in a multi-state licensing system which may vary
180 from the provisions set out in this section and section 2. The commissioner may require a
181 background investigation of each applicant for a license to engage in debt management services
182 by means of fingerprint and state and national criminal history record checks by the department
183 of criminal justice information services pursuant to section 172 of chapter 6 and the Federal
184 Bureau of Investigation. If the applicant is a partnership, association, corporation or other form
185 of business organization, the commissioner may require such background investigation by means
186 of fingerprint checks on each member, director, principal officer of such applicant, and any
187 individual acting as a manager of an office location. The applicant shall pay directly to such
188 multi-state licensing system any additional fee relating to participation in such multi-state
189 licensing system.

190

191 Section 5. (a) The commissioner may deny a license if:

192

193 (1) the applicant does not satisfy the criteria set forth in subsection (c) of section 4.

194

195 (2) the application contains information that is materially erroneous or incomplete;

196

197 (3) the applicant fails to provide information that the commissioner may request, in a
198 timely manner;

199

200 (4) an officer, director, member or principal of the applicants business has been (i)
201 convicted of or pled nolo contendere to a felony, or (ii) committed an act involving fraud, deceit
202 or dishonesty;

203

204 (5) an officer, director, member or principal of the applicant has had a professional
205 license revoked, suspended or subjected to administrative action in any jurisdiction;

206

207 (6) the applicant or any of its an officers, directors, members or principals has defaulted
208 in the payment of money collected for others; or

209

210 (7) the applicants license was revoked or suspended in another jurisdiction and has not
211 been reinstated.

212

213 (b) On or before the 20th day after a license application denial, the commissioner shall
214 enter upon the records a written decision and findings containing the reasons supporting a license
215 denial, and shall send a notice to the applicant via certified mail. On or before the 30th day after
216 the date of the notice, the applicant may appeal the denial to the superior court for Suffolk
217 County, sitting in equity.

218

219 Section 6. (a) The commissioner may suspend, revoke or deny renewal of a license if:

220

221 (1) a licensee has violated this chapter or any rule or regulation adopted hereunder or any
222 other law applicable to the conduct of its business;

223

224 (2) a fact or condition exists that, if it had existed when the licensee applied for a license,
225 would have warranted the commissioner refusing to issue the initial license;

226

227 (3) the licensee does not satisfy the criteria required under subsection (c) of section 4;

228

229 (4) the licensee has refused to permit the commissioner to examine the licensee's books
230 and records under this chapter, failed to comply with section 13 or made a material
231 misrepresentation or omission in complying with section 13; or

232

233 (5) the licensee has not responded within a reasonable time and in an appropriate manner
234 to the commissioner's communications.

235

236 (b) If the commissioner suspends, revokes, or denies renewal of a license, the
237 commissioner may seek a court order to seize the licensee's books, records, accounts, property or
238 money in a trust account maintained by the provider.

239

240 (c) Except as provided in section 7, a licensee shall receive notice and a hearing under
241 chapter 30A before the commissioner revokes or suspends a license.

242

243 (d) A licensee may deliver a written notice to the commissioner to surrender its license,
244 provided, however, that if a licensee surrenders its license, its civil or criminal liability for acts
245 committed before the surrender is not affected.

246

247 Section 7. (a) If the commissioner determines, after giving notice of and opportunity for a
248 hearing, that a licensee has acted in a manner that has violated or would violate this chapter, or a
249 rule, regulation or order hereunder, the commissioner may order the licensee to cease and desist
250 from unlawful acts or practices and take affirmative action to enforce this chapter.

251

252 (b) If the commissioner finds that a delay in issuing an order under subsection (a) will
253 irreparably harm the public interest, the commissioner may issue a temporary cease and desist
254 order. Upon the entry of a temporary cease and desist order, the commissioner shall promptly
255 notify the affected licensee in writing that the order has been entered, the reasons for the order
256 and that on or before the 20th day after the receipt of a written request from the licensee, the
257 matter will be scheduled for hearing to determine whether or not such temporary order shall
258 become permanent. If the commissioner does not order a hearing and a licensee does not request
259 a hearing, the order shall remain in effect until the commissioner modifies or vacates it. If a
260 hearing is requested or ordered, the commissioner shall vacate, modify or make the order
261 permanent, by written findings of fact and conclusions of law, after giving the licensee subject to
262 the order notice of and opportunity for a hearing.

263

264 (c) The commissioner shall not issue an order under this section, except an order issued
265 pursuant to subsection (b), without prior notice of and opportunity for a hearing. The
266 commissioner may vacate or modify an order under this section upon finding that the conditions
267 that required the order have changed and that it is in the public interest to vacate or modify the
268 order.

269

270 (d) Any order issued pursuant to this section shall be subject to review as provided in
271 chapter 30A

272

273 Section 8. (a) The commissioner may examine the books and records of a licensee and
274 have full access to the records related to its business. A licensee shall keep and use its business
275 records in a form, at a location and for a retention period as the commissioner shall promulgate
276 in a regulation, which shall enable the commissioner to determine whether the licensee is
277 complying with this chapter and the rules and regulations promulgated hereunder, and any other
278 law, rule or regulation applicable to its business.

279

280 (b) In connection with the examination, the commissioner may:

281

282 (1) oblige a licensee to pay expenses on or before the thirtieth day after the licensee
283 receives an invoice, which the division incurs in conducting an examination, including expenses
284 for travel outside the commonwealth;

285

286 (2) require or permit a licensee to file a statement under oath as to the facts and
287 circumstances of a matter to aid in an examination; and

288

289 (3) seek a court order to seize the following items from the federally insured bank that a
290 licensee maintains its trust account at: money, books, records, accounts and other property that
291 the licensee keeps under the control of the federally insured bank.

292

293 (c) The commissioner shall preserve a full record of a licensee's examination, including a
294 statement of its condition. Examination records and reports, including work papers, information
295 derived from reports or in response to reports and any copies thereof in a licensee's possession
296 shall be confidential and privileged communications, shall not be subject to subpoena and shall
297 not be a public record under clause 26 of section 7 of chapter 4. For the purpose of this
298 paragraph, examination records and reports shall include examination records and reports that
299 any bank regulatory agency of a state, federal or foreign government conducted, which that
300 agency or government considers confidential, and which are in possession of the commissioner.
301 In any proceeding before a court, the court may issue a protective order to seal the record
302 protecting the confidentiality of a record, other than a record on file with the court or filed in
303 connection with the court proceeding, and the court may exclude the public from any portion of a
304 proceeding at which a record may be disclosed. The commissioner shall distribute copies of
305 examination reports to a licensee for its use only and the licensee shall not publish these reports
306 to any person or agency without the commissioner's prior written approval. The commissioner
307 may distribute any information, report, examination or statement relating to a licensee to any
308 regulatory or law enforcement agency.

309

310 Section 9. The commissioner may investigate the books, accounts, records and files of a
311 person that the commissioner has reason to believe is conducting the business of a provider in the
312 commonwealth, whether the person acts or claims to act as a principal or agent, or under or
313 without the authority of this chapter.

314

315 Section 10. (a) A licensee shall complete and furnish a written budget analysis to an
316 individual before an individual may execute an agreement, which budget analysis may be based
317 on information provided by the individual. A licensee shall not execute an agreement unless the
318 budget analysis indicates that an individual can reasonably afford the payments established under
319 the stated agreement. The commissioner shall determine the information that a budget analysis
320 shall require.

321

322 (b) A licensee shall not accept compensation or gain, directly or indirectly, for
323 performing debt management services before an individual executes an agreement. The
324 agreement shall contain information that the commissioner shall determine. A licensee shall, at
325 the time the agreement is executed, distribute a copy to the consumer.

326

327 (c) In addition to other items as the commissioner may require, the agreement shall
328 disclose:

329

330 (1) the debt management services that the licensee will perform;

331

332 (2) the fees that the licensee will charge the consumer;

333

334 (3) that agreements may not be suitable for all individuals;

335 (4) that participation in a debt management program may adversely affect the individual's
336 credit rating or credit scores;

337 (5) that nonpayment of debt may lead creditors to increase finance and other charges or
338 undertake collection activity, including litigation;

339 (6) that, unless the individual is insolvent, if a creditor settles for less than the full amount
340 of the debt, the program may result in the creation of taxable income to the individual, even
341 though the individual does not receive any money;

342 (7) that specific results cannot be predicted or guaranteed and the provider cannot force
343 negotiations or settlements with creditors;

344 (8) that debt management programs require that individuals meet certain regular savings
345 goals in order to enable settlements;

346 (9) that the provider does not provide accounting or legal advice to individuals, unless the
347 provider is professionally licensed to provide such advice;

348 (10) that, if the provider is a debt settlement company and not a credit counselor, the
349 provider is the individual's advocate and does not receive compensation from creditors, banks, or
350 third party collection agencies;

351 (11) that, if the provider is a debt settlement company and not a credit counselor, the
352 provider is does not make monthly payments to the individual's creditors,

353 (11) if applicable, disclose that the agreement does not cover secured debt; and

354

355 (12) disclose the list of debts that the agreement covers as provided to the licensee by the
356 consumer at the time of the agreement.

357

358 Section 11. (a) A consumer may terminate an agreement at any time without a
359 termination penalty by notifying the licensee in writing of his intention to terminate the
360 agreement. Notice is deemed effective on the date the consumer mails such notice.

361

362 (b) All fees and payments that the consumer made, other than fees earned hereunder by
363 the licensee, shall be refunded in full on or before the tenth business day after a licensee receives
364 a termination notice.

365

366 Section 12. (a) If a consumer fails to honor the consumers contractual obligations on or
367 before the 60th day after the consumer was required to perform under an agreement, then the
368 licensee may terminate the agreement with the consumer. Notwithstanding the foregoing, if a
369 consumer refuses to pay any fee to a licensee after such payment has been earned by the licensee,
370 then the licensee may terminate its agreement with the consumer immediately.

371

372 (b) If a licensee terminates an agreement, the licensee shall immediately return to the
373 consumer any money that the licensee held in trust for the consumer.

374

375 Section 13. A licensee shall file with the commissioner an annual report in a form that the
376 commissioner shall prescribe. The report shall be in writing, under oath, and contain information
377 related to the conduct of a licensee's business. If a licensee neglects to file an annual report or
378 fails to amend the same on or before the fifteenth day after the commissioner provides notice to
379 the licensee, then the licensee shall pay a fine of \$50 per day during which the neglect or failure
380 to amend the same continues.

381

382 Section 14. (a) A licensee shall maintain a separate trust account at a federally insured
383 bank to hold funds that it receives from consumers. Trust accounts shall comply with regulations
384 that the commissioner promulgates hereunder.

385

386 (b) A licensee shall not commingle money collected for a creditor with the licensee's own
387 funds or use any part of a consumer's money in the conduct of the licensee's business.

388

389 Section 15. (a) A licensee shall not impose, directly or indirectly, a fee or other charge on
390 a consumer or receive payment from or on behalf of a consumer for performing debt
391 management services except as provided in this Section 15.

392 (b) A licensee shall not impose charges or receive payment for debt management services
393 until the licensee and the individual have signed an agreement that complies with section 10 and
394 the regulations promulgated hereunder.

395 (c) If an agreement contemplates that creditors will settle an individual's debts for less
396 than the principal amount of the debt, a licensee may not charge or collect compensation for
397 services in connection with settling a debt unless: the licensee has renegotiated, settled, reduced
398 or otherwise altered the terms of at least one debt pursuant to a valid contractual agreement
399 executed by the consumer; and the consumer has made at least one payment pursuant to the
400 settlement agreement or other valid contractual agreement between the consumer and the creditor
401 or debt collector.

402 (d) With respect to agreements in which no fees are charged or collected until such time
403 as a settlement agreement has been reached with a creditor and at least one payment has been
404 made towards such agreement by the individual, the provider may collect a fee that: bears the
405 same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the
406 terms of the entire debt balance as the individual debt amount bears to the entire debt amount
407 based on the time the debt was enrolled in the service; or is a percentage of the amount saved as
408 a result of the renegotiation, settlement, reduction, or alteration, provided that the percentage
409 charged to an individual cannot change from one debt to another, and provided further that the

410 amount saved shall be calculated as the difference between the amount owed at the time the debt
411 was enrolled in the plan and the amount actually paid to satisfy the debt.

412 (e) The amount or calculation of settlement fees charged under this Section 15 must be
413 disclosed at the time of the inception of the agreement between the provider and the individual.

414 Section 15A. A licensee may not:

415 (a) take or exercise a power of attorney that authorizes it to settle a debt;

416 (b) exercise or attempt to exercise a power of attorney or any other authority of the
417 individual after an individual has terminated his or her debt management agreement;

418 (c) initiate a transfer from an individual's account at a bank or with another person unless
419 the transfer is: a return of money to the individual; before termination of an agreement, properly
420 authorized by the agreement and this chapter for payment of a fee; or to a creditor to fund a
421 negotiated settlement with that creditor;

422 (d) settle a debt or lead an individual to believe that a payment to a creditor is in
423 settlement of a debt to the creditor unless, at the time of settlement, the individual receives a
424 confirmation from the creditor that the payment is in full settlement of the debt, or is part of a
425 payment plan that is in full settlement of the debt;

426 (e) make any representation that: the provider will furnish money to pay bills or prevent
427 attachments; payment of a certain amount will guarantee satisfaction of a certain amount or
428 range of indebtedness; or participation in a program will prevent litigation, garnishment,
429 attachment, repossession, foreclosure, eviction, or loss of employment;

430 (f) misrepresent that the provider is able to furnish legal advice or perform legal services;

431 (g) represent that it is a not-for-profit entity unless it is organized and properly operating
432 as a not-for-profit under the law of the state in which it was formed or that it is a tax-exempt
433 entity unless it has received certification of tax-exempt status from the Internal Revenue Service;

434 (h) take a confession of judgment or power of attorney to confess judgment against an
435 individual;

436 (i) employ any unfair, unconscionable, or deceptive act or practice, including the
437 knowing omission of any material information;

438 (j) purchase a debt or obligation of the individual;

439 (k) receive from or on behalf of the individual a promissory note or other negotiable
440 instrument other than a check or a demand draft or a post-dated check or demand draft;

441 (l) other than through an affiliate that is either separately licensed to perform lending in
442 the commonwealth or exempt from such licensure, lend money or provide credit to the
443 individual, except as a deferral of a settlement fee at no additional expense to the individual, or
444 obtain a mortgage or other security interest from any person in connection with the services
445 provided to the individual;

446 (m) except as permitted by federal law, disclose the identity or identifying information of
447 the individual or the identity of the individual's creditors, except to: the commissioner, upon
448 proper demand; or to the extent necessary to administer the program, including but not limited to
449 a creditor of the individual.

450

451 Section 16. (a) A statement of accounting shall contain the following information:

452

453 (1) the amount of money that the consumer has paid to the provider since the provider
454 prepared the last statement;

455

456 (2) the amounts, dates and creditors that the provider paid on the consumers behalf, since
457 the provider prepared the last statement;

458

459 (3) the amounts of money that the provider collected as compensation from the
460 consumers payments;

461

462 (4) the amount of money that the provider holds in trust for the consumer; and

463

464 (5) if, since the last statement date, the consumers creditor accepted a payment from the
465 provider in full or partial satisfaction of the consumers debt with that creditor: (i) the total
466 amount of money that the provider paid the creditor to settle a consumers debt; (ii) the amount of
467 the debt at the time the provider and a consumer entered their agreement; (iii) the amount of a
468 debt at the time a consumers creditor agreed to settle a debt with a provider; and (iv) the amount
469 of compensation that the provider receives to settle a debt.

470

471 (b) A licensee shall distribute a statement of accounting to a consumer:

472

473 (1) while an agreement is in effect: (i) at least once per month; and (ii) on or before the
474 fifth business day after a consumer demands a statement of accounting from a licensee; provided,
475 however, a licensee may refuse to comply with more than 1 request for a statement of accounting
476 per month; and

477

478 (2) on the day on which a consumer or a licensee rescinds or terminates an agreement.

479

480 (c) Notwithstanding the requirement set forth in clauses (1) and (2) of subsection (b), a
481 provider that enables, or arranges to enable, 24 hours a day, 7 days a week, electronic access by a
482 consumer to all of the consumers deposit account transaction information, including, but not
483 limited to, all deposit and withdrawal activity, and electronic access by a consumer to debt
484 management account activity, including, but not limited to, such settlement information as
485 account status, settlement dates, settlement amounts and fees paid, shall be deemed to have
486 satisfied the content requirements in subsection (a) and the distribution requirements in
487 subsection (b).

488

489 Section 17. A person shall not advertise, announce, broadcast, display, distribute, print,
490 publish, televise or permit any other person to advertise, announce, broadcast, display, distribute,

491 print, publish or televise on its behalf a statement or representation that is deceptive, false or
492 misleading.

493

494

495 17A. All communications required by this Act that take place between providers and
496 individuals may take place by electronic means.

497 (a) In this section:

498 (1) "federal act" means the federal "electronic signatures in global and national commerce
499 act", 15 U.S.C. sec. 7001 et seq., as amended.

500 (2) "consumer" means an individual who seeks or obtains goods or services that are used
501 primarily for personal, family, or household purposes.

502 (b) a provider may satisfy the requirements of this chapter by means of the Internet or
503 other electronic means if the provider obtains a consumer's consent in the manner provided by
504 section 101 (c) (1) of the federal act.

505 (c) the disclosures and materials required by this chapter shall be presented in a form that
506 is capable of being accurately reproduced for later reference.

507 (d) with respect to disclosure by means of an Internet web site, the disclosures required
508 by this chapter must appear on one or more screens that:

509 (1) contains no other information; and

510 (2) the individual must see before proceeding to assent to formation of a program.

511 (e) at the time of providing the materials and agreement required by this chapter, a
512 provider shall inform the individual that upon electronic, telephonic, or written request, it will
513 send the individual a written copy of the materials and shall comply with a request as provided in
514 subsection (f) of this section.

515 (f) if a provider is requested, before the expiration of ninety days after a program is
516 completed or terminated, to send a written copy of the materials required by this chapter, the
517 provider shall send them at no charge within three business days after the request, but the
518 provider need not comply with a request more than once per calendar month or if it reasonably
519 believes the request is made for purposes of harassment. If a request is made more than ninety
520 days after a program is completed or terminated, the provider shall send within a reasonable time
521 a written copy of the materials requested.

522 (g) a provider that maintains an Internet web site shall disclose on the home page or on a
523 page that is clearly and conspicuously connected to the home page by a link that clearly reveals
524 its contents:

525 (1) its name and all names under which it does business;

526 (2) its principal business address, telephone number, and electronic mail address, if any.

527 (h) subject to Section 22(i), if a consumer who has consented to electronic
528 communication in the manner provided by section 101 of the federal act withdraws consent as
529 provided in the federal act, a provider may terminate its agreement with the consumer.

530 (i) if a provider wishes to terminate an agreement with a consumer pursuant to Section
531 22(h), it shall notify the consumer that it will terminate the agreement unless the consumer,
532 within thirty days after receiving the notification, consents to electronic communication in the
533 manner provided in section 101 (c) of the federal act.

534 Section 18. If a licensee delegates a duty or obligation that this chapter mandates to
535 another person, including an independent contractor, the licensee is liable for the other persons
536 conduct that violates an agreement, this chapter or any of regulation of the division.

537

538 Section 19. A person that violates section 2 or any rule or regulation promulgated
539 thereunder shall pay a fine of not more than \$2,000 or be imprisoned in a house of correction for
540 not more than 2 1/2 years or be imprisoned in state prison for not more than 5 years, or both a
541 fine and imprisonment. Each day a violation occurs or continues shall be deemed a separate
542 offense. This sections penalty provision shall be in addition to, and not in lieu of, the penalty
543 provisions under any other law applicable to providers for violating section 2 or any rule or
544 regulation made thereunder.

545

546 Section 20. (a) If the commissioner finds that a person has violated this chapter, a rule or
547 regulation adopted thereunder or any other law applicable to the conduct of a provider, the
548 commissioner may order or impose a penalty upon the person, which shall not exceed \$5,000 per
549 violation of law, rule or regulation, up to a maximum of \$100,000 plus the costs of investigation.

550

551 (b) Nothing in this section limits an individuals right to bring an action against a provider
552 that injured the individual to recover damages or restitution in a court of competent jurisdiction.

553

554 (c) A finding or order that the commissioner issues under this section shall be reviewable
555 under chapter 30A

556

557 Section 21. A violation of this chapter shall be a violation of chapter 93A and an
558 aggrieved individual may recover damages from a provider under this chapter and chapter 93A

559

560 SECTION 3. This act shall take effect 180 days after its passage, provided, however, that
561 the authority for the commissioner to promulgate regulations in section 2 of chapter 255G of the
562 General Laws, as appearing in section 2, shall take effect upon passage.