

HOUSE No. 00291

The Commonwealth of Massachusetts

PRESENTED BY:

Peter J. Koutoujian

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 passage of the accompanying bill:

An Act relative to the Division of Banks' licensing and supervision of debt management services.

PETITION OF:

NAME:

Peter J. Koutoujian

DISTRICT/ADDRESS:

10th Middlesex

HOUSE No. 00291

By Mr. Peter J. Koutoujian of Waltham, petition (accompanied by bill, House, No. 00291) of Peter J. Koutoujian relative to the Division of Banks licensing and supervision of debt management services. Joint Committee on Financial Services.

[SIMILAR MATTER FILED IN PREVIOUS SESSION
SEE
□ HOUSE
□ , NO. 4913 OF 2009-2010.]

The Commonwealth of Massachusetts

In the Year Two Thousand Eleven

An Act relative to the Division of Banks' licensing and supervision of debt management services.

□.

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. The General Laws are hereby amended by inserting after chapter 255F the
- 2 following chapter:--
- 3 Chapter 255G.
- 4 Regulating Debt Management Services in the Commonwealth.
- 5 Section 1. Definitions.

6 As used in this chapter, the following words have the following meanings, unless the context
7 requires otherwise:

8 “Agreement” means a contract between a provider and an individual for the performance of debt
9 management services.

10 “Business address” means the physical location of a business, including the name and number of
11 a street.

12 “Business day” means a calendar day, except for Sundays and the following holidays: New
13 Year’s Day, Birthday of Martin Luther King, Jr., Washington’s Birthday, Memorial Day,
14 Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day and Christmas
15 Day.

16 “Commissioner” means the commissioner of banks for the Commonwealth of Massachusetts.

17 “Consumer” means an individual who has secured or unsecured debt, which arises out of
18 personal, family or household obligations, and who has executed an agreement with a provider.

19 “Creditor” means a person that has extended credit to an individual.

20 “Debt management services” means directly or indirectly receiving an individual’s money to
21 distribute it to 1 or more of an individual’s creditors in partial or full satisfaction of the
22 individual’s secured or unsecured debts; arranging the distribution or assisting an individual in
23 the distribution of an individual’s money to 1 or more of an individual’s creditors in partial or
24 full satisfaction of the individual’s secured or unsecured debts; or acting or offering to act as an
25 intermediary between an individual and 1 or more of the individual’s creditors to reduce, defer,

26 discharge or in any other way modify the terms and conditions of an individual's obligation to
27 repay secured or unsecured debts.

28 "Individual" means a natural person.

29 "Licensee" means a provider that possesses a valid license.

30 "Provider" means a person that performs debt management services for compensation or gain, or
31 in the expectation of compensation or gain.

32 "Statement of accounting" means a written or electronic document that a provider prepares for
33 consumers, which contains the following information:

34 the amount of money that the consumer has paid to the provider since the provider prepared the
35 last statement;

36 the amounts, dates and creditors that the provider paid on the consumer's behalf, since the
37 provider prepared the last statement;

38 the amounts of money that the provider collected as compensation from the consumer's
39 payments;

40 the amount of money that the provider holds in trust for the consumer;

41 if, since the last statement date, the consumer's creditor accepted a payment from the provider in
42 full or partial satisfaction of the consumer's debt with that creditor:

43 the total amount of money that the provider paid the creditor to settle a consumer's debt;

44 the amount of the debt at the time the provider and a consumer entered their agreement;

45 the amount of a debt at the time a consumer's creditor agreed to settle a debt with a provider; and

46 the amount of compensation that the provider receives to settle a debt.

47 Section 2. License and Bond Required; Terms.

48 No person shall engage in or advertise for debt management services in Massachusetts unless the

49 commissioner issues it a license.

50 A provider shall obtain a license for each of its business addresses.

51 A license shall not be transferable or assignable.

52 A licensee shall file a surety bond in an amount and form that the commissioner determines

53 before it may conduct business in Massachusetts.

54 A licensee shall not conduct business in Massachusetts under a business name other than the

55 business name that is listed on its license.

56 If a licensee intends to conduct business at a business address in addition to the business address

57 on the license, it shall notify the commissioner in writing at least thirty days before the date on

58 which the addition is effective, and it shall pay a reasonable fee that the commissioner of

59 administration shall determine under chapter 7, section 3B.

60 The commissioner shall promulgate regulations to administer and enforce this chapter.

61 Section 3. Exempt Persons.

62 The following persons are exempt from this chapter:

63 A provider's employees who perform debt management services on the provider's behalf in the
64 regular course of their employment.

65 A person organized under section 501(c) of the Internal Revenue Code that receives no
66 compensation or gain for the debt management services that it provides to or on behalf of
67 individuals.

68 Judicial officers, individuals acting under the direction of a court, or assignees for creditors'
69 benefit.

70 A commercial bank, savings bank, cooperative bank, savings and loan association, national
71 banking association, credit union, trust company engaged in the business of banking or a
72 subsidiary of any of the above that is chartered under federal or state law and subject to federal
73 or state banking regulatory supervision.

74 Licensed Massachusetts attorneys at law who do not provide debt management services as their
75 primary business.

76 Persons that provide bill paying services if those persons do not perform debt management
77 service.

78 Creditors or the creditors' employees who negotiate debt settlement with individuals or
79 providers, acting on an individual's or consumer's behalf.

80 Officers or employees of the United States or a state of the United States who perform debt
81 management services for individuals on behalf of the federal government, the Commonwealth of
82 Massachusetts, a Massachusetts municipality or a Massachusetts state agency, and receive
83 compensation solely from these governmental entities.

84 Section 4. License Application.

85 The application for the license and the application for the license renewal shall be in a form that
86 the commissioner shall prescribe, shall be signed under oath and shall contain information as the
87 commissioner shall determine.

88 Applicants shall pay an investigation fee that the commissioner of administration shall determine
89 under chapter 7, section 3B.

90 The commissioner shall evaluate the applicant's financial responsibility, character, reputation,
91 integrity and general fitness to determine whether the applicant will act lawfully, honestly, fairly,
92 soundly and efficiently in the public interest.

93 The license shall be for a period of 1 year as of a date that the commissioner determines. The
94 commissioner of administration shall determine the license fee annually under chapter 7, section
95 3B.

96 Section 5. License Issuance or Denial; Timing.

97 The commissioner may deny a license if:

98 the applicant does not satisfy the criteria set forth in section 4(c).

99 the application contains information that is materially erroneous or incomplete;

100 the applicant fails to provide information that the commissioner may request, in a timely manner;

101 an officer, director, member or principal of the applicant's business has been (i) convicted of or

102 pled nolo contendere to a felony, or (ii) committed an act involving fraud, deceit or dishonesty;

103 an officer, director, member or principal of the applicant has had a professional license revoked,
104 suspended or subjected to administrative action in any jurisdiction;

105 the applicant or any of its an officers, directors, members or principals has defaulted in the
106 payment of money collected for others; or

107 the applicant's license was revoked or suspended in another jurisdiction or the applicant has been
108 issued a regulatory action in another jurisdiction.

109 On or before the twentieth day after a license application denial, the commissioner shall enter
110 upon the records a written decision and findings containing the reasons supporting a license
111 denial, and shall send a notice to the applicant via certified mail. On or before the thirtieth day
112 after the date of the notice, the applicant may appeal the denial to the superior court for Suffolk
113 County, sitting in equity. The court shall hear the relevant evidence, determine the facts, affirm
114 the denial or order the commissioner to issue the license, as justice and equity may require.

115 Section 6. Suspension, Revocation, or Non-Renewal of License.

116 The commissioner may suspend, revoke or deny renewal of a license if:

117 a licensee has violated this chapter or any rule or regulation adopted hereunder or any other law
118 applicable to the conduct of its business;

119 a fact or condition exists that, if it had existed when the licensee applied for a license, would
120 have warranted the commissioner refusing to issue a license;

121 the licensee does not satisfy criteria required under section 4(c);

122 the licensee has refused to permit the commissioner to examine the licensee's books and records
123 under this chapter, failed to comply with section 13 or made a material misrepresentation or
124 omission in complying with section 13; or

125 the licensee has not responded within a reasonable time and in an appropriate manner to the
126 commissioner's communications.

127 If the commissioner suspends, revokes, or denies renewal of a license, the commissioner may
128 seek a court order to seize the licensee's books, records, accounts, property or money in a trust
129 account.

130 Except as provided in section 7, a licensee shall receive notice and a hearing under chapter 30A
131 before the commissioner revokes or suspends a license.

132 A licensee may deliver a written notice to the commissioner to surrender its license, but if a
133 licensee surrenders its license, its civil or criminal liability for acts committed before the
134 surrender is not affected.

135 Section 7. Commissioner's Order to Cease and Desist from Unlawful Acts or Practices; Prior
136 Notice and Opportunity for Hearing; Temporary Order.

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

141 (b) If the commissioner finds that delay in issuing an order under subsection (a) will irreparably
142 harm the public interest, the commissioner may issue a temporary cease and desist order. Upon

143 the entry of a temporary cease and desist order, the commissioner shall promptly notify the
144 affected licensee in writing that the order has been entered, the reasons for the order and that on
145 or before the twentieth day after the receipt of a written request from the licensee, the matter will
146 be scheduled for hearing to determine whether or not such temporary order shall become
147 permanent. If the commissioner does not order a hearing and a licensee does not request a
148 hearing, the order shall remain in effect until the commissioner modifies or vacates it. If a
149 hearing is requested or ordered, the commissioner shall vacate, modify or make the order
150 permanent, by written findings of fact and conclusions of law, after giving the licensee subject to
151 the order notice of and opportunity for a hearing.

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

156 (d) An order issued under this section shall be subject to the review process that chapter 30A
157 provides.

158 Section 8. Commissioner's Examination; Business Records; Records of Examination.

159 (a) The commissioner may examine the books and records of a licensee and have full access to
160 the records related to its business. A licensee shall keep and use its business records in a form, at
161 a location and for a retention period as the commissioner shall promulgate in a regulation, which
162 shall enable the commissioner to determine whether the licensee is complying with this chapter
163 and the rules and regulations promulgated hereunder, and any other law, rule or regulation
164 applicable to its business.

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

166 (1) oblige a licensee to pay expenses on or before the thirtieth day after the licensee receives an
167 invoice, which the Massachusetts Division of Banks incurs in conducting an examination,
168 including expenses for travel outside Massachusetts;

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

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

174 (c) The commissioner shall preserve a full record of a licensee's examination, including a
175 statement of its condition. Examination records and reports, including work papers, information
176 derived from reports or in response to reports and any copies thereof in a licensee's possession
177 shall be confidential and privileged communications, shall not be subject to subpoena and shall
178 not be a public record under chapter 4, section 7, clause 26. For the purpose of this paragraph,
179 examination records and reports shall include examination records and reports that any bank
180 regulatory agency of a state, federal or foreign government conducted, which that agency or
181 government considers confidential, and which are in possession of the commissioner. In any
182 proceeding before a court, the court may issue a protective order to seal the record protecting the
183 confidentiality of a record, other than a record on file with the court or filed in connection with
184 the court proceeding, and the court may exclude the public from any portion of a proceeding at
185 which a record may be disclosed. The commissioner shall distribute copies of examination
186 reports to a licensee for its use only and the licensee shall not publish these reports to any person

187 or agency without the commissioner's prior written approval. The commissioner may distribute
188 any information, report, examination or statement relating to a licensee to any regulatory or law
189 enforcement agency.

190 Section 9. Violations of this Chapter; Commissioner Investigations.

191 The commissioner may investigate the books, accounts, records and files of a person that the
192 commissioner has reason to believe is conducting the business of a provider in Massachusetts,
193 whether the person acts or claims to act as a principal or agent, or under or without the authority
194 of this chapter.

195 Section 10. Agreements.

196 A licensee shall complete and furnish a written budget analysis to an individual before an
197 individual may execute an agreement. A licensee shall not execute an agreement unless the
198 budget analysis indicates that an individual can reasonably afford the payments established under
199 the stated agreement. The commissioner shall determine the information that a budget analysis
200 shall require.

201 A licensee shall not accept compensation or gain, directly or indirectly, for performing debt
202 management services before an individual executes an agreement. The agreement shall contain
203 information that the commissioner shall determine. A licensee shall, at the time the agreement is
204 executed, distribute a copy to the consumer.

205 In addition to other items as the commissioner may require, the agreement shall:

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

207 (2) disclose the fees that the licensee will charge the consumer;

- 208 (3) disclose that agreements may not be suitable for all individuals;
- 209 (4) if applicable, disclose that the agreement does not cover secured debt; and
- 210 (5) disclose the list of debts that the agreement covers and the interest rate of those debts at
211 the time.

212 Section 11. Rescission

213 A consumer may rescind an agreement on or before the third business day after the consumer
214 executed the agreement. Rescission occurs when written notice of rescission is given to the
215 licensee. Notice is effective on the date the consumer mails the notice.

216 A licensee shall furnish a notice of rescission in a form and shall contain conditions as the
217 commissioner shall determine, at the time the agreement is signed.

218 All fees and payments that the consumer made shall be refunded in full on or before the tenth
219 business day after a licensee receives a rescission notice.

220 Section 12. Termination of Agreement.

221 If a consumer fails to make a payment to a licensee on or before the sixtieth day after the
222 consumer was required to pay under an agreement, then the licensee may terminate the
223 agreement with the consumer.

224 If a licensee terminates an agreement, the licensee shall immediately return to the consumer any
225 money that the licensee held in trust for the consumer.

226 A consumer may terminate an agreement at any time without a termination penalty.

227 Section 13. Annual Report; Failure to File; Penalties.

228 A licensee shall file with the commissioner on an annual or periodic basis a report in a form that
229 the commissioner shall prescribe. The report shall be in writing, under oath, and contain
230 information related to the conduct of a licensee's business. If a licensee neglects to file an
231 annual report or fails to amend the same on or before the fifteenth day after the commissioner
232 provides notice to the licensee, then the licensee shall pay to the Commonwealth of
233 Massachusetts \$50 per day during which the neglect or failure to amend the same continues.

234 Section 14. Trust Account Required.

235 (a) A licensee shall maintain a separate trust account at a federally insured bank to deposit
236 money that it receives from consumers. Trust accounts shall comply with regulations that the
237 commissioner promulgates hereunder.

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

240 Section 15. Permissible Fees.

241 (a) A licensee shall not impose directly or indirectly a fee or other charge on a consumer or
242 receive money from or on behalf of a consumer for performing debt management services except
243 as this section or a regulation that the commissioner promulgates under this chapter permits.

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

247 Section 16. Statement of Accounting.

248 A licensee shall distribute a statement of accounting to a consumer:

249 while an agreement is in effect:

250 at least once per month; and

251 on or before the fifth business day after a consumer demands a statement of accounting from a

252 licensee; however, a licensee may refuse to comply with more than 1 request for a statement of

253 accounting per month; and

254 on the day on which a consumer or a licensee rescinds or terminates an agreement.

255 Section 17. Advertising.

256 A person shall not advertise, announce, broadcast, display, distribute, print, publish, televise or

257 permit any other person to advertise, announce, broadcast, display, distribute, print, publish or

258 televise on its behalf a statement or representation that is deceptive, false or misleading.

259 Advertisements that a licensee authorizes shall clearly state its licensed business name and its

260 Massachusetts license number.

261 Section 18. Liability for the Conduct of Other Persons.

262 If a licensee delegates a duty or obligation that this chapter mandates to another person,

263 including an independent contractor, the licensee is liable for the other person's conduct that

264 violates an agreement, this chapter or any of the Massachusetts Division of Banks' regulations.

265 Section 19. Criminal Penalties.

266 A person that violates section 2 or any rule or regulation promulgated thereunder shall: pay a
267 fine of not more than \$2,000, be imprisoned in a house of correction for not more than 2 1/2
268 years, be imprisoned in state prison for not more than 5 years, or both a fine and imprisonment.
269 Each day a violation occurs or continues shall be deemed a separate offense. This section's
270 penalty provision shall be in addition to, and not in lieu of, the penalty provisions under any
271 other law applicable to providers for violating section 2 or any rule or regulation made
272 thereunder.

273 Section 20. Civil Penalties; Review.

274 If the commissioner finds that a person has violated this chapter, a rule or regulation adopted
275 thereunder or any other Massachusetts law applicable to the conduct of a provider, the
276 commissioner may order or impose a penalty upon the person, which shall not exceed \$5,000 per
277 violation of law, rule or regulation, up to a maximum of \$100,000 plus the costs of investigation.

278 Nothing in this section limits an individual's right to bring an action against a provider that
279 injured the individual to recover damages or restitution in a court of competent jurisdiction.

280 A finding or order that the commissioner issues under this section shall be reviewable under
281 chapter 30A.

282 Section 21. Violation of Chapter 93A.

283 A violation of this chapter is also a violation of chapter 93A, and an aggrieved individual may
284 recover damages from a provider under this chapter and chapter 93A.

285 SECTION 2. Effective Date.

286 This Chapter shall take effect 180 days after its passage, provided, however, subsection (g) of
287 section 2 of chapter 255G of the General Laws, inserted by section 1, shall take effect upon its
288 passage.