

SENATE BILL 646

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SB 367/07 – FIN

8lr1833
CF HB 947

By: **Senators Astle, Garagiola, Kelley, Klausmeier, Middleton, and Pugh**
Introduced and read first time: February 1, 2008
Assigned to: Finance

Committee Report: Favorable with amendments
Senate action: Adopted
Read second time: March 4, 2008

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 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)

EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.

Underlining indicates amendments to bill.

~~Strike-out~~ indicates matter stricken from the bill by amendment or deleted from the law by amendment.



1 BY adding to
2 Article – Financial Institutions
3 Section 12–916(a)(3)
4 Annotated Code of Maryland
5 (2003 Replacement Volume and 2007 Supplement)

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

8 **Article – Financial Institutions**

9 12–901.

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

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

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

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

18 (1) Resides in the State; and

19 (2) Is seeking debt management services or has entered into a debt
20 management services agreement.

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

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

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

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

28 (II) **ESTABLISHING DEBT MANAGEMENT PAYMENT PLANS**
29 **WITH CREDITORS;**

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

1 (IV) FILING FOR BANKRUPTCY.

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

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

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

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

14 (j) "Fund" means the Debt Management Services Fund established under §
15 12-905 of this subtitle.

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

18 (l) "Maintenance fee" means a fee paid by a consumer to a debt management
19 services provider for the maintenance or servicing of the consumer's accounts with the
20 consumer's creditors in accordance with a debt management services agreement.

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

23 [(n)] **(M)** "Relative" means any of the following who are related to an
24 individual by blood, marriage, or adoption:

25 (1) A spouse;

26 (2) A child;

27 (3) A sibling;

28 (4) A parent;

29 (5) A grandparent;

30 (6) A grandchild;

31 (7) A stepparent;

1 (8) A stepchild;

2 (9) A stepsibling;

3 (10) An aunt; or

4 (11) An uncle.

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

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

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

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

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

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

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

20 12–905.

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

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

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

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

28 12–907.

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

1 (1) The applicant [is an organization;

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

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

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

9 (iii) Command the confidence of the public;

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

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

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

16 (iii) Command the confidence of the public; [and]

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

22 **(4) ~~WITHIN 3 MONTHS AFTER BEING HIRED~~ BEFORE PROVIDING**
 23 **COUNSELING TO A CONSUMER, EACH DEBT MANAGEMENT COUNSELOR**
 24 **EMPLOYED BY THE APPLICANT OR THE APPLICANT’S AGENT WILL RECEIVE**
 25 **COMPREHENSIVE TRAINING IN COUNSELING SKILLS, PERSONAL FINANCE,**
 26 **BUDGETING, AND CREDIT AND DEBT MANAGEMENT.**

27 12–908.

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

30 (b) The application shall include:

31 (11) [Evidence] **IF APPLICABLE, EVIDENCE** of nonprofit status under
 32 § 501(c) of the Internal Revenue Code;

1 12-916.

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

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

6 2. **THE LICENSEE PROVIDES THE CONSUMER WITH A**
7 **WRITTEN SUMMARY OF THE COUNSELING OPTIONS AND STRATEGIES FOR**
8 **ADDRESSING THE CONSUMER'S DEBT PROBLEMS DEVELOPED UNDER §**
9 **12-901(E)(2) OF THIS SUBTITLE; AND**

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

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

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

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

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

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

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

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

31 (iv) The licensee has a reasonable expectation based on the
32 licensee's past experience that each creditor of the consumer that is listed as a
33 participating creditor in the consumer's debt management services agreement will

1 accept payment of the consumer’s debts owed to the creditor as provided in the
2 consumer’s debt management services agreement; [and]

3 (V) THE LICENSEE HAS MADE A DETERMINATION, BASED ON
4 THE LICENSEE’S ANALYSIS OF THE INFORMATION PROVIDED BY THE CONSUMER
5 AND OTHERWISE AVAILABLE TO IT, THAT:

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

8 2. THE CONSUMER WILL BE ABLE TO MEET THE
9 PAYMENT OBLIGATIONS UNDER THE DEBT MANAGEMENT SERVICES
10 AGREEMENT; AND

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

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

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

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

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

28 12-921.

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

32 (2) The annual report shall be on the form that the Commissioner
33 requires.

1 (3) The report shall include:

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

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

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

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

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

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

19 1. Payments to be disbursed to creditors; and

20 2. Payments for the licensee's services;

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

25 **(VIII) THE NUMBER OF CONSUMERS WHO SUCCESSFULLY**
26 **COMPLETED A DEBT MANAGEMENT PLAN DURING THE PRECEDING CALENDAR**
27 **YEAR;**

28 **(IX) THE NUMBER OF CONSUMERS WHO CEASED**
29 **PARTICIPATING IN A DEBT MANAGEMENT PLAN WITHOUT SUCCESSFULLY**
30 **COMPLETING THE PLAN DURING THE PRECEDING CALENDAR YEAR; AND**

31 ~~(VIII)~~ **(X) A REPRESENTATIVE SAMPLE OF THE WRITTEN**
32 **SUMMARY REQUIRED UNDER § 12-916(A)(1)(I)2 OF THIS SUBTITLE.**

33 12-922.

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

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

6 (2) Each debt management services agreement between the licensee
7 and a consumer;

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

10 (4) Bank statements and bank reconciliation records;

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

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

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

Approved:

Governor.

President of the Senate.

Speaker of the House of Delegates.