

The Commonwealth of Massachusetts

In the One Hundred and Ninety-Second General Court
(2021-2022)

1 by inserting after section 163 the following section:-

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

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

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

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

25 CHAPTER 255G

26 DEBT MANAGEMENT SERVICES

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

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

31 Business address, the physical location of a business, including the name and number of a
32 street.

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

35 Commissioner, the commissioner of banks.

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

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

39 Debt management services, directly or indirectly receiving an individuals money to
40 distribute it to 1 or more of an individuals creditors in partial or full satisfaction of the
41 individuals secured or unsecured debts; arranging the distribution or assisting an individual in the
42 distribution of an individuals money to 1 or more of an individuals creditors in partial or full
43 satisfaction of the individuals secured or unsecured debts; or acting or offering to act as an
44 intermediary between an individual and 1 or more of the individuals creditors to reduce, defer,
45 discharge or in any other way modify the terms and conditions of an individuals obligation to
46 repay secured or unsecured debts.

47 Division, the division of banks.

48 Individual, a natural person.

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

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

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

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

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

60 Trust Account, an account held by a provider that is: established by the provider in a
61 financial institution described in Section 3(4) of this chapter; separate from other accounts of the
62 provider or its designee; designated as a trust or other account such that it is clear that the money
63 in the trust account is not the money of the provider or its designee; and used to hold money of
64 one or more consumers for disbursement to the creditors of the consumers, in each case pursuant
65 to a debt management plan whereby consumers' funds are distributed, pro rata, on a periodic
66 basis to the consumers' creditors. An account established by a consumer that is both owned and
67 controlled by the consumer shall not be deemed to be a "trust account" for purposes of this
68 chapter.

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

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

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

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

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

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

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

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

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

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

92 (4) a bank as defined in section 1 of chapter 167, a national banking association, a
93 federally chartered credit union, a federal savings and loan association, a federal savings bank, or
94 any subsidiary of the above, or any bank, trust company, savings bank, savings and loan
95 association, or credit union organized under the laws of any other state, or any subsidiary of the
96 above;

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

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

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

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

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

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

114 Section 4. (a) The application for the license and the application for the license renewal
115 shall be in a form prescribed by the commissioner, signed under oath and containing information
116 as the commissioner shall determine. Applicants shall pay an investigation fee that the secretary
117 of administration and finance shall determine under section 3B of chapter 7. The commissioner

118 shall evaluate the applicants financial responsibility, character, reputation, integrity and general
119 fitness to determine whether the applicant will act lawfully, honestly, fairly, soundly and
120 efficiently in the public interest. The license shall be for a period of 1 year. The secretary of
121 administration and finance shall determine the license fee annually under section 3B of chapter
122 7. The following items shall be required in any application for a license under this Chapter:

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

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

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

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

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

138 (b) The commissioner may participate in a multi-state licensing system for the sharing of
139 regulatory information and for the licensing and application, by electronic or other means, of
140 entities engaged in the business of debt management services. The commissioner may establish
141 requirements for participation by an applicant in a multi-state licensing system which may vary
142 from the provisions set out in this section and section 2. The commissioner may require a
143 background investigation of each applicant for a license to engage in debt management services
144 by means of fingerprint and state and national criminal history record checks by the department
145 of criminal justice information services pursuant to section 172 of chapter 6 and the Federal
146 Bureau of Investigation. If the applicant is a partnership, association, corporation or other form
147 of business organization, the commissioner may require such background investigation by means
148 of fingerprint checks on each member, director, principal officer of such applicant, and any
149 individual acting as a manager of an office location. The applicant shall pay directly to such
150 multi-state licensing system any additional fee relating to participation in such multi-state
151 licensing system.

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

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

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

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

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

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

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

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

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

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

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

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

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

177 (4) the licensee has refused to permit the commissioner to examine the licensees books
178 and records under this chapter, failed to comply with section 13 or made a material
179 misrepresentation or omission in complying with section 13; or

180 (5) the licensee has not responded within a reasonable time and in an appropriate manner
181 to the commissioners communications.

182 (b) If the commissioner suspends, revokes, or denies renewal of a license, the
183 commissioner may seek a court order to seize the licensees books, records, accounts, property or
184 money in a trust account maintained by the provider.

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

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

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

194 (b) If the commissioner finds that a delay in issuing an order under subsection (a) will
195 irreparably harm the public interest, the commissioner may issue a temporary cease and desist
196 order. Upon the entry of a temporary cease and desist order, the commissioner shall promptly
197 notify the affected licensee in writing that the order has been entered, the reasons for the order
198 and that on or before the 20th day after the receipt of a written request from the licensee, the
199 matter will be scheduled for hearing to determine whether or not such temporary order shall
200 become permanent. If the commissioner does not order a hearing and a licensee does not request
201 a hearing, the order shall remain in effect until the commissioner modifies or vacates it. If a

202 hearing is requested or ordered, the commissioner shall vacate, modify or make the order
203 permanent, by written findings of fact and conclusions of law, after giving the licensee subject to
204 the order notice of and opportunity for a hearing.

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

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

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

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

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

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

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

227 (c) The commissioner shall preserve a full record of a licensee's examination, including a
228 statement of its condition. Examination records and reports, including work papers, information
229 derived from reports or in response to reports and any copies thereof in a licensee's possession
230 shall be confidential and privileged communications, shall not be subject to subpoena and shall
231 not be a public record under clause 26 of section 7 of chapter 4. For the purpose of this
232 paragraph, examination records and reports shall include examination records and reports that
233 any bank regulatory agency of a state, federal or foreign government conducted, which that
234 agency or government considers confidential, and which are in possession of the commissioner.
235 In any proceeding before a court, the court may issue a protective order to seal the record
236 protecting the confidentiality of a record, other than a record on file with the court or filed in
237 connection with the court proceeding, and the court may exclude the public from any portion of a
238 proceeding at which a record may be disclosed. The commissioner shall distribute copies of
239 examination reports to a licensee for its use only and the licensee shall not publish these reports
240 to any person or agency without the commissioner's prior written approval. The commissioner
241 may distribute any information, report, examination or statement relating to a licensee to any
242 regulatory or law enforcement agency.

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

247 Section 10. (a) A licensee shall complete and furnish a written budget analysis to an
248 individual before an individual may execute an agreement, which budget analysis may be based
249 on information provided by the individual. A licensee shall not execute an agreement unless the
250 budget analysis indicates that an individual can reasonably afford the payments established under
251 the stated agreement. The commissioner shall determine the information that a budget analysis
252 shall require.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

296 Section 13. A licensee shall file with the commissioner an annual report in a form that the
297 commissioner shall prescribe. The report shall be in writing, under oath, and contain information
298 related to the conduct of a licensees business. If a licensee neglects to file an annual report or
299 fails to amend the same on or before the fifteenth day after the commissioner provides notice to
300 the licensee, then the licensee shall pay a fine of \$50 per day during which the neglect or failure
301 to amend the same continues.

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

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

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

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

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

320 (d) With respect to agreements in which no fees are charged or collected until such time
321 as a settlement agreement has been reached with a creditor and at least one payment has been
322 made towards such agreement by the individual, the provider may collect a fee that: bears the
323 same proportional relationship to the total fee for renegotiating, settling, reducing, or altering the
324 terms of the entire debt balance as the individual debt amount bears to the entire debt amount
325 based on the time the debt was enrolled in the service; or is a percentage of the amount saved as
326 a result of the renegotiation, settlement, reduction, or alteration, provided that the percentage

327 charged to an individual cannot change from one debt to another, and provided further that the
328 amount saved shall be calculated as the difference between the amount owed at the time the debt
329 was enrolled in the plan and the amount actually paid to satisfy the debt.

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

332 Section 15A. A licensee may not:

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

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

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

340 (d) settle a debt or lead an individual to believe that a payment to a creditor is in
341 settlement of a debt to the creditor unless, at the time of settlement, the individual receives a
342 confirmation from the creditor that the payment is in full settlement of the debt, or is part of a
343 payment plan that is in full settlement of the debt;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

388 (c) Notwithstanding the requirement set forth in clauses (1) and (2) of subsection (b), a
389 provider that enables, or arranges to enable, 24 hours a day, 7 days a week, electronic access by a

390 consumer to all of the consumers deposit account transaction information, including, but not
391 limited to, all deposit and withdrawal activity, and electronic access by a consumer to debt
392 management account activity, including, but not limited to, such settlement information as
393 account status, settlement dates, settlement amounts and fees paid, shall be deemed to have
394 satisfied the content requirements in subsection (a) and the distribution requirements in
395 subsection (b).

396 Section 17. A person shall not advertise, announce, broadcast, display, distribute, print,
397 publish, televise or permit any other person to advertise, announce, broadcast, display, distribute,
398 print, publish or televise on its behalf a statement or representation that is deceptive, false or
399 misleading.

400 17A. All communications required by this Act that take place between providers and
401 individuals may take place by electronic means.

402 (a) In this section:

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

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

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

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

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

414 (1) contains no other information; and

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

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

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

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

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

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

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

435 (i) if a provider wishes to terminate an agreement with a consumer pursuant to Section
436 22(h), it shall notify the consumer that it will terminate the agreement unless the consumer,
437 within thirty days after receiving the notification, consents to electronic communication in the
438 manner provided in section 101 (c) of the federal act.

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

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

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

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

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

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

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