

HOUSE No. 956

The Commonwealth of Massachusetts

PRESENTED BY:

Daniel Cahill

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:	DISTRICT/ADDRESS:	DATE ADDED:
<i>Daniel Cahill</i>	<i>10th Essex</i>	<i>1/18/2023</i>

HOUSE No. 956

By Representative Cahill of Lynn, a petition (accompanied by bill, House, No. 956) of Daniel Cahill relative to the licensing and supervision of debt management services. Financial Services.

The Commonwealth of Massachusetts

**In the One Hundred and Ninety-Third General Court
(2023-2024)**

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 Section 4A. (a) As used in this chapter, credit counseling services shall mean: (1) the
5 providing of financial and budgetary advice and judgment to individuals for compensation or
6 gain in connection with the creation of a budgetary plan; (2) the creation of a plan whereby an
7 individual turns over an agreed amount of his income to a nonprofit credit counseling
8 corporation which distributes it to the creditors of that individual in accordance with a plan
9 which they have approved and which may provide for smaller payments or a longer term than the
10 original contract; (3) the providing of educational services relating to the use of credit; or (4) any
11 combination of clauses (1), (2) or (3).

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

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

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

24 CHAPTER 255G

25 DEBT MANAGEMENT SERVICES

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

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

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

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

34 Commissioner, the commissioner of banks.

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

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

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

46 Division, the division of banks.

47 Individual, a natural person.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

91 (4) a bank as defined in section 1 of chapter 167, a national banking association, a
92 federally chartered credit union, a federal savings and loan association, a federal savings bank, or
93 any subsidiary of the above, or any bank, trust company, savings bank, savings and loan

94 association, or credit union organized under the laws of any other state, or any subsidiary of the
95 above;

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

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

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

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

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

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

113 Section 4. (a) The application for the license and the application for the license renewal
114 shall be in a form prescribed by the commissioner, signed under oath and containing information

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

331 Section 15A. A licensee may not:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

399 17A. All communications required by this Act that take place between providers and
400 individuals may take place by electronic means.

401 (a) In this section:

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

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

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

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

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

413 (1) contains no other information; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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