

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2004

A N A C T

RELATING TO BUSINESSES AND PROFESSIONS -- CREDIT COUNSELORS

Introduced By: Senators Walaska, Gallo, P Fogarty, F Caprio, and Alves

Date Introduced: February 10, 2004

Referred To: Senate Financial, Technology, Regulatory

It is enacted by the General Assembly as follows:

1 SECTION 1. Chapter 5-66 of the General Laws entitled "Debt Pooling" is hereby
2 repealed in its entirety.

3 CHAPTER ~~5-66~~

4 ~~Debt Pooling~~

5 ~~**5-66-1. Definitions.** -- As used in this chapter, the following words and phrases are~~
6 ~~construed as follows:~~

7 ~~-(1) "Bona fide nonprofit organization" means a corporation qualifying as a 26 U.S.C.~~
8 ~~section 501(c)(3) nonprofit organization, in the operation of which no member, director, officer,~~
9 ~~partner, employee, agent, or other affiliated person profits financially other than receiving~~
10 ~~reasonable salaries if applicable, and which provides debt pooling services for individuals at no~~
11 ~~cost or a cost not exceeding that required to defray bona fide expenses in order to provide the~~
12 ~~services.~~

13 ~~-(2) "Debt pooling" means the receiving, as agent of a debtor, money or evidences of~~
14 ~~money for the purpose of distributing the money or evidences of money among creditors in full or~~
15 ~~partial payment of obligations of the debtor.~~

16 ~~-(3) "Director" means the director of business regulation, or his or her designee.~~

17 ~~**5-66-2. License required.** -- With the exception of the Rhode Island consumers' council,~~
18 ~~a state agency, no person, firm, or corporation, other than a bona fide nonprofit organization,~~
19 ~~engages in the business of debt pooling in this state. No bona fide nonprofit organization engages~~

1 ~~in the business of debt pooling in this state without a license issued in accordance with the~~
2 ~~provisions of this chapter. Any bona fide nonprofit organization desiring to obtain a license files~~
3 ~~with the department of business regulation an application, in writing, under oath, providing any~~
4 ~~information that may be required by the director. The director may propound interrogatories to an~~
5 ~~applicant for a license under this chapter relating to qualifications, residence, prospective place of~~
6 ~~business, plan of business operation and any matters which are necessary in order to protect the~~
7 ~~public and ascertain the qualifications of the applicant. The director may conduct an inquiry or~~
8 ~~investigation to determine the applicant's fitness to be licensed or continue to be licensed. Failure~~
9 ~~by the applicant to secure approval by the director does not preclude him or her from applying as~~
10 ~~many times as he or she desires, but no application is made within six (6) months subsequent to~~
11 ~~the date upon which the director denied the last application. A license issued under this chapter is~~
12 ~~effective for two (2) years; provided, that the licensee remains in the business of debt pooling,~~
13 ~~unless revoked prior to this by the director; provided, that nothing in this chapter is construed to~~
14 ~~apply to an attorney at law admitted to the practice and in good standing before the supreme court~~
15 ~~of this state while holding him or herself out as an attorney.~~

16 ~~**5-66-3. Grounds for denial or revocation of license.** --- (a) The director may deny,~~
17 ~~revoke, or suspend any license under this chapter for cause upon ten (10) days' notice, in writing,~~
18 ~~sent by certified mail to the principal place of business of the licensee or residence of the~~
19 ~~applicant, stating the contemplated action and reason for the action but only after allowing the~~
20 ~~licensee a reasonable opportunity to be heard. The director may deny, revoke, or suspend any~~
21 ~~license for the following causes:~~

- 22 ~~(1) Conviction of a crime involving moral turpitude;~~
- 23 ~~(2) Violation of or inability to meet any provision of this chapter;~~
- 24 ~~(3) Fraud or deceit or, if the licensee was not at the time of application and is still not~~
25 ~~entitled to obtain a license under this chapter;~~
- 26 ~~(4) The licensee no longer meets the requirements necessary to obtain a license under~~
27 ~~this chapter;~~
- 28 ~~(5) Maintenance of a continuous course of unfair conduct; or~~
- 29 ~~(6) Insolvency, any past or present proceeding of bankruptcy, receivership or assignment~~
30 ~~for the benefit of creditors by any licensee or applicant for a license under this chapter.~~

31 ~~(b) Any person aggrieved by an order or decision of the director may appeal to the~~
32 ~~superior court for the county in which he or she resides within twenty (20) days after the order or~~
33 ~~decision is mailed by certified mail to the applicant or licensee, as the case may be. No order or~~
34 ~~decision is stayed on appeal except by order of the superior court.~~

1 ~~**5-66-4. Bond required.**— The applicant files a bond with the director, to be approved by~~
2 ~~him or her, in the sum equal to the amount of moneys received from debtors and on hand at any~~
3 ~~time but not less than twenty thousand dollars (\$20,000) with one or more insurers, approved by~~
4 ~~the director, which does not exceed the sum in the aggregate. The bond runs to the state for the~~
5 ~~use of the state and of any person or persons who may have a cause of action against the obligor~~
6 ~~of bond under the provisions of this chapter. The bond is conditioned that the obligor faithfully~~
7 ~~conforms to and abides by the provisions of this chapter and all of the rules and regulations of the~~
8 ~~director made under this chapter, and pays to the state and any person or persons any and all~~
9 ~~moneys that may become due or owing to the state or to the person or persons from the obligor~~
10 ~~under and by virtue of this chapter.~~

11 ~~**5-66-5. Penalty for violation.**— Any person, partnership, association, or corporation~~
12 ~~violating any of the provisions of this chapter is, upon conviction, fined not more than one~~
13 ~~thousand dollars (\$1,000) for each offense.~~

14 ~~**5-66-6. Posting of license -- Business of licensee.**— Each license or a copy is posted~~
15 ~~conspicuously in each office of the licensee. No license is transferable or assignable. The licensee~~
16 ~~is limited solely to the business of debt pooling, credit counseling, and credit education.~~

17 ~~**5-66-7. Separate bank account for benefit of debtors -- Books and records.**— Each~~
18 ~~licensee maintains a separate bank account for the benefit of debtors in which all payments~~
19 ~~received from debtors for the benefit of creditors are deposited and in which all payments remain~~
20 ~~until a remittance is made to either a debtor or a creditor. Every licensee maintains books,~~
21 ~~accounts, and records which are open to the director to enable him or her to determine whether~~
22 ~~the licensee is complying with the provisions of this chapter and with the regulations of the~~
23 ~~director. Every licensee preserves the books, accounts, and records for at least seven (7) years~~
24 ~~after making the final entry on any transaction record therein.~~

25 ~~**5-66-8. Licensee's duties.**— Each licensee:~~

26 ~~(1) Keeps complete and adequate records during the term of the contract with the debtor~~
27 ~~and for a period of seven (7) years from the date of cancellation or completion of the contract~~
28 ~~with each debtor, and these records contain complete information regarding the contract,~~
29 ~~extensions of the contract, payments, disbursements and charges, and are open to inspection by~~
30 ~~the director and his or her appointed agents during normal business hours;~~

31 ~~(2) Makes remittances to creditors within a reasonable period of time after receipt of any~~
32 ~~funds, less prorated fees and costs, unless the reasonable payment of one or more of the debtor's~~
33 ~~obligations requires that funds be held for a longer period so as to accumulate a sum certain; and~~

34 ~~(3) Furnishes the debtor with a written statement of his or her account within a~~

1 ~~reasonable time after the debtor requests it and within ninety (90) days after the completion of the~~
2 ~~pooling of the debtor's debts, and furnishes the debtor a verbal accounting at any time the debtor~~
3 ~~requests it during normal business hours.~~

4 ~~**5-66-9. Prohibited acts. --**~~ No licensee:

5 ~~(1) Purchases from a creditor any obligation of a debtor;~~

6 ~~(2) Operates as a collection agent and as a licensee as to the same debtor's account;~~

7 ~~(3) Executes any contract or agreement to be signed by the debtor unless the contract or~~
8 ~~agreement is fully and completely filled in and finished;~~

9 ~~(4) Pays any bonus or consideration to any person for the referral of a debtor to his or her~~
10 ~~business or accepts or receives any bonus, commission or consideration for referring any debtor~~
11 ~~to any person for any reason; or~~

12 ~~(5) Advertises, displays, distributes, broadcasts, or televises his or her services, rates, or~~
13 ~~terms in any manner where any false, misleading or deceptive statements or representations are~~
14 ~~made with regard to the services to be performed by the licensee or the charges to be made.~~

15 ~~**5-66-10. [Repealed.]--**~~

16 SECTION 2. Sections 19-14-1, 19-14-2, 19-14-3, 19-14-4 and 19-14-6 of the General
17 Laws in Chapter 19-14 entitled "Licensed Activities" are hereby amended to read as follows:

18 ~~**19-14-1. Definitions. --**~~ For purposes of this chapter and chapters 14.1, 14.2, 14.3, 14.4,
19 ~~and~~ 14.6 ~~and~~ 14.7 of this title:

20 (1) "Check" means any check, draft, money order, personal money order, or other
21 instrument for the transmission or payment of money. For the purposes of check cashing,
22 travelers checks or foreign denomination instruments shall not be considered checks. "Check
23 cashing" means providing currency for checks;

24 (2) "Deliver" means to deliver a check to the first person who in payment for the check
25 makes or purports to make a remittance of or against the face amount of the check, whether or not
26 the deliverer also charges a fee in addition to the face amount, and whether or not the deliverer
27 signs the check;

28 (3) "Electronic money transfer" means receiving money for transmission within the
29 United States or to locations abroad by any means including, but not limited to, wire, facsimile or
30 other electronic transfer system;

31 (4) (i) "Lender" means any person who makes or funds a loan within this state with the
32 person's own funds, regardless of whether the person is the nominal mortgagee or creditor on the
33 instrument evidencing the loan;

34 (ii) A loan is made or funded within this state if any of the following conditions exist:

1 (A) The loan is secured by real property located in this state;

2 (B) An application for a loan is taken by an employee, agent, or representative of the
3 lender within this state;

4 (C) The loan closes within this state; or

5 (D) The loan solicitation is done by an individual with a physical presence in this state.

6 (iii) The term "lender" shall also include any person engaged in a transaction whereby
7 the person makes or funds a loan within this state using the proceeds of an advance under a line
8 of credit over which proceeds the person has dominion and control and for the repayment of
9 which the person is unconditionally liable. This transaction is not a table funding transaction. A
10 person is deemed to have dominion and control over the proceeds of an advance under a line of
11 credit used to fund a loan regardless of whether:

12 (A) The person may, contemporaneously with or shortly following the funding of the
13 loan, assign or deliver to the line of credit lender one or more loans funded by the proceeds of an
14 advance to the person under the line of credit;

15 (B) The proceeds of an advance are delivered directly to the settlement agent by the line
16 of credit lender, unless the settlement agent is the agent of the line of credit lender;

17 (C) One or more loans funded by the proceeds of an advance under the line of credit is
18 purchased by the line of credit lender; or

19 (D) Under the circumstances as set forth in regulations adopted by the director or the
20 director's designee pursuant to this chapter;

21 (5) "Licensee" means an entity licensed under this chapter;

22 (6) "Loan" means any advance of money or credit including, but not limited to:

23 (i) Loans secured by mortgages;

24 (ii) Insurance premium finance agreements;

25 (iii) The purchase or acquisition of retail installment contracts or advances to the holders
26 of those contracts;

27 (iv) Educational loans;

28 (v) Any other advance of money; or

29 (vi) Any transaction such as those commonly known as "pay day loans," "pay day
30 advances," or "deferred presentment loans," in which a cash advance is made to a customer in
31 exchange for the customer's personal check, or in exchange for the customer's authorization to
32 debit the customer's deposit account, and where the parties agree either that the check will not be
33 cashed or deposited, or that customer's deposit account will not be debited, until a designated
34 future date.

1 (7) "Loan broker" means any person who, for compensation or gain, or in the expectation
2 of compensation or gain, either directly or indirectly, solicits, processes, negotiates, places or sells
3 a loan within this state for others in the primary market, or offers to do so. A loan broker shall
4 also mean any person who is the nominal mortgagee or creditor in a table funding transaction. A
5 loan is brokered within this state if any of the following conditions exist:

6 (i) The loan is secured by real property located in this state;

7 (ii) An application for a loan is taken by an employee, agent or representative of the loan
8 broker within this state;

9 (iii) The loan closes within this state; or

10 (iv) The loan solicitation is done by an individual with a physical presence in this state.

11 (8) "Personal money order" means any instrument for the transmission or payment of
12 money in relation to which the purchaser or remitter appoints or purports to appoint the seller as
13 his or her agent for the receipt, transmission, or handling of money, whether the instrument is
14 signed by the seller or by the purchaser or remitter or some other person;

15 (9) "Primary market" means the market in which loans are made to borrowers by lenders,
16 whether or not through a loan broker or other conduit;

17 (10) "Principal owner" means any person who owns, controls, votes or has a beneficial
18 interest in, directly or indirectly, ten percent (10%) or more of the outstanding capital stock of a
19 licensee;

20 (11) "Sell" means to sell, to issue, or to deliver a check;

21 (12) "Small loan" means a loan of less than five thousand dollars (\$5,000), not secured
22 by real estate, made pursuant to the provisions of chapter 14.2 of this title;

23 (13) "Small loan lender" means a lender engaged in the business of making small loans
24 within this state;

25 (14) "Table funding transaction" means a transaction in which there is a
26 contemporaneous advance of funds by a lender and an assignment by the mortgagee or creditor of
27 the loan to the lender;

28 (15) "Check casher" means a person or entity that, for compensation, engages, in whole
29 or in part, in the business of cashing checks;

30 (16) "Deferred deposit transaction" means any transaction such as those commonly
31 known as "pay-day loans," "pay-day advances," or "deferred presentment loans" in which a cash
32 advance is made to a customer in exchange for the customer's personal check or in exchange for
33 the customer's authorization to debit the customer's deposit account and where the parties agree
34 either that the check will not be cashed or deposited, or that the customer's deposit account will

1 not be debited until a designated future date;

2 (17) "Insurance premium finance agreement" means an agreement by which an insured,
3 or prospective insured, promises to pay to an insurance premium finance company the amount
4 advanced or to be advanced, under the agreement to an insurer or to an insurance producer, in
5 payment of a premium or premiums on an insurance contract or contracts, together with interest
6 and a service charge, as authorized and limited by this title;

7 (18) "Insurance premium finance company" means a person engaged in the business of
8 making insurance premium finance agreements or acquiring insurance premium finance
9 agreements from other insurance premium finance companies; ~~and~~

10 (19) "Simple interest" means interest computed on the principal balance outstanding
11 immediately prior to a payment for the actual number of days between payments made on a loan
12 over the life of a loan. ;

13 (20) "Credit counseling service" means a person or corporation that provides DMP
14 service to consumers, usually for a fee, contribution, or other consideration;

15 (21) "Debt Management plan (DMP)" means a program whereby money is received from
16 a consumer by the credit counseling service for the purpose of distributing that money to one or
17 more creditors of the consumer in full or partial payment of the consumer's obligation;

18 (22) "Nonprofit organization" means a corporation qualifying as a 26 U.S.C. section 50
19 (c)(3) nonprofit organization, in the operation of which no member, director, officer, partner,
20 employee, agent, or other affiliated person profits financially other than receiving reasonable
21 salaries if applicable, and which provides debt counseling services for individuals at no cost or a
22 cost not exceeding that required to defray bona fide expenses in order to provide the services; and

23 (23) "Joint control agent" means any person engaged in the business of receiving money
24 or other property for disbursal or use in payment of the cost of labor, material services, permits,
25 fees, or other items of expense incurred in the construction of improvements upon real property.

26 **19-14-2. Licenses required.** -- No person shall engage within this state in the business
27 of: (1) making or funding loans or acting as a lender or small loan lender; (2) brokering loans or
28 acting as a loan broker; (3) selling checks for a fee or other consideration; (4) cashing checks for
29 a fee or other consideration which includes any premium charged for the sale of goods in excess
30 of the cash price of the goods; ~~or~~ (5) providing electronic money transfers for a fee or other
31 consideration; or (6) providing debt management plan(s) without first obtaining a license from the
32 director or the director's designee. The licensing requirement for any person providing debt
33 management plans shall apply to all persons, without regard for state of incorporation or a
34 physical presence in this state, who initiate or service debt management plans for residents of this

1 [state](#). Special exemptions from licensing for each activity are contained in other chapters in this
2 title.

3 **19-14-3. Application for license.** – (a) Application for a license shall be made in writing
4 under oath in a form to be provided by the director or the director's designee. The applicant at the
5 time of making application shall pay to the director or the director's designee the sum of one half
6 (1/2) of the annual license fee as a fee for investigating the application. If the application for
7 license is approved, the applicant shall pay a fee equal to the annual license fee as provided in this
8 chapter. The license shall be continuous and the license fee shall cover the period through March
9 31 of each year. Any application approved after January 1 of any given year shall pay one half
10 (1/2) of the annual license fee for the period ending March 31 of that year.

11 [\(b\) Only a nonprofit organization may apply for a license to provide debt management](#)
12 [plan\(s\) under this title. Any nonprofit organization desiring to obtain a license shall file with the](#)
13 [department of business regulation an application in writing under oath providing the following](#)
14 [information:](#)

15 [\(1\) Proof of nonprofit status as determined by being designated under the United States](#)
16 [Internal Revenue Code as Section 501 \(-c-\)\(-3-\).](#)

17 [\(2\) Proof of a separate trust account with a federally-insured financial institution for the](#)
18 [handling of client funds.](#)

19 [\(3\) Proof of counselor certification through a bona fide third-party certification provider](#)
20 [that demonstrates the competence of counselors providing consumer assistance.](#)

21 [\(4\) Proof of a board of directors, a majority of which does not include individuals for](#)
22 [whom such a position could pose a conflict with the mission of the organization, such as creditors](#)
23 [and creditors' representatives: bankruptcy attorneys, and others who would have a direct stake in](#)
24 [the outcome of the counseling process. The board must have a working majority that is not](#)
25 [comprised of officers of the company or their relatives.](#)

26 [\(5\) Proof of agency accreditation provided by a bona fide third-party accreditation body](#)
27 [such as the council on accreditation or as approved by the director. Such accreditation shall](#)
28 [include sector certification that insures compliance to industry standards and best practices and](#)
29 [corporate governance.](#)

30 [\(6\) A copy of an annual audit by an independent certified public accountant, which such](#)
31 [audit taking place within six \(6\) months of the close of the agency's fiscal year.](#)

32 [\(c\) The director shall require a background report prepared by an independent licensed](#)
33 [private investigation firm for every applicant for a license to engage in the business of providing](#)
34 [debt management plan\(s\), including said applicant's principal owners and officers. The cost of](#)

1 such report shall be borne by the applicant. The director may conduct an additional inquiry or
2 investigation to determine the applicant's fitness to be licensed or continue to be licensed.

3 (d) Any license issued under the provisions of former section 5-66-2 shall remain in full
4 force and effect until its expiration and shall be subject to the provisions of this chapter.

5 **19-14-4. Annual fee.** -- (a) Each licensee shall pay an annual license fee as follows:

6 (1) Each small loan lender license and each branch certificate, the sum of five hundred
7 fifty dollars (\$550);

8 (2) Each loan broker license and each branch certificate, the sum of five hundred fifty
9 dollars (\$550);

10 (3) Each lender license and each branch certificate, the sum of one thousand one hundred
11 dollars (\$1,100);

12 (4) Each sale of checks license, the sum of three hundred dollars (\$300);

13 (5) Each check cashing license, the sum of three hundred dollars (\$300); ~~and~~

14 (6) Each electronic money transfer license, the sum of three hundred dollars (\$300); ;

15 and

16 (7) Each debt management plan license, the sum of two hundred dollars (\$200).

17 (b) Any licensee who shall not pay the annual fee by March 31 of each year shall be
18 subject to a daily penalty of twenty-five dollars (\$25) per day, subject to a maximum of seven
19 hundred fifty dollars (\$750). The penalty shall be paid to the director to and for the use of the
20 state. The penalty may be waived for good cause by the director or the director's designee, upon
21 written request.

22 **19-14-6. Bond of applicant.** -- (a) An applicant for any license shall file with the director
23 or the director's designee a bond to be approved by him or her in which the applicant shall be the
24 obligor.

25 (b) The amount of the bond shall be as follows:

26 (1) Small loan lenders, the sum of ten thousand dollars (\$10,000);

27 (2) Loan brokers, the sum of ten thousand dollars (\$10,000);

28 (3) Lenders, the sum of twenty-five thousand dollars (\$25,000);

29 (4) Sale of checks and electronic money transfer licensees, the sum of fifty thousand
30 dollars (\$50,000) subject to a maximum of one hundred and fifty thousand dollars (\$150,000)
31 when aggregated with agent locations;

32 (5) Check cashing licensees who accept checks for collection with deferred payment, the
33 sum of fifty thousand dollars (\$50,000) subject to a maximum of one hundred and fifty thousand
34 dollars (\$150,000) when aggregated with agent locations;

1 (6) Foreign exchange licensees, the sum of ten thousand dollars (\$10,000); ~~or~~

2 (7) Each branch or agent location of a licensee, the sum of five thousand dollars
3 (\$5,000) ~~;~~ or

4 (8) Each debt management plan licensee, the sum equal to the amount of moneys
5 received from debtors and on hand at any time, but not less than twenty thousand dollars
6 (\$20,000) with one or more insurers, approved by the director, which does not exceed the sum in
7 the aggregate.

8 (c) The bond shall run to the state for the use of the state and of any person who may
9 have cause of action against the obligor of the bond under the provisions of this title. The bond
10 shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of
11 this title and of all rules and regulations lawfully made, and the obligor will pay to the state and to
12 any person any and all money that may become due or owing to the state or to the person from
13 the obligor under and by virtue of the provisions of this title.

14 (d) The provisions of subsection (b)(6) of this section shall not apply to any foreign
15 exchange business holding a valid electronic money transfer license issued pursuant to section
16 19-14-1 et seq., that has filed with the division of banking the bond required by subsections (b)(4)
17 and (b)(7) of this section.

18 (e) The bond shall remain in force and effect until the surety is released from liability by
19 the director or the director's designee or until the bond is cancelled by the surety. The surety may
20 cancel the bond and be released from further liability under the bond upon receipt by the director
21 or the director's designee of written notice of the cancellation of the bond at least thirty (30) days
22 in advance of the cancellation of the bond. The cancellation shall not affect any liability incurred
23 or accrued under the bond before the termination of the thirty (30) day period. Upon receipt of
24 any notice of cancellation, the director shall provide written notice to the licensee.

25 SECTION 3. Title 19 of the General Laws entitled "Financial Institutions" is hereby
26 amended by adding thereto the following chapter:

27 CHAPTER 14.7

28 NONPROFIT CREDIT COUNSELING SERVICES ACT

29 **19-14.7-1. Short title.** -- This chapter shall be known as the "Nonprofit Credit
30 Counseling Services Act."

31 **19-14.7-2. Special exemptions.** -- No license to provide debt management plans shall be
32 required of any:

33 (a) Regulated institutions and banks or credit unions organized under the laws of the
34 United States, or banks or credit unions organized under the laws of any state within the United

1 States if the laws of the state in which the bank or credit union is organized authorizes under
2 conditions not substantially more restrictive than those imposed by the laws of this state, as
3 determined by the director or the director's designee, a financial institution or credit union to
4 engage in the business of originating or brokering loans in the other state; no bank or credit union
5 duly organized under the laws of another state within the United States may receive deposits, pay
6 checks or lend money from an established location within this state without having obtained the
7 approval of the director or the director's designee pursuant to chapter 19-7 of the general laws;

8 (b) Person licensed to practice law in this state when services are rendered in the course
9 of his or her practice as an attorney and fees for such services are not in excess of those stated in
10 this chapter;

11 (c) Transaction in which money or other property is paid through a "joint control agent";

12 (d) Merchant-owned credit or creditors association;

13 (e) A certified public accountant (CPA), when services are rendered in the course of his
14 or her practice as a CPA and fees for such services are not in excess of those stated in this
15 chapter.

16 **19-14.7-3. Licensee's duties. --** (a) All debt management plans must be evidenced by a
17 written agreement between the credit counseling agency and the consumer, clearly acknowledged
18 by both parties. A copy of the agreement must be provided to the consumer.

19 (b) All debt management plan agreements must contain the following:

20 (1) the name and address of both the consumer and the credit counseling agency;

21 (2) a full description of all services to be performed for the consumer;

22 (3) a clear indication of the costs to the consumer, including contributions or fees,
23 highlighted in bold type;

24 (4) a statement that the agreement may be terminated for any reason by the consumer and
25 that the consumer has no obligation to continue the arrangement unless satisfied with the services
26 provided;

27 (5) an indication of how to resolve disputes under the agreement, including the telephone
28 number of the department of business regulation;

29 (6) a complete list of the consumer's and agency's obligations that are subject to the
30 agreement; and

31 (7) a budget analysis showing, as a minimum, sources of income, detailed monthly
32 expenses, and debt payments.

33 (c) Licensees shall:

34 (1) Maintain complete and adequate records during the term of the contract with the

1 consumer and for a period of seven (7) years from the date of cancellation or completion of the
2 contract with each debtor. These records shall contain complete information regarding the
3 contract, extensions of the contract, payments, disbursements and charges, and shall be open to
4 inspection by the director and his or her appointed agents during normal business hours;

5 (2) Make remittances to creditors within a reasonable period of time after receipt of any
6 funds, less prorated fees and costs, unless the reasonable payment of one or more of the debtor's
7 obligations requires that funds be held for a longer period so as to accumulate a sum certain;

8 (3) Furnish the consumer with a written statement of his or her account on a regular basis,
9 as established by the director and within a reasonable time after the consumer requests it and
10 within ninety (90) days after the completion of the credit counseling agreement, and furnish the
11 consumer a verbal accounting at any time the consumer requests it during normal business hours;
12 and

13 (4) Keep the cost to the consumer for the credit counseling services as low as possible. In
14 no event, shall the cost to the consumer, including voluntary contributions, exceed those set by
15 regulation. All material contracts or fee for service arrangements with any third-party out sources,
16 companies, or vendors must be disclosed to the director. No one may be denied access to the debt
17 management plans because of an inability to pay a fee.

18 **19-14.7-4. Prohibited acts. -- No licensee shall:**

19 (a) Purchase from a creditor any obligation of a consumer;

20 (b) Operate as a collection agent and as a licensee for the same consumer's account;

21 (c) Execute any contract or agreement to be signed by the consumer, unless the contract
22 or agreement is completed in full;

23 (d) Pay any bonus or consideration to any person for the referral of a debtor to his or her
24 business or accept or receive any bonus, commission, or consideration for referring any consumer
25 to any person for any reason;

26 (e) Advertise, display, distribute, broadcast, or televise his or her services, rates, or terms
27 in any manner where any false, misleading, or deceptive statements or representations are made
28 with regard to the services to be performed by the licensee or the charges to be made;

29 (f) Lend money or provide credit to any consumer;

30 (g) Obtain a mortgage or any other security interest in property of a consumer;

31 (h) Pay any incentive to its employees for the executing of any debt management plan
32 contracts or receive any undisclosed compensation, bonds, commissions, or compensation for
33 referring any consumer for any reason; or

34 (i) Enter into any contract or fee for service arrangement with any company or vendor

1 owned, controlled, or affiliated with an officer or director or relative of an officer or director that
2 materially personally benefits, enriches, or inures benefit to an officer or director of the nonprofit
3 credit counseling agency.

4 SECTION 4. This act shall take effect upon passage.

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LC00895/SUB A/3
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO BUSINESSES AND PROFESSIONS -- CREDIT COUNSELORS

1 This act would create a new chapter regulating consumer credit counseling agencies and
2 their customers. It would provide for increased scrutiny over agency actions and more protection
3 for consumers.

4 This act would also acknowledge debt pooling licenses issued pursuant to the repealed
5 debt pooling law, and would provide that said licenses would remain effective until their
6 expiration date.

7 This act would take effect upon passage.

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LC00895/SUB A/3
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