

**HOUSE . . . . . No. 334**

By Mr. Torrasi of North Andover, petition of David M. Torrasi and others for legislation to establish standards for consumer credit counseling. Consumer Protection and Professional Licensure.

**The Commonwealth of Massachusetts**

PETITION OF:

David M. Torrasi  
Susan C. Tucker

James B. Eldridge

In the Year Two Thousand and Seven.

AN ACT TO ESTABLISH STANDARDS FOR CONSUMER CREDIT COUNSELING.

*Be it enacted by the Senate and House of Representatives in General Court assembled, and by the authority of the same, as follows:*

1 The General Laws, as appearing in the 2004 Official Edition, are  
2 hereby amended by repealing Section 4A of Chapter 180 and  
3 inserting after Chapter 255E the following new chapter:—

**CHAPTER 255F.  
Consumer Credit Counseling.**

6 Section 1. For the purposes of this chapter, the following words  
7 shall have the following meanings unless the context clearly requires  
8 otherwise:—

- 9 “Client”, a person who engages the services of a credit counselor.
- 10 “Commissioner”, the commissioner of banks.
- 11 “Consumer credit counseling services”,
  - 12 (a) the provision of financial and budgetary advice and judg-
  - 13 ment to individuals in connection with the creation of a budgetary
  - 14 plan for personal, family or household purposes; or
  - 15 (b) the creation of a plan whereby an individual turns over an
  - 16 agreed amount of his income to a credit counseling corporation

17 which distributes it to his creditors in accordance with a plan which  
18 they have approved and which may provide for smaller payments or  
19 a longer term than the original contract; or

20 (c) the provision of educational services relating to the use of  
21 credit; or

22 d) any combination of these.

23 “Creditor”, includes a general creditor, a secured creditor, a lien  
24 creditor and any representative of creditors, including an assignee  
25 for the benefit of creditors, a trustee in bankruptcy, a receiver in  
26 equity and an executor or administrator of an insolvent debtor’s or  
27 assignor’s estate.

28 “Debt Management Plan”, a written agreement entered into by a  
29 licensee and an individual whereby an individual turns over an  
30 agreed amount of his income to a credit counseling corporation  
31 which distributes it to his creditors in accordance with a plan which  
32 they have approved and which may provide for smaller payments or  
33 a longer term than the original contract.

34 “License”, a written certificate issued by the commissioner,  
35 authorizing a person or entity to provide consumer credit counseling  
36 services to residents of Commonwealth.

37 “Licensee”, a person or entity licensed under this act to perform  
38 consumer credit counseling services.

39 Section 2. No person or entity shall engage in consumer credit  
40 counseling services with any individual residing within the bound-  
41 aries of this Commonwealth nor shall they advertise consumer credit  
42 counseling services within the boundaries of this Commonwealth  
43 without first obtaining a license from the commissioner. All written  
44 advertisements and solicitations by a licensee shall include a state-  
45 ment that the licensee is licensed by the commissioner and shall pro-  
46 vide the license number of the licensee. The commissioner may from  
47 time to time establish such regulations pertaining to the conduct of  
48 the business as he may deem necessary.

49 No person, other than an attorney or a nonprofit charitable corpo-  
50 ration licensed by the commissioner, shall enter into a debt manage-  
51 ment plan with a client. Each such corporation shall comply with the  
52 provisions of Section 8F of Chapter 12.

53 Any such corporation formed for credit counseling purposes shall  
54 not engage in the practice of law. If it appears that an individual  
55 receiving credit counseling services needs legal advice or counsel,

56 he shall be referred to an attorney of his own choice, the local bar  
57 association referral service, or a local legal aid program, whichever  
58 course may seem most appropriate.

59 A licensee shall charge a reasonable fee under a consumer credit  
60 counseling services contract. If, upon review, the commissioner shall  
61 determine that the fees or service charges set by the licensee are  
62 unreasonable, he shall direct the licensee to make adjustments in  
63 said fees and service charges in accordance with his findings, which  
64 shall set forth a detailed factual basis and reasoning supporting such  
65 finding.

66 All deposits paid to a consumer credit counseling service by con-  
67 sumers for disbursement to their creditors shall be deposited in one  
68 or more trust accounts maintained at a federally insured financial  
69 institution. Said account(s) shall contain only those funds collected  
70 from such clients or applicants. A licensee may offset funds in the  
71 trust account(s) against payments to which it is entitled for services  
72 actually performed or for reimbursement for authorized fees paid  
73 directly to third parties. All offsets shall be accounted for through  
74 written documentation evidencing the amount of offset. The licensee  
75 shall maintain complete and accurate trust account records and shall  
76 produce, upon request, all documents pertaining to trust account  
77 activity.

78 A consumer credit counseling agency:—

79 (i) May not engage in false or misleading advertising concerning  
80 the terms or conditions of any services or assistance offered;

81 (ii) Must show proof of counselor certification through a bona  
82 fide third-party certification provider that demonstrates the compe-  
83 tence of counselors providing consumer assistance;

84 (iii) Must have a board of directors, a majority of which does not  
85 include individuals for whom such a position could impose a con-  
86 flict with the mission of the organization, such as creditors and cred-  
87 itors' representatives; bankruptcy attorneys; and others who could  
88 have a direct stake in the outcome of the counseling process. The  
89 board should have a working majority that is not comprised of offi-  
90 cers of the company or their relatives;

91 (iv) Must show proof of agency accreditation provided by a bona  
92 fide third-party accreditation body, such as the Council on Accredi-  
93 tation or such other body that is approved by the commissioner.  
94 Such accreditation shall include sector certification that ensures

95 compliance with industry standards, best practices and corporate  
96 governance;

97 (v) Must show proof of an annual audit by an independent Certi-  
98 fied Public Accountant, with such audit taking place within six  
99 months of the close of the agency's fiscal year.

100 Section 3. The application for a license shall be in writing, shall  
101 be in a form prescribed by the commissioner, and shall contain the  
102 name, residential address and the address where the business of the  
103 applicant is to be conducted, and if the applicant is a partnership,  
104 association, corporation or other form of business organization, the  
105 names and addresses of each member, director and principal officer  
106 thereof, together with such further information as the commissioner  
107 may require including, but not limited to, a description of the nature  
108 of the business to be conducted, the proposed hours of operation on  
109 a daily basis and the area intended to be served. The application  
110 shall also contain the criminal history, if any, of each member,  
111 director, partner and principal officer, and a disclosure of any  
112 pending lawsuits, settled lawsuits, and judgments related to fraud of  
113 each member, director, partner and principal officer. Each applica-  
114 tion for a license shall be accompanied by:—

115 (a) an investigation fee and license fee. Investigation and license  
116 fees shall be determined annually by the secretary of administration  
117 under the provisions of Section three B of Chapter seven;

118 (b) the certificates and reports filed with the state secretary as  
119 required in Section 4 of Chapter 181 of the General Laws;

120 (c) the IRS exemption notice and a copy of the Form PC sub-  
121 mitted to the Attorney General stating nonprofit status, if applicable;  
122 and

123 (d) evidence of a surety bond written by a surety authorized to  
124 write such bonds in this state, provided any applicant that files appli-  
125 cations for licenses for more than one location shall file a single  
126 bond. For every applicant, the principal amount of the bond shall be  
127 the greater of (A) forty thousand dollars, or (B) twice the amount of  
128 the highest total payments received by the applicant from Massachu-  
129 setts debtors in connection with the applicant's debt adjustment  
130 activity in any month during the preceding twelve months ending  
131 March thirty-first of each year. Each licensee shall submit to the  
132 commissioner evidence that the bond complies with the provisions  
133 of the section annually.

134 If a licensee or applicant for renewal of a license establishes that  
135 such licensee or applicant is unable to comply with the bond  
136 required by this section, it may submit to the commissioner, a  
137 request for an alternative to such requirement. If the commissioner  
138 finds that the financial responsibility, character, reputation, integrity  
139 and general fitness of the applicant so warrant, the commissioner  
140 may permit the applicant or licensee to supplement the maximum  
141 surety bond that it can obtain, provided the principal amount of the  
142 surety bond shall be a minimum of forty thousand dollars, with such  
143 other bonds or insurance policies, in such amounts, for such period  
144 and subject to such conditions as the commissioner may approve.  
145 Any such bond or insurance policy shall be written or issued by a  
146 surety or insurance company authorized to write such bonds or sell  
147 such insurance in this state.

148 The form of any surety bond submitted pursuant to this section  
149 shall be approved by the Attorney General. Any surety bond filed  
150 under this section shall be conditioned upon the licensee faithfully  
151 performing all written agreements with debtors, truly and faithfully  
152 accounting for all funds received by the licensee in the licensee's  
153 capacity as a debt adjuster. Any debtor who may be damaged by  
154 failure to perform any written agreements, or by the wrongful con-  
155 version of funds paid to a licensee, may proceed on any such surety  
156 bond against the principal or surety thereon, or both, to recover  
157 damages. The commissioner may proceed on any such surety bond  
158 against the principal or surety thereon, or both, to collect any civil  
159 penalty imposed upon the licensee. The proceeds of any bond or  
160 insurance policy, even if commingled with other assets of the  
161 licensee, shall be deemed to be held in trust for the benefit of such  
162 claimants against the licensee in the event of bankruptcy of the  
163 licensee and shall be immune from attachment by creditors and judg-  
164 ment creditors. Any bond or insurance policy required by this  
165 section shall be maintained during the entire period of the license  
166 granted to the applicant, and the aggregate liability under any such  
167 bond or insurance policy shall not exceed the principal amount of  
168 the bond or the limit of liability of the insurance policy.

169 The surety or insurance company shall have the right to cancel  
170 any bond or insurance policy written or issued under this section at  
171 any time by a written notice to the licensee, stating the date cancella-  
172 tion shall take effect. Such notice shall be sent by certified mail to

173 the licensee at least thirty days prior to the date of cancellation. No  
174 such bond shall be cancelled unless the surety or insurance company  
175 notifies the commissioner in writing not less than thirty days prior to  
176 the effective date of cancellation. The commissioner shall auto-  
177 matically suspend the license on the date the cancellation takes  
178 effect, unless the bond or insurance policy has been replaced or  
179 renewed. The commissioner shall give the licensee notice of the  
180 automatic suspension pending proceedings for revocation or refusal  
181 to renew and an opportunity for a hearing.

182 Section 4. Upon the filing of an application for a license, if the  
183 commissioner finds that the financial responsibility, character, repu-  
184 tation, integrity and general fitness of the applicant, and of the part-  
185 ners or members thereof if the applicant is a partnership or  
186 association, and of the officers, directors and principal employees if  
187 the applicant is a corporation, are such as to warrant belief that the  
188 business will be operated honestly, fairly, soundly and efficiently in  
189 the public interest consistent with the purposes of this chapter, he  
190 shall thereupon issue the applicant a license to engage in the busi-  
191 ness of credit counseling. If the commissioner shall not so find, or if  
192 the application is incomplete or erroneous, he shall not issue a  
193 license and he shall notify the applicant of the denial. Within twenty  
194 days thereafter, he shall enter upon his records a written decision and  
195 findings containing the reasons supporting the denial and shall forth-  
196 with give written notice thereof by registered mail to the applicant.  
197 Any person or entity aggrieved by such denial may appeal pursuant  
198 to Section fourteen of Chapter thirty A.

199 The commissioner shall make the decision to approve or deny an  
200 application for a license within ninety days after the filing thereof;  
201 provided, however, that failure of the commissioner to act within  
202 such period shall not be deemed to be an approval of any such appli-  
203 cation.

204 Section 5. Each license shall state the addresses at which the busi-  
205 ness is to be conducted and shall state fully the name of the licensee.  
206 Business at all locations shall at all times be conducted in the name  
207 of the licensee as it appears on the license. A copy of such license  
208 shall be prominently displayed in each place of business of the  
209 licensee. Such copies for places of business at addresses other than  
210 that appearing on the license may be obtained at a reasonable cost,  
211 as determined by the commissioner. Such license shall not be trans-

212 ferable or assignable and shall be for a period of one year as of a  
213 date determined by the commissioner. Any change of location or  
214 closing of a place of business of the licensee, either at the address  
215 stated on the license or at a place other than said address stated on  
216 the license, shall require written notice thereof to the commissioner.  
217 Such notice shall set forth the reason therefore and shall be filed  
218 with the commissioner at least thirty days after such relocation or  
219 closing. A request for relocation or change in the area of operation  
220 shall also be accompanied by a relocation investigation fee to be  
221 determined annually by the secretary of administration under provi-  
222 sions of Section three B of Chapter seven.

223 If there shall be any change among the members, officers, part-  
224 ners or directors of any licensee, the licensee shall notify the com-  
225 missioner in a timely manner of the name, address and occupation of  
226 each new member, principal officer, partner or director, and provide  
227 such other information as the commissioner may require, including  
228 but not limited to the criminal history of each new member, director,  
229 partner and principal officer, any pending law-suits, settled lawsuits,  
230 and judgments related to fraud. The Commissioner shall have the  
231 authority to investigate the new member, officer, partner or director  
232 and may revoke or suspend the license if the change would have  
233 resulted in a rejection of the license application under the provisions  
234 of Section 4.

235 The commissioner shall establish regulations relative to the proce-  
236 dures for a licensee to renew its license.

237 Section 6. The commissioner may suspend or revoke any license  
238 issued pursuant to this chapter if said commissioner finds that:—

239 (a) the licensee has violated a provision of this chapter or any rule  
240 or regulation adopted hereunder or any other law applicable to the  
241 conduct of its business; or

242 (b) a fact or condition exists which, if it had existed at the time of  
243 the original application for such license, would have warranted said  
244 commissioner in refusing to issue such license.

245 Except as provided in Section eight, no license shall be revoked  
246 or suspended except after notice and hearing pursuant to Chapter  
247 thirty A. A licensee may surrender a license by delivering to the  
248 commissioner written notice that it hereby surrenders such license,  
249 but such surrender shall not affect the civil or criminal liability of  
250 such licensee for acts committed before such surrender.

251 No revocation, suspension or surrender of any license shall impair  
252 or affect the obligation of any pre-existing lawful contract between  
253 the licensee and any person.

254 The commissioner may suspend or revoke only the particular  
255 license or licenses for particular places of business or locations with  
256 respect to which grounds for revocation occur or exist; provided,  
257 however, that if the commissioner shall find that such grounds for  
258 revocation are of general application to all places of business or  
259 locations of the licensee or that such grounds for fine, suspension or  
260 revocation have occurred or exist with respect to a substantial  
261 number of places of business or locations of such licensee, the com-  
262 missioner may suspend, revoke or impose fines with respect to all of  
263 the licenses issued to such licensee.

264 The commissioner shall issue regulations to establish consumer  
265 recourse in the event of a revocation, suspension or surrender of a  
266 license.

267 Section 7. A licensee shall provide clearly written consent and  
268 full disclosure forms to each of its clients outlining all costs associ-  
269 ated with the programs of the licensee and the methods used in such  
270 programs including, but not limited to, the total anticipated cost  
271 including set-up and handling fees and the process required to cancel  
272 the plan. A licensee shall also provide each client with a notice con-  
273 taining the appropriate address and phone number for the Division  
274 of Banks at which to direct any inquiries or complaints. A licensee  
275 shall send regular reports, to be determined by the commissioner but  
276 at least quarterly, to each of its clients, detailing the client's  
277 accounts, including reporting on funds received and disbursements  
278 made.

279 Prior to entering into a debt management plan, a licensee shall  
280 provide to a client a written notice describing the effect of credit  
281 counseling upon the client's consumer credit rating. Such written  
282 notice shall be printed in no less than 12-point typeface and shall be  
283 written in clear language.

284 There must be a DMP agreement signed by the consumer and the  
285 licensee that contains:—

286 (i) the name and address of the consumer and the credit coun-  
287 seling agency;

288 (ii) a full description of all services to be performed for the con-  
289 sumer;

290 (iii) costs, highlighted in bold type;  
291 (iv) a statement that the agreement can be terminated for any  
292 reason by the consumer, and that the consumer has no obligation to  
293 continue the arrangement unless satisfied with the services provided;  
294 and  
295 (v) a complete list of the consumer's and agency's obligations that  
296 are subject to the agreement.

297 If a person or entity that provides consumer credit counseling  
298 services on the Internet is not licensed in the Commonwealth, the  
299 person or entity shall disclose on its website that it is not licensed in  
300 the Commonwealth and may not provide such services to Massachu-  
301 setts residents.

302 A licensee shall not enter into a debt management plan with a  
303 client until a thorough and written budget analysis, on a form  
304 approved by the commissioner, is compiled and delivered to the  
305 client. A licensee shall not accept an account unless the budget  
306 analysis indicates the client can reasonably meet the requirements  
307 set forth by the budget analysis and will be benefited by any debt  
308 management plan.

309 A licensee must have executed a debt management plan with a  
310 client before collecting any debt management fees from the client.

311 The commissioner may establish standardized language to be  
312 used in all forms, notices and reports required by this section.

313 Section 8. (a) If the commissioner determines, after giving notice  
314 of and opportunity for a hearing, that a licensee has engaged in or is  
315 about to engage in an act or practice constituting a violation of a pro-  
316 vision of this chapter or a rule, regulation or order hereunder, he may  
317 order such licensee to cease and desist from such unlawful act or  
318 practice and take such affirmative action as in his judgment will  
319 effect the purposes of this chapter.

320 (b) If the commissioner makes written findings of fact that the  
321 public interest will be irreparably harmed by delay in issuing an  
322 order under subsection (a) he may issue a temporary cease and desist  
323 order. Upon the entry of a temporary cease and desist order, the  
324 commissioner shall promptly notify, in writing, the licensee affected  
325 thereby that such order has been so entered, the reasons therefor, and  
326 that within twenty days after the receipt of a written request from  
327 such licensee, the matter will be scheduled for hearing to determine  
328 whether or not such temporary order shall become permanent and

329 final. If no such hearing is requested and none is ordered by the  
330 commissioner, the order shall remain in effect until it is modified or  
331 vacated by the commissioner. If a hearing is requested or ordered,  
332 the commissioner, after giving notice of and opportunity for a  
333 hearing to the licensee subject to said order, shall, by written finding  
334 of facts and conclusions of law, vacate, modify or make permanent  
335 the order.

336 (c) No order under this section, except an order issued pursuant to  
337 subsection (b), may be entered without prior notice of and opportu-  
338 nity for a hearing. The commissioner may vacate or modify an order  
339 under this section upon finding that the conditions which required  
340 such an order have changed and that it is in the public interest to so  
341 vacate or modify. Any order issued pursuant to this section shall be  
342 subject to review as provided in Chapter thirty A.

343 Section 9. For the purpose of discovering violations of this  
344 chapter or a rule or regulation promulgated hereunder, or for  
345 securing information lawfully required by him, the commissioner  
346 may, at any time, and as often as he may determine, investigate the  
347 business and examine the books, accounts, records and files used  
348 therein of a licensee. The total charge for such examination, which  
349 shall be paid by the licensee within thirty days after receipt of an  
350 invoice therefor, shall be determined annually by the secretary of  
351 administration under the provisions of Section three B of Chapter  
352 seven for each person participating in such examination.

353 For such purpose, the commissioner and his duly designated rep-  
354 resentative shall have access to the offices and places of business,  
355 books, accounts, papers, records, files, safes and vaults of all such  
356 licensees. The commissioner and any person designated by him may  
357 require the attendance of and examine under oath all persons whose  
358 testimony he may require relative to such business.

359 Copies of reports of such examinations of a licensee shall be fur-  
360 nished to such licensee and shall not be exhibited to any other  
361 person, organization or agency; provided, however, that the commis-  
362 sioner may, upon the request of a law enforcement agency made in  
363 the course of its official duties, provide copies of such reports to any  
364 such law enforcement agency.

365 Section 10. The licensee shall keep and use such books, accounts,  
366 and business records in such form and at such location as said com-  
367 missioner shall, by regulation, determine, which shall enable said

368 commissioner to determine whether such licensee is complying with  
369 the provisions of this chapter and any rules or regulations promul-  
370 gated hereunder by said commissioner and any other law, rule or  
371 regulation applicable to the conduct of the business for which it is  
372 licensed under this chapter. Such regulations may contain provisions  
373 for such records to be recorded, copied or reproduced by photo-  
374 graphic, photostatic, microfilm, microcard, miniature photographic,  
375 electronic, including, but not limited to, optical imaging, or other  
376 process which accurately reproduces or forms a durable medium for  
377 reproducing the original record or document or in any other form or  
378 manner authorized by the commissioner. Licensees shall preserve  
379 such books, accounts and records for at least three years. Notwith-  
380 standing the provisions of any general or special law or the Massa-  
381 chusetts Rules of Civil Procedure to the contrary, service of a  
382 subpoena for business records upon a licensee, delivered to an office  
383 of such licensee located within the Commonwealth shall be deemed  
384 to have been served at the location, whether within or outside the  
385 Commonwealth, where the original business records or documents  
386 are kept or maintained.

387 Each licensee shall, annually, on a date to be determined by the  
388 Commissioner, file a report with the commissioner providing such  
389 information as the commissioner may require concerning its busi-  
390 ness and operations during the preceding calendar year at each  
391 licensed place of business conducted by a licensee in the Common-  
392 wealth. A licensee neglecting to file such report or failing to amend  
393 the same within fifteen days of notice from the commissioner  
394 directing the same shall, unless such neglect or failure is due to justi-  
395 fiable cause and not due to willful neglect, pay to the Common-  
396 wealth fifty dollars for each day during which such neglect or failure  
397 continues.

398 Such reports shall not be exhibited to any other person, organiza-  
399 tion or agency; provided, however, that the commissioner may, upon  
400 the request of a law enforcement agency made in the course of its  
401 official duties, provide copies of such reports' to any such law  
402 enforcement agency. The commissioner shall evaluate such reports  
403 and make such recommendations, if any, as he deems necessary to  
404 the general court.

405 Section 11. The commissioner or an aggrieved party may enforce  
406 the provisions of this chapter, or restrain any violations thereof, by  
407 filing a civil action in a court of competent jurisdiction. A violation  
408 of this chapter or a rule or regulation adopted hereunder, shall con-  
409 stitute a violation of Chapter 93A.

410 Section 12. Licensees may not:—

411 (i) purchase any debt or obligation of a consumer;

412 (ii) lend money or provide credit to any consumer;

413 (iii) obtain a mortgage or other security interest in the property of  
414 a consumer;

415 (iv) operate as a debt collector;

416 (v) structure a debt management plan that, at the conclusion of the  
417 debt management plan, would result in negative amortization of any  
418 of the consumer's obligations to creditors. The licensee may not pay  
419 incentives to its employees for placing a consumer on a Debt Man-  
420 agement Plan. And it may not enter into any contract or fee-for-  
421 service arrangement with any company or vendor that is owned,  
422 controlled or affiliated with an officer or director, or a relative of an  
423 officer or director, that materially personally benefits, enriches or  
424 insures benefit to an employee or director of the credit counseling  
425 agency.

426 Section 13. Whoever violates any provision of Section 2, Section  
427 7, Section 12, or any rule or regulation made thereunder by the com-  
428 missioner shall be punished by a fine of not more than twenty-five  
429 thousand dollars per violation, or by imprisonment for not more than  
430 six months, or both such fine and imprisonment.

431 Section 14. The provisions of this chapter shall not apply to a  
432 bank as defined in Section one of Chapter one hundred and sixty-  
433 seven, a national banking association, a federally chartered credit  
434 union, a federal savings and loan association, a federal savings bank,  
435 or any subsidiary of the above, or to any bank, trust company, sav-  
436 ings bank, savings and loan association, or credit union organized  
437 under the laws of any other state which is insured by a federal  
438 deposit insurer, or any subsidiary of the above.