

# Debt Management Services

In 2002, credit card debt in the United States stood at nearly \$700 billion and 1.5 million people in the United States filed for bankruptcy. Nearly nine million people in financial trouble contact a credit-counseling agency each year. The National Consumer Law Center released a report declaring the credit counseling industry is in crisis. Complaints about deceptive practices, improper advice, excessive fees and abuse of non-profit status have grown exponentially. For example, The Better Business Bureau of Metropolitan Washington reports that inquiries about this industry went from 2,083 in 2000 to 12,502 in 2002.

The credit counseling and debt management industry has undergone a tremendous transformation in recent years. At no cost, traditional debt management companies meet personally with consumers to educate them about budgeting, the judicious use of credit and offer debt management as a last resort to those on the verge of bankruptcy. The new breed of debt managers use Internet, cable TV and vast phone banks to sign up consumers who may or may not be in financial crisis. These groups charge up-front fees and require “voluntary” contributions for their services. One of the largest new companies, located in Montgomery County, Maryland, has 100,000 clients and processes more than \$40 million monthly in payments from its customers.

In 2003, Maryland enacted the Debt Management Act (Chapter 374 of 2003) to reign in an aggressive new breed of debt management companies that operate as 501(c) tax exempt corporations but bear little resemblance to a true mission oriented non-profit organization. Other states have a patchwork of oversight ranging from no regulation to requiring a bond and limiting the fees allowed. The Maryland Debt Management Act goes beyond simple licensing to providing an appropriate level of consumer protection where none existed.

This SSL draft is based on Maryland’s law. The draft addresses four areas related to regulating debt management services; licensing, service, fees, and penalties.

## Licensing

With limited exceptions, a person is required to obtain a license from the state before providing “debt management services.” Debt management services means receiving funds periodically from a consumer in order to distribute funds among the consumer’s creditors in full or partial payment of the consumer’s debts.

To qualify for a license, an applicant must be an organization and satisfy the commissioner that each of the applicant’s owners, officers, directors, principals, and agents has sufficient experience, character, financial responsibility, and general fitness to command the confidence of the public.

The president and any other officer, director, principal, or owner of the corporation must provide fingerprints for criminal background checks. Further, any agent acting on behalf of a licensee to manage or with access to a trust account of a consumer, must provide fingerprints for criminal background checks.

An applicant or licensee may be required to maintain general liability or fidelity insurance that insures against dishonesty, fraud, theft, or other malfeasance on part of an employee.

Applicants must post a surety bond of at least \$10,000 and up to \$350,000, as determined by the state. The surety bond filed must run to the state for the benefit of any consumer who is injured by a violation of the law.

## Service Limits

Under the Act, a licensee may not perform debt management services for a consumer or collect a fee until it:

1. Provides the consumer with a consumer education program;
2. Provides the consumer with a financial analysis of, and an initial budget plan for, the consumer's debt obligations through a debt management counselor certified by an independent organization;
3. Provides the consumer a list of all services available to a consumer and any related fees required;
4. Furnishes the consumer with a written accounting of all funds received and disbursed his behalf at least once per quarter and upon cancellation or termination of the agreement; and
5. Discloses where and to whom any consumer complaints can be lodged both in the executed agreement and on any licensee website.

The consumer has the right to rescind the agreement by giving written notice to the debt management services organization.

Debt management organizations are prohibited from, among other things:

1. Offering incentives of any value to consumers for participating in a debt management plan;
2. Paying a referral fee for acquiring a client receiving a referral fee for referring a client to another for credit services;
3. Executing a plan resulting in negative amortization; or
4. Acquiring a consumer's debt obligation or extending credit to a consumer.

#### Fees Limited

Under the Act, fees are limited to \$50 for any up-front or consultation fee and a monthly maintenance fee of up to \$8 for each of the consumer's creditors listed in the agreement, up to \$40 per month. A licensee may only charge fees as authorized under law. Charging of unauthorized fees, except as a result of an accidental and bona fide error render the agreement void.

Funds collected from or on behalf of a consumer must be deposited in a trust account established for the benefit of consumers within 2 business days of receipt. The licensee must disburse these funds within 8 business days after receipt to the creditors in the plan.

#### Penalties And Enforcement

Under the Act, unless approved by the state, a licensee may not change an owner, officer, director, or principal of the licensee, or an agent who is acting on behalf of the licensee to manage a trust account of consumer funds, listed on the licensee's application.

Licensees must preserve books, accounts, and records for 7 years. This requirement also applies to books, accounts, and records in the possession of a subsidiary, affiliate, or other person that relate to the operation of, and services provided by, a licensee's debt management services business.

The state may deny licensure to an applicant, reprimand a licensee, or suspend or revoke a license for specified activities. The state may also issue cease and desist orders or orders to take affirmative corrective action, including restitution, to violators. Violators who fail to comply with a cease and desist order could be liable for a civil penalty of up to \$1,000 for each violation.

A knowing and willful violation is a felony. Violators are subject to a fine of up to \$1,000 for the first violation and \$5,000 for each subsequent violation and/or five years' imprisonment.

Submitted as:  
Maryland  
Chapter 374 of 2003  
Status: Enacted into law in 2003.

## **Suggested State Legislation**

(Title, enacting clause, etc.)

- 1           Section 1. [*Short Title.*] This Act may be cited as “The Debt Management Services Act.”  
2
- 3           Section 2. [*Definitions.*] As used in this Act:  
4           “Commissioner” means the state [Commissioner of Financial Regulation].  
5           “Consultation Fee” means a fee paid by a consumer to a debt management services  
6 provider in connection with the processing of any application that the consumer makes for debt  
7 management services.  
8           “Consumer” means an individual who:  
9                 (1) Resides in the state; and  
10                (2) Is seeking debt management services or has entered into a debt management  
11 services agreement.  
12           “Consumer Education Program” means a program or plan that seeks to improve the  
13 financial literacy of consumers.  
14           “Debt Management Counselor” means a permanent, temporary, or contractual employee  
15 of a debt management services provider or its agent who provides counseling to consumers on  
16 behalf of the debt management services provider.  
17           “Debt Management Services” means receiving funds periodically from a consumer  
18 under an agreement with the consumer for the purpose of distributing the funds among the  
19 consumer's creditors in full or partial payment of the consumer's debts.  
20           “Debt Management Services Agreement” means a written contract, plan, or agreement  
21 between a debt management services provider and a consumer for the performance of debt  
22 management services.  
23           “Debt Management Services Provider” means an organization that provides or offers to  
24 provide debt management services to a consumer.  
25           “Fund” means the debt management services fund established under section 6 of this  
26 Act.  
27           “Licensee” means an organization licensed under this Act to provide debt management  
28 services.  
29           “Maintenance Fee” means a fee paid by a consumer to a debt management services  
30 provider for the maintenance or servicing of the consumer's accounts with the consumer's  
31 creditors in accordance with a debt management services agreement.  
32           “Organization” means a nonprofit organization that is exempt from taxation under §  
33 501(c) of the Internal Revenue Code.  
34           “Resident Agent” means an individual residing in the state or a state corporation whose  
35 name, address, and designation as a resident agent are filed or recorded with the [state  
36 department of assessments and taxation] in accordance with the provisions of the [insert  
37 citation].  
38           “Trust Account” means an account that is:  
39                 (1) Established in a financial institution that is federally insured;

- 40 (2) Separate from the debt management services provider's operating account;  
41 (3) Designated as a "trust account" or by another appropriate designation  
42 indicating that the funds in the account are not the funds of the licensee or its officers,  
43 employees, or agents;  
44 (4) Unavailable to creditors of the debt management services provider; and  
45 (5) Used to hold funds paid by consumers to a debt management services  
46 provider for disbursement to creditors of the consumers.

47  
48 Section 3. [*Exemptions.*] This Act does not apply to the following people when engaged  
49 in the regular course of their respective businesses and professions:

- 50 (1) An attorney at law;  
51 (2) An escrow agent;  
52 (3) A certified public accountant;  
53 (4) A banking institution, other-state bank, national banking association, credit  
54 union, or savings and loan association;  
55 (5) A person that:  
56 (i) Provides bill payer services, as defined in [insert citation];  
57 (ii) Does not initiate any contract with individual creditors of the debtor  
58 to compromise a debt or arrange a new payment schedule; and  
59 (iii) Does not provide any debt counseling services;  
60 (6) A person that provides accelerated mortgage payment services, as defined in  
61 [insert citation];  
62 (7) An approved servicer, as defined in [insert citation];  
63 (8) A title insurer, title insurance agency, or abstract company; or  
64 (9) A judicial officer or a person acting under a court order;  
65 (10) A person while performing services incidental to the dissolution, winding  
66 up, or liquidation of a partnership, corporation, or other business enterprise;  
67 (11) A trade or mercantile association acting in the course of arranging the  
68 adjustment of debts with a business establishment; or  
69 (12) A mortgage lender, as defined in [insert citation], that:  
70 (i) Is licensed by the [commissioner]; and  
71 (ii) Does not receive funds from a consumer for the purpose of  
72 distributing the funds among the consumer's creditors in full or partial payment of the  
73 consumer's debts.

74  
75 Section 4. [*Rules and Regulations.*] To carry out the provisions of this Act, the  
76 [commissioner] may:

- 77 (1) Adopt rules and regulations;  
78 (2) Enter into cooperative and information sharing agreements with any other  
79 federal or state agencies having supervisory responsibility over debt management services  
80 businesses; and  
81 (3) Exchange information about a debt management services provider, including  
82 information obtained during an examination, with any state or federal agency having authority  
83 over the debt management services provider.

84  
85 Section 5. [*Fees.*]

- 86 (A) The [commissioner] by regulation shall establish:  
87 (1) A fee, not exceeding [\$2,000], for the issuance of a license under this Act in  
88 an even-numbered year; and

89 (2) A fee, not exceeding [\$1,000], for the issuance of a license under this Act in  
90 an odd-numbered year;

91 (3) A fee, not exceeding [\$2,000], for renewal of a license issued under this Act;

92 (4) A fee, not exceeding [\$100], for each location in the state at which a licensee  
93 provides debt management services under this Act, payable at the time of issuance of an initial  
94 license and at each renewal of a license; and

95 (5) A fee, not exceeding [\$1,000], for an investigation of an applicant or licensee  
96 under this Act.

97 (B) Any fees charged by the [commissioner] under this Act shall approximate the direct  
98 and indirect costs of administering and enforcing this Act.

99  
100 Section 6. *[Debt Management Services Fund.]*

101 (A) There is a [Debt Management Services Fund] that consists of:

102 (1) All revenue received for the licensing of organizations that provide debt  
103 management services under this Act;

104 (2) Income from investments that the [state treasurer] makes for the [Fund]; and

105 (3) Except as provided in subsection (G) of this section, any other fee or revenue  
106 received by the [commissioner] under this Act.

107 (B) The purpose of the [Fund] is to pay all the costs and expenses incurred by the  
108 [commissioner] that are related to the regulation of the debt management services business  
109 under this Act, including:

110 (1) Expenditures authorized under this Act; and

111 (2) Any other expense authorized in the [state budget].

112 (C) (1) The [treasurer] is the custodian of the [Fund]; and

113 (2) The [treasurer] shall deposit payments received from the [commissioner] into  
114 the [Fund].

115 (D) (1) The [Fund] is a continuing, nonlapsing fund that is not subject to [insert  
116 citation], and may not be deemed a part of the [General Fund] of the state.

117 (2) Unless otherwise provided by law, no part of the [Fund] may revert or be  
118 credited to:

119 (i) The [General Fund] of the state; or

120 (ii) A [special fund] of the state.

121 (E) (1) All the costs and expenses of the [commissioner] relating to the regulation of  
122 the debt management services business under this Act shall be included in the [state budget].

123 (2) Any expenditures from the [Fund] to cover costs and expenses of the  
124 [commissioner] may be made only:

125 (i) By an appropriation from the [Fund] approved by the [legislature] in  
126 the [annual state budget]; or

127 (ii) By the [budget amendment procedure] provided for in [insert  
128 citation].

129 (3) If, in any fiscal year, the amount of the revenue collected by the  
130 [commissioner] and deposited into the [Fund] exceeds the actual appropriation for the  
131 [commissioner] to regulate the debt management services business under this Act, the excess  
132 amount shall be carried forward within the [Fund].

133 (F) The [office of legislative audits] shall audit the accounts and transactions of the  
134 [Fund] under [insert citation].

135 (G) The [commissioner] shall pay all fines and penalties collected by the [commissioner]  
136 under this Act into the [General Fund] of the state.

137

138 Section 7. *[Providing Debt Management Services.]*  
139 (A) A person may not provide debt management services to consumers unless the  
140 person:  
141 (1) Is licensed by the [commissioner] under this Act; or  
142 (2) Is exempt from licensing under this Act.  
143 (B) To qualify for a license, an applicant shall satisfy the [commissioner] that:  
144 (1) The applicant is an organization;  
145 (2) Each of the owners, officers, directors, and principals of the applicant has  
146 sufficient experience, character, financial responsibility, and general fitness to:  
147 (i) Engage in the business of providing debt management services;  
148 (ii) Warrant the belief that the debt management services business will be  
149 conducted lawfully, honestly, fairly, and efficiently; and  
150 (iii) Command the confidence of the public;  
151 (3) Each agent acting on behalf of the applicant to manage a trust account  
152 required under section 14 of this Act has sufficient experience, character, financial  
153 responsibility, and general fitness to:  
154 (i) Engage in the business of managing a trust account; and  
155 (ii) Warrant the belief that the management of the trust account will be  
156 conducted lawfully, honestly, fairly, and efficiently; and  
157 (iii) Command the confidence of the public; and  
158 (4) The applicant has a net worth computed according to generally accepted  
159 accounting principles of at least [\$50,000], plus an additional net worth of [\$10,000] for each  
160 location at which debt management services will be provided to consumers, up to a maximum of  
161 [\$500,000] as provided in subsection (C) of this section.  
162 (C) The [commissioner] may require a net worth of up to [\$500,000], subject to a  
163 consideration of the following:  
164 (1) The nature and volume of the business or proposed business of the applicant;  
165 (2) The amount, nature, quality, and liquidity of the assets of the applicant;  
166 (3) The amount and nature of the liabilities, including contingent liabilities, of the  
167 applicant;  
168 (4) The history of and prospects for the applicant to earn and retain income;  
169 (5) The quality of the operations of the applicant;  
170 (6) The quality of the management of the applicant;  
171 (7) The nature and quality of the person that has control of the applicant; and  
172 (8) Any other factor that the [commissioner] considers relevant.  
173  
174 Section 8. *[Licensing.]*  
175 (A) To apply for a license, an applicant shall submit to the [commissioner] an  
176 application on the form that the [commissioner] provides.  
177 (B) The application shall include:  
178 (1) The applicant's name, business address, telephone number, electronic mail  
179 address, if any, and website address, if any;  
180 (2) The address of each location in the state at which the applicant will provide  
181 debt management services;  
182 (3) The name and address of each owner, officer, director, and principal of the  
183 applicant;  
184 (4) The name, address, and telephone number of the applicant's resident agent in  
185 the state; and

186 (5) A description of the ownership interest of any officer, director, agent, or  
187 employee of the applicant in any affiliate or subsidiary of the applicant or in any other business  
188 entity that provides any service to the applicant or any consumer relating to the applicant's debt  
189 management services business;

190 (6) The name and address of any agent acting on behalf of the applicant to  
191 manage a trust account required under section 14 of this Act;

192 (7) The applicant's federal employer identification number;

193 (8) A list of any state in which:

194 (i) The applicant engages in the business of providing debt management  
195 services;

196 (ii) The applicant is registered or licensed to provide debt management  
197 services; and

198 (iii) The applicant's registration or license has been suspended or  
199 revoked;

200 (9) A statement of whether any pending judgment, tax lien, material litigation, or  
201 administrative action by any government agency exists against the applicant;

202 (10) The most recent, unconsolidated financial statement of the applicant that:

203 (i) Is prepared in accordance with generally accepted accounting  
204 principles applied on a consistent basis;

205 (ii) Includes a certified opinion audit prepared by an independent  
206 certified public accountant; and

207 (iii) Was prepared no more than [12 months] before the date of  
208 application;

209 (11) Evidence of nonprofit status under § 501(c) of the Internal Revenue Code;

210 (12) If the applicant is a corporation, a detailed description of the applicant's  
211 corporate structure, including parent companies, subsidiaries, and affiliates;

212 (13) The applicant's business credit report;

213 (14) Evidence of general liability or fidelity insurance that insures against  
214 dishonesty, fraud, theft, or other malfeasance on the part of an employee of the applicant;

215 (15) A description of the applicant's consumer education program that is  
216 provided to consumers;

217 (16) A description of the applicant's financial analysis and initial budget plan,  
218 including any form or electronic model, that are used to evaluate the financial condition of  
219 consumers;

220 (17) A copy of the debt management services agreement that the applicant will  
221 use in its debt management services business;

222 (18) A copy of the applicant's plan to ensure that each debt management  
223 counselor is certified by an independent organization within [6 months] after the debt  
224 management counselor is hired, and that any employee who is a supervisor or manager of a debt  
225 management counselor is certified by an independent organization within [3 months] after the  
226 employee is hired; and

227 (19) Any other information that the [commissioner] reasonably requires.

228 (C) The [commissioner] may refuse an application if it contains erroneous or incomplete  
229 information.

230 (D) With the application, the applicant shall pay to the [commissioner]:

231 (1) A license fee in the amount established under section 5 of this Act, and  
232 (2) A nonrefundable investigation fee in the amount established under section 5  
233 of this Act.

234 (E) With the application, the applicant shall file a surety bond with the [commissioner]  
235 as provided in section 11 of this Act.

236 (F) In connection with an initial application, a renewal application, and at any other time  
237 the [commissioner] requests, an applicant or licensee shall provide fingerprints for use by the  
238 Federal Bureau of Investigation and the [state criminal justice information system central  
239 repository] of the [department of public safety and correctional services] to conduct criminal  
240 history records checks.

241 (G) An applicant or licensee required to provide fingerprints under this section shall pay  
242 any processing or other required fee.

243 (H) If the applicant or licensee is a corporation, the fingerprinting and criminal history  
244 records check requirements shall apply to the president and any other officer, director, principal,  
245 or owner of the corporation as required by the [commissioner].

246 (I) The [commissioner] shall require any agent acting on behalf of a licensee to manage a  
247 trust account required under section 14 of this Act, and any agent of the licensee who has access  
248 to the account, to provide fingerprints for use by the [Federal Bureau Of Investigation] and the  
249 [state criminal justice information system central repository] of the [department of public safety  
250 and correctional services] to conduct criminal history records checks.

251 (J) After an applicant for a license files a complete application, files a surety bond, and  
252 pays the license and investigation fees required under this Act, the [commissioner] shall  
253 investigate the facts relevant to the application to determine if the applicant meets the  
254 requirements of this Act.

255 (K) Unless the [commissioner] notifies an applicant that a different time period is  
256 necessary, the [commissioner] shall approve or deny each application for a license within [60  
257 days] after the date on which the complete application is filed, the surety bond is filed, and the  
258 fees are paid.

259 (L) The [commissioner] shall issue a license to any applicant that meets the requirements  
260 of this Act.

261 (M) (1) If an applicant does not meet the requirements of this Act, the  
262 [commissioner]:

263 (i) Subject to the hearing provisions of section 9 of this Act, shall deny  
264 the application;

265 (ii) Shall notify the applicant immediately of the denial;

266 (iii) Shall refund the license fee; and

267 (iv) Shall keep the investigation fee.

268 (2) Within [30 days] after the [commissioner] denies an application, the  
269 [commissioner] shall state the reasons for the denial in writing and mail them to the applicant at  
270 the address listed in the application.

271 (N) The [commissioner] shall include on each license:

272 (1) The name of the licensee;

273 (2) The address at which the business is to be conducted; and

274 (3) The debt management services license number of the licensee.

275 (O) A license authorizes the licensee to provide debt management services.

276 (P) A license may not be transferred, assigned, or pledged.

277 (Q) (1) If the licensee has an office in the state, the licensee shall prominently display  
278 the license in a location that is open to the public and at which the licensee engages in the  
279 business of providing debt management services.

280 (2) If the licensee does not maintain an office in the state, the licensee shall  
281 maintain the license in the licensee's headquarters.

282 (R) A licensee that offers or provides debt management services through the Internet  
283 shall include the following notice on its website:

284 “The [commissioner of financial regulation] for will accept any questions and  
285 complaints from [state] residents regarding (name and license number of the debt  
286 management services provider) at [address of commissioner], phone [toll-free  
287 number of the commissioner].”

288 (S) A license issued under this Act expires on [December 31 of each odd-numbered]  
289 year unless it is renewed for a [2-year term] as provided in subsection (T) of this section.

290 (T) On or before [December 1 of the year of expiration], a license may be renewed for a  
291 [2-year term] if the licensee:

292 (1) Otherwise is entitled to be licensed;  
293 (2) Pays to the [commissioner] the renewal fee established under section 5 of this  
294 Act;

295 (3) Files with the [commissioner] a surety bond renewal certificate or a new  
296 surety bond required under section 11 of this Act; and

297 (4) Submits to the [commissioner] a renewal application on the form that the  
298 [commissioner] requires.

299 (U) The [commissioner] may determine that licenses issued under this Act shall expire  
300 on a staggered basis.

301

302 Section 9. [*Denying, Reprimanding, Suspending or Revoking Debt Management Services*  
303 *Licenses.*]

304 (A) Except as provided in subsection (C) of this section, and subject to the hearing  
305 provisions of section 9 of this Act, the [commissioner] may deny a license to an applicant,  
306 reprimand a licensee, or suspend or revoke the license of a licensee if the applicant or licensee  
307 or an owner, officer, director, or principal of the applicant or licensee:

308 (1) Fraudulently or deceptively obtains or attempts to obtain a license;

309 (2) Fraudulently or deceptively uses a license or debt management services  
310 license number;

311 (3) Presents or attempts to present the debt management services license number  
312 of another licensee as the applicant's or licensee's debt management services license number;

313 (4) Violates any provision of this Act or any regulation adopted under this Act;

314 (5) Is convicted under the laws of the United States or of any state of:

315 (i) A felony; or

316 (ii) A misdemeanor that is directly related to the fitness and qualification  
317 of the applicant or licensee to engage in the business of providing debt management services;

318 (6) In connection with the provision of debt management services:

319 (i) Commits a fraud;

320 (ii) Engages in an illegal or dishonest activity;

321 (iii) Has engaged or participated in an unsafe or unsound act; or

322 (iv) Misrepresents or fails to disclose a material fact to a person entitled  
323 to that information;

324 (7) Engages in false, misleading, or deceptive advertising; or

325 (8) Otherwise demonstrates unworthiness, bad faith, dishonesty, or any other  
326 quality that indicates that the business of the applicant or licensee has not been or will not be  
327 conducted honestly, fairly, and equitably.

328 (B) In determining whether to deny a license to an applicant, reprimand a licensee, or  
329 suspend or revoke the license of a licensee for a reason listed in subsection (A)(5) of this  
330 section, the [commissioner] shall consider:

- 331 (1) The nature of the crime;  
332 (2) The relationship of the crime to the activities authorized by the license;  
333 (3) With respect to a felony, the relevance of the conviction to the fitness and  
334 qualification of the applicant or licensee to provide debt management services;  
335 (4) The length of time since the conviction; and  
336 (5) The behavior and activities of the applicant or licensee since the conviction.

337 (C) Subject to the hearing provisions of section 9 of this Act, the [commissioner] shall  
338 deny a license to an applicant and suspend or revoke the license of a licensee if the applicant or  
339 licensee or an owner, officer, director, or principal of the applicant or licensee has:

340 (1) Committed a violation of subsection (A) of this section that directly results in  
341 property damage or monetary loss by any other person; and

342 (2) Has not restored the property or money to the person or paid the value of the  
343 property to the person.

344 (D) Before the [commissioner] denies an application for a license under this Act or takes  
345 any action under this section of this Act, the [commissioner] shall give the applicant or licensee  
346 an opportunity for a hearing.

347 (E) Notice of the hearing shall be given and the hearing shall be held in accordance with  
348 [insert citation].

349

350 Section 10. [*Surrendering Licenses.*]

351 (A) (1) A licensee may surrender a license by sending to the [commissioner] a  
352 written statement that the license is surrendered.

353 (B) The statement shall provide:

354 (i) The reason for the license surrender;

355 (ii) For each consumer for whom the licensee is providing debt  
356 management services, the following information:

357 (a) The name of the consumer;

358 (b) The total amount of funds held by the licensee for distribution  
359 to the consumer's creditors; and

360 (c) The name of each creditor of the consumer that is receiving  
361 payments from the licensee for debts owed by the consumer to the creditor, and the outstanding  
362 balance owed to each creditor.

363 (C) The surrender of a license does not:

364 (1) Affect any administrative, civil, or criminal liability of the licensee for acts  
365 committed before the license is surrendered;

366 (2) Affect the surety bond required under section 11 of this Act; or

367 (3) Entitle the licensee to the return of any fee paid to the [commissioner] under  
368 section 5 of this Act.

369

370 Section 11. [*Surety Bond.*]

371 (A) With the application for a new or renewal license, the applicant or licensee shall file  
372 a surety bond or bond renewal certificate with the [commissioner] as provided in this section.

373 (B) (1) A surety bond filed under this section shall run to the state for the benefit of  
374 any consumer who is injured by a violation of this subtitle or a regulation adopted under this Act  
375 committed by a licensee or an agent of a licensee, including an agent managing a trust account.

376 (2) The surety bond shall be:

377 (i) In an amount not less than [\$10,000] and not more than [\$350,000], as  
378 set by the [commissioner];

379 (ii) Issued by a bonding, surety, or insurance company that is authorized  
380 to do business in the state; and

381 (iii) Conditioned so that the licensee and its agent shall comply with all  
382 state and federal laws and regulations governing the business of providing debt management  
383 services.

384 (3) The liability of a surety:

385 (i) Is not affected by the insolvency or bankruptcy of the licensee or its  
386 agent or by any misrepresentation, breach of warranty, failure to pay a premium, or other act or  
387 omission of the licensee or its agent; and

388 (ii) Continues as to all transactions of the licensee, and transactions of its  
389 agent on behalf of the licensee, for no longer than [2 years] after the licensee ceases, for any  
390 reason, to be licensed.

391 (4) The [commissioner] may allow the amount of the surety bond to be reduced if  
392 the amount of the licensee's outstanding debt management services liabilities in the state is  
393 reduced.

394 (5) In setting the amount of the surety bond, the [commissioner] shall consider:

395 (i) The financial condition and business experience of the applicant or  
396 licensee and the agent of the applicant or licensee;

397 (ii) For an applicant, the projected monthly and annual volume of debt  
398 management services to be provided in the state;

399 (iii) For a licensee, the average monthly and annual volume of debt  
400 management services provided in the state during the previous [12-month period];

401 (iv) The potential loss to consumers who remit funds to the applicant or  
402 licensee if the applicant or licensee becomes financially impaired; and

403 (v) Any other factor the [commissioner] considers appropriate.

404 (C) If the principal amount of a surety bond is reduced by payment of a claim or  
405 judgment, the licensee shall file with the [commissioner] any new or additional surety bond in  
406 the amount that the [commissioner] sets.

407 (D) The [commissioner] may waive the surety bond requirement under this section if the  
408 [commissioner] determines that the volume of debt management services provided by the  
409 applicant or licensee does not warrant the need for a surety bond.

410 (E) A penalty imposed under section 23 of this Act may be paid and collected from the  
411 proceeds of a surety bond required under this section.

412

413 Section 12. *[Notice of Change in Licensee's Application.]*

414 (A) (1) A licensee shall give the [commissioner] written notice of any change in the  
415 information required to be included in the licensee's application under section 8(B)(1) and (2) of  
416 this Act within [30 days] before the change is effective.

417 (2) The licensee shall provide with the notice evidence that, after the change  
418 described in the notice, the licensee will continue to satisfy the surety bond requirement under  
419 section 11 of this Act.

420 (B) Unless approved by the [commissioner], a licensee may not change an owner, officer,  
421 director, or principal of the licensee, or an agent who is acting on behalf of the licensee to  
422 manage a trust account, listed on the licensee's application under section 8(B)(3) and (6) of this  
423 Act.

424 (C) (1) To request approval of a proposed change described in subsection (B) of this  
425 section, the licensee shall notify the [commissioner] in writing of the proposed change and  
426 submit any information that the [commissioner] requires.

427 (2) For a proposed change in owner or agent acting on behalf of the licensee to  
428 manage a trust account, the [commissioner] may determine that the filing of a new application  
429 for the issuance of a license is warranted.

430 (3) Unless the [commissioner] notifies the licensee that a different time period is  
431 necessary, the [commissioner] shall approve or deny a request for a change described in  
432 subsection (B) of this section within [60 days] after the date the [commissioner] receives all  
433 information required under paragraph (1) of this subsection.

434  
435 Section 13. [*Consumer Education, Financial Analysis, Budget Plan, List of Participating*  
436 *Creditors, Counseling and Debt Management Services Agreement.*]

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

438  
439 (i) The licensee provides the consumer with a consumer education  
440 program;

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

443 (a) Prepared a financial analysis of and an initial budget plan for  
444 the consumer's debt obligations;

445 (b) Provided a copy of the financial analysis and the initial budget  
446 plan to the consumer; and

447 (c) Provided to the consumer, for all creditors identified by the  
448 consumer, a list of:

449 (I) The creditors that the licensee reasonably expects to  
450 participate in the management of the consumer's debt under the debt management services  
451 agreement; and

452 (II) The creditors that the licensee reasonably expects not  
453 to participate in the management of the consumer's debt under the debt management services  
454 agreement;

455 (iii) The licensee and the consumer have executed a debt management  
456 services agreement that describes the debt management services to be provided by the licensee  
457 to the consumer;

458 (iv) The licensee has a reasonable expectation based on the licensee's past  
459 experience that each creditor of the consumer that is listed as a participating creditor in the  
460 consumer's debt management services agreement will accept payment of the consumer's debts  
461 owed to the creditor as provided in the consumer's debt management services agreement; and

462 (v) A copy of the completed debt management services agreement has  
463 been provided to the consumer.

464 (2) (i) A licensee may provide to a consumer the materials required under  
465 paragraph (1)(ii) of this subsection using the Internet if:

466 (a) A debt management counselor of the licensee has reviewed and  
467 approved the computer program or application used to create the financial analysis and initial  
468 budget plan; and

469 (b) The consumer is:

470 (I) Advised of the availability of counseling; and

471 (II) Afforded the opportunity for counseling and for  
472 discussion of the financial analysis and initial budget plan with a debt management counselor at  
473 any time.

474 (ii) [Insert citation] applies to the provision of materials and associated  
475 transactions under this paragraph.

476 (B) Each debt management services agreement shall:  
477 (1) Be signed and dated by the licensee and the consumer; and  
478 (2) Include, in at least 12 point type:  
479 (i) The name, address, and phone number of the consumer;  
480 (ii) The name, address, phone number, and license number of the  
481 licensee;  
482 (iii) A description of the debt management services to be provided to the  
483 consumer and any fees to be charged to the consumer for the debt management services;  
484 (iv) A disclosure of the existence of the surety bond required under  
485 section 11 of this Act;  
486 (v) The name and address of the financial institution in which funds, paid  
487 by the consumer to the licensee for disbursement to the consumer's creditors, will be held;  
488 (vi) A notice of the right of a party to the debt management services  
489 agreement to rescind the debt management services agreement by giving written notice of  
490 rescission to the other party;  
491 (vii) A schedule of payments that the consumer must make to the debt  
492 management services provider, including:  
493 (a) The amount of each payment and the date on which each  
494 payment is due; and  
495 (b) An itemization of the maintenance fees that will be retained by  
496 the debt management services provider, and the amount of money that will be paid to the  
497 consumer's creditors, from each payment the consumer makes to the debt management services  
498 provider;  
499 (viii) A list of:  
500 (a) Each participating creditor of the consumer to which payments  
501 will be made under the debt management services agreement;  
502 (b) The amount owed to each creditor; and  
503 (c) A schedule of payments that the debt management services  
504 provider will make to each participating creditor from the consumer's payments, including the  
505 amount of each payment and the date on which each payment will be made; and  
506 (d) Each creditor that the licensee reasonably expects not to  
507 participate in the management of the consumer's debt under the debt management services  
508 agreement;  
509 (ix) A disclosure that the licensee also may receive compensation from  
510 the consumer's creditors for providing debt management services to the consumer;  
511 (x) A disclosure that the licensee may not, as a condition of entering into  
512 a debt management services agreement, require a consumer to purchase for a fee a counseling  
513 session, an educational program, or materials and supplies;  
514 (xi) A disclosure that the licensee may not require a voluntary  
515 contribution from a consumer for any service provided by the licensee to the consumer;  
516 (xii) A disclosure that, by executing the debt management services  
517 agreement, the consumer authorizes any financial institution in which the licensee has  
518 established a trust account for deposit of the consumer's funds to disclose to the [commissioner]  
519 any financial records relating to the trust account during the course of any investigation or  
520 examination of the licensee by the [commissioner];  
521 (xiii) A disclosure that execution of a debt management services  
522 agreement may impact the consumer's credit rating and credit scores; and  
523 (xiv) The following notice:

524 “The [commissioner of financial regulation] will accept questions and  
525 complaints from residents regarding [name and license number of the debt  
526 management service provider] at [address of the commissioner] phone [toll-free  
527 number of the commissioner]. Do not sign this agreement before you read it.  
528 You must be given a copy of this agreement.”

529 (C) A debt management services agreement between a consumer and a person that is not  
530 a licensee under this subtitle shall be null and void, and all fees paid to the person under the debt  
531 management services agreement shall be recoverable by the consumer, together with reasonable  
532 attorney's fees.

533

534 Section 14. [*Trust Accounts.*]

535 (A) Within [2 business days] after receipt, a licensee shall deposit, in a trust account  
536 established for the benefit of consumers, any funds paid to the licensee by or on behalf of a  
537 consumer for disbursement to the consumer's creditors.

538 (B) A licensee shall:

539 (1) Maintain separate records of account for each consumer to whom the licensee  
540 is providing debt management services;

541 (2) Disburse any funds paid by or on behalf of a consumer to the consumer's  
542 creditors within [8 business days] after receipt of the funds; and

543 (3) (i) Correct any misdirected payments resulting from an error by the licensee;

544 and

545 (ii) Reimburse the consumer for any actual fees or other charges imposed by  
546 a creditor as a result of the misdirection.

547 (C) A licensee may not commingle any trust account established for the benefit of  
548 consumers with any operating accounts of the licensee.

549

550 Section 15. [*Licensee Fees.*]

551 (A) With respect to the provision of debt management services, a licensee may not  
552 impose any fees or other charges on a consumer, or receive any funds or other payments from a  
553 consumer or another person on behalf of a consumer:

554 (1) Except as provided in subsections (G)(3) and (I) of this section, until after the  
555 licensee and consumer have executed a debt management services agreement; and

556 (2) Only as allowed under this section.

557 (B) (1) A licensee may charge a consultation fee not exceeding [\$50].

558 (2) The cost of a credit report on a consumer shall be paid from the consultation  
559 fee paid by the consumer.

560 (C) (1) Subject to paragraph (2) of this subsection, a licensee may charge a monthly  
561 maintenance fee not exceeding [\$8] for each creditor of a consumer that is listed in the debt  
562 management services agreement between the licensee and the consumer.

563 (2) The total fees charged to a consumer under paragraph (1) of this subsection  
564 may not exceed [\$40] per month.

565 (D) A licensee may collect from or on behalf of a consumer the funds the consumer has  
566 agreed to pay to the licensee under the debt management services agreement.

567 (E) A licensee may not charge a fee to:

568 (1) Prepare a financial analysis or an initial budget plan for the consumer;

569 (2) Counsel a consumer about debt management;

570 (3) Provide a consumer with the consumer education program described in the  
571 licensee's license application; or

572 (4) Rescind a debt management services agreement.

573 (F) (1) A licensee may not require a voluntary contribution from a consumer for any  
574 service provided by the licensee to the consumer.

575 (2) A licensee may accept a voluntary contribution from a consumer for a debt  
576 management service provided by the licensee to the consumer if the aggregate amount of the  
577 voluntary contribution and any other fees received by the licensee from the consumer for debt  
578 management services does not exceed the total amount the licensee is authorized to charge the  
579 consumer under subsections (B) and (C) of this section.

580 (G) (1) Before providing debt management services to a consumer, a licensee shall  
581 provide the consumer a list of services and their charges describing:

582 (i) Those services that the licensee offers:

583 (a) Free of charge if the consumer enters into a debt management  
584 services agreement with the licensee; and

585 (b) For a charge if the consumer does not enter into a debt  
586 management services agreement with the licensee; and

587 (ii) Those services that the licensee offers for a charge that are not  
588 offered as a part of debt management services.

589 (2) A licensee may not, as a condition of entering into a debt management  
590 services agreement, require a consumer to purchase for a fee a counseling session, an  
591 educational program, or materials and supplies.

592 (3) A licensee may charge a consumer a fee for a counseling session, an  
593 educational program, or materials and supplies if the consumer does not enter into a debt  
594 management services agreement with the licensee.

595 (H) (1) In addition to any other right of rescission contained in the debt management  
596 services agreement, a consumer may modify or rescind a debt management services agreement  
597 if the consumer is notified of a creditor's nonparticipation under this subsection.

598 (2) If a creditor that is listed as participating in the debt management services  
599 agreement declines to participate in debt management services under the agreement, the licensee  
600 shall notify the consumer by certified mail, or other verifiable means approved by the consumer,  
601 at least [5 business days] before the consumer's next scheduled payment under the agreement.

602 (3) The notice shall include:

603 (i) The identity of the creditor; and

604 (ii) The right of the consumer to modify or rescind the agreement.

605 (4) A consumer who rescinds a debt management services agreement under this  
606 subsection is entitled to a refund of all unexpended funds that the consumer has paid to the  
607 licensee for the reduction of the consumer's debt.

608 (I) If a payment by a consumer under this section to a licensee is dishonored, the licensee  
609 may charge the consumer the amount allowable for dishonored checks or other instruments  
610 under [insert citation], whether or not the consumer has entered into a debt management services  
611 agreement with the licensee.

612 (J) With respect to the provision of debt management services, if a licensee imposes any  
613 fee or other charge or receives any funds or other payments not authorized under this section,  
614 except as a result of an accidental and bona fide error:

615 (1) The debt management services agreement shall be void; and

616 (2) The licensee shall return the amount of the unauthorized fees, charges, funds,  
617 or payments to the consumer.

618

619 Section 16. [*Licensees: Written Statements.*]

620 (A) A licensee shall provide to each consumer with whom the licensee has a debt  
621 management services agreement a written accounting of:

622 (1) The amount of funds received from the consumer for payment to the  
623 consumer's creditors since the last report; and

624 (2) The amounts and dates of disbursements made to each creditor of the  
625 consumer since the last report.

626 (B) A licensee shall provide the accounting required under subsection (A) of this section:

627 (1) At least [once during each calendar quarter]; and

628 (2) On cancellation or termination of the debt management services agreement.

629  
630 Section 17. [*Prohibitions: Licensees.*]

631 (A) A licensee may not:

632 (1) Purchase any debt or obligation of a consumer;

633 (2) Lend money or provide credit to a consumer;

634 (3) Obtain a mortgage or other security interest in property owned by a  
635 consumer;

636 (4) Operate as a collection agency, as defined in [insert citation];

637 (5) Structure a debt management services agreement in a manner that would  
638 result in a negative amortization of any of the consumer's debts;

639 (6) Make any false, misleading, or deceptive representations or omissions of  
640 information in connection with the offer, sale, or performance of any service;

641 (7) Offer, pay, or give a substantial gift, bonus, premium, reward, or other  
642 compensation to a person for referring a prospective customer to the licensee;

643 (8) Offer an incentive, including a gift, bonus, premium, reward, or other  
644 compensation, to a consumer for executing a debt management services agreement with the  
645 licensee;

646 (9) Charge for or provide credit insurance; or

647 (10) Compromise any debts of a consumer unless the licensee has obtained the  
648 prior written approval of the consumer, and the compromise benefits the consumer.

649 (B) (1) Notwithstanding any other provision of state law, a licensee may not, directly  
650 or indirectly, collect any fee for referring, advising, procuring, arranging, or assisting a  
651 consumer in obtaining any extension of credit or other consumer service from a lender or  
652 service provider if the licensee, or any owner, officer, director, principal, or employee of the  
653 licensee, is an owner, partner, director, officer, or employee of the lender or service provider.

654 (2) This subsection does not prohibit a licensee from referring, advising,  
655 procuring, arranging, or assisting a consumer in obtaining any extension of credit or other  
656 consumer service from a lender or service provider of which the licensee, or any owner, officer,  
657 director, principal, or employee of the licensee, is an owner, partner, director, officer, or  
658 employee, if:

659 (i) The licensee does not directly or indirectly collect any fee; and

660 (ii) The consumer is provided with a written disclosure of the  
661 relationship.

662  
663 Section 18. [*Licensee Annual Reports.*]

664 (A) (1) On or before [April 30 of each year], a licensee shall report to the  
665 [commissioner] on the debt management services business of the licensee conducted during the  
666 preceding calendar year.

667 (2) The annual report shall be on the form that the [commissioner] requires.

668 (3) The report shall include:

- 669 (i) An audited financial statement that is prepared in accordance with  
670 generally accepted accounting principles and includes a balance sheet, income statement,  
671 statement of changes in fund balances, and statement of cash flow;
- 672 (ii) An alphabetical list of all debt management counselors who provided  
673 services for the licensee during the previous calendar year;
- 674 (iii) The number of consumers for whom the licensee provided debt  
675 management services under a debt management services agreement during the preceding  
676 calendar year;
- 677 (iv) The number of consumers who signed new debt management  
678 services agreements with the licensee during the preceding calendar year;
- 679 (v) The highest number of consumers for whom the licensee provided  
680 debt management services under a debt management services agreement during any month in  
681 the preceding calendar year; and
- 682 (vi) The amounts paid by consumers to the licensee, both in total and for  
683 each month, during the preceding calendar year, broken down by:
- 684 (I) Payments to be disbursed to creditors; and  
685 (II) Payments for the licensee's services.
- 686 (B) (1) Within [15 days] after the occurrence of any of the following events, a  
687 licensee shall file a written report with the [commissioner] describing the event and its expected  
688 impact on the licensee's activities in the state:
- 689 (i) The filing for bankruptcy or reorganization by the licensee;
- 690 (ii) The institution of a revocation or suspension proceeding against the  
691 licensee by a governmental authority that is related to the licensee's debt management services  
692 business in any state;
- 693 (iii) A felony indictment or conviction of the licensee, or any of its  
694 officers directors, or debt management counselors, that is related to the licensee's debt  
695 management services business;
- 696 (iv) The commencement of a civil action by a consumer against the  
697 licensee, or its owners, officers, directors, principals, or debt management counselors, that is  
698 related to the licensee's debt management services business;
- 699 (v) The filing of any material litigation against the licensee, or its owners,  
700 officers, directors, principals, or debt management counselors, that is related to the licensee's  
701 debt management services business; and
- 702 (vi) A list of all third-party vendors and other service providers that the  
703 licensee used in providing debt management services at any time in the preceding calendar year.
- 704 (2) The written report required under paragraph (1) of this subsection shall be  
705 sent to the [commissioner] by certified mail, return receipt requested, and include details  
706 sufficient to identify the event.
- 707 (C) The [commissioner] may require any other reports from a licensee that the  
708 [commissioner] considers necessary.
- 709 (D) If a licensee fails to make any report required by this subtitle, the [commissioner]  
710 may require the licensee to pay a surcharge not exceeding [\$50] for each day that the report is  
711 overdue.

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716

Section 19. *[Licensee Records.]*

(A) To enable the [commissioner] to determine compliance with this Act, a licensee shall make and preserve the following books, accounts, and records for a period of at least [7 years]:

- 717 (1) A general ledger containing all assets, liability, capital, income, and expense  
718 accounts;  
719 (2) Each debt management services agreement between the licensee and a  
720 consumer;  
721 (3) Books and records for each consumer with whom the licensee has a debt  
722 management services agreement; and  
723 (4) Bank statements and bank reconciliation records.

724 (B) A licensee may retain the books, accounts, and records required under this section at  
725 any location, provided that the licensee:

726 (1) Notifies the [commissioner] in writing of the location of the books, accounts,  
727 and records; and

728 (2) Makes the books, accounts, and records available at a location in the state, as  
729 agreed by the commissioner and the licensee, within [7 days] after a written request for  
730 examination by the [commissioner].

731 (C) A licensee shall retain the books, accounts, and records required under this section  
732 in:

733 (1) Original form; or

734 (2) Photographic, electronic, or other similar form approved by the  
735 [commissioner].

736 (D) If the [commissioner] finds that the books, accounts, and records of the licensee are  
737 insufficient to determine compliance with this subtitle, the [commissioner] may require the  
738 licensee to have a certified public accountant audit the licensee, at the licensee's expense, for  
739 any period of time that the commissioner considers necessary.

740 (E) (1) A licensee shall keep all books, accounts, and records relating to a consumer  
741 confidential, and may not disclose any information about a consumer except to a duly  
742 authorized government official, the consumer, or the consumer's representative.

743 (2) A duly authorized government official may disclose information obtained  
744 under paragraph (1) of this subsection only in accordance with [insert citation].

745 (F) The requirements of this section also apply to books, accounts, and records in the  
746 possession of a subsidiary, affiliate, or other person that relate to the operation of and services  
747 provided by the licensee's debt management services business.

748

749 Section 20. *[Violations.]*

750 (A) To discover any violations of this subtitle or to obtain any information required by  
751 this subtitle, the [commissioner] at any time may investigate the business of:

752 (1) A licensee;

753 (2) A person that is engaged or participating in the business of providing debt  
754 management services; and

755 (3) Any other person that the [commissioner] has cause to believe is violating  
756 this subtitle or any regulation adopted under this subtitle, whether that person claims to be  
757 within or beyond the scope of this [subtitle].

758 (B) For the purposes of this section, the [commissioner]:

759 (1) Shall be given access to the place of business, books, papers, records, safes,  
760 and vaults of the person under investigation; and

761 (2) May summon and examine under oath any person whose testimony the  
762 [commissioner] requires.

763 (C) If, after an investigation conducted under this subsection, the [commissioner] finds  
764 that the person that was investigated violated this subtitle or any regulation adopted under this  
765 subtitle, the person shall pay all reasonably incurred costs of the investigation.

766 (D) (1) If a person fails to comply with a subpoena or summons of the  
767 [commissioner] under this Act or to testify concerning any matter about which the person may  
768 be interrogated under this Act, the [commissioner] may file a petition for enforcement with the  
769 [circuit court] for any [county]

770 (2) On petition by the [commissioner], the [court] may order the person to attend  
771 and testify or produce evidence.

772  
773 Section 21. [*Examinations of Licensee.*]

774 (A) The [commissioner] may conduct an on-site examination of a licensee with or  
775 without prior notice.

776 (B) The licensee shall pay all reasonably incurred costs directly related to an  
777 examination conducted under this section, including the travel expenses, lodging expenses, and  
778 a per diem for examiners.

779 (C) An on-site examination may be conducted in conjunction with an examination  
780 performed by a representative of a responsible supervisory agency of another state.

781 (D) (1) The [commissioner], in lieu of an on-site examination, may accept the  
782 examination report of a responsible supervisory agency of another state.

783 (2) A report accepted under paragraph (1) of this subsection is considered for all  
784 purposes as an official report of the [commissioner].

785 (E) The [commissioner] may:

786 (1) Examine all books, accounts, and records that the [commissioner] determines  
787 are necessary to conduct a complete examination, including the books, accounts, and records in  
788 the possession of a subsidiary, affiliate, or other person that relate to the operation of and  
789 services provided by the licensee's debt management services business; and

790 (2) Examine under oath any owner, officer, director, principal, and employee of  
791 the licensee or any other individual who may provide information on behalf of the licensee.

792  
793 Section 22. [*Licensee Advertising.*] A licensee shall include in any advertisement the  
794 licensee's debt management services license number.

795  
796 Section 23. [*Violations, Enforcement and Penalties.*]

797 (A) (1) The [commissioner] may enforce the provisions of this Act and regulations  
798 adopted under this Act by:

799 (i) Issuing an order requiring the violator:

800 1. To cease and desist from the violation and any further similar  
801 violations; and

802 2. To take affirmative action to correct the violation including the  
803 restitution of money or property to any person aggrieved by the violation; and

804 (ii) Imposing a civil penalty not exceeding [\$1,000] for each violation.

805 (2) An order issued under this subsection may apply to a licensee's agent that  
806 violates any provision of this subtitle or the regulations adopted under this Act.

807 (3) If a violator fails to comply with an order issued under paragraph (1)(i) of this  
808 subsection, the [commissioner] may impose a civil penalty not exceeding [\$1,000] for each  
809 violation from which the violator failed to cease and desist or for which the violator failed to  
810 take corrective affirmative action.

811 (B) The [commissioner] may file a petition in the [circuit court] for any county seeking  
812 enforcement of an order issued under this section.

813 (C) In determining the amount of financial penalty to be imposed under subsection (a) of  
814 this section, the [commissioner] shall consider the following:

- 815 (1) The seriousness of the violation;  
816 (2) The good faith of the violator;  
817 (3) The violator's history of previous violations;  
818 (4) The deleterious effect of the violation on the public;  
819 (5) The assets of the violator; and  
820 (6) Any other factors relevant to the determination of the financial penalty.

821 (D) A person who knowingly and willfully violates any provision of this Act is guilty of  
822 a felony and on conviction is subject to a fine not exceeding [\$1,000] for the first violation and  
823 not exceeding [\$5,000] for each subsequent violation or imprisonment not exceeding [5 years]  
824 or both.

825

826 Section 24. [*Remedies for Damages from Debt Management Services.*] In addition to any  
827 other remedies provided in this Act, a consumer may bring a civil action to recover for any  
828 damages caused by a violation of this Act, including court costs and reasonable attorney's fees.

829

830 Section 25. [*Retroactive Application of Debt Management Services Act.*]

831 (A) In the absence of an order by the [commissioner of financial regulation] to the  
832 contrary, an organization providing debt management services to [state] consumers on the  
833 effective date of this Act may continue to provide debt management services to [state]  
834 consumers without being licensed, as required under this Act, until the [commissioner] approves  
835 or disapproves the organization's application for a license if:

836 (1) The organization applies for a license no later than [60 days] after the date  
837 the [commissioner] makes license applications available; and

838 (2) The organization complies with all other provisions of this Act.

839 (B) A license issued on or after [October 1, 2003], and on or before [December 31,  
840 2003], expires on [December 31, 2005], unless it is renewed for a [2-year term] as provided in  
841 section 8 of this Act.

842

843 Section 26. [*Reports.*] That, on or before [insert date], the [commissioner] shall report, in  
844 accordance with [insert citation] to the [Senate Finance Committee] and the [House Economic  
845 Matters Committee] on the number of licenses that the [commissioner] has issued under this Act  
846 and any recommendations for changes to this Debt Management Services Act.

847

848 Section 27. [*Debt Adjusting.*]

849 (A) In this Section, "debt adjusting" means the making of a contract, expressed or  
850 implied, with a debtor and another person engaged in the debt adjusting business by which the  
851 debtor agrees to pay a certain amount of money periodically to the other, who for consideration  
852 distributes the money among specified creditors in accordance with an agreed plan.

853 (B) A person may not engage in the business of debt adjusting.

854 (C) A person who violates this section is guilty of a misdemeanor and on conviction is  
855 subject to imprisonment not exceeding [6 months] or a fine not exceeding [\$500] or both.

856 (D) This section does not apply to the following when engaged in the regular course of  
857 their respective businesses and professions:

858 (1) A lawyer;

859 (2) A bank or fiduciary, authorized to transact business in this state and perform  
860 credit and financial adjusting service in the regular course of its principal business;

861 (3) A title insurer or abstract company, while doing an escrow business;

862 (4) A judicial officer or a person acting under a court order;

863 (5) A nonprofit, religious, fraternal, or cooperative organization that offers debt  
864 management service exclusively for members, if a charge is not made and a fee is not imposed;  
865 (6) A certified public accountant; and  
866 (7) A trade or mercantile association in the course of arranging the adjustment of  
867 debts with a business establishment.

868  
869 Section 28. [*Severability.*] [Insert severability clause.]

870  
871 Section 29. [*Repealer.*] [Insert repealer clause.]

872  
873 Section 30. [*Effective Date.*] [Insert effective date.]