

Public Act 096-1420

HB4781 Enrolled

LRB096 16778 MJR 32078 b

AN ACT concerning debt settlement.

**Be it enacted by the People of the State of Illinois,
represented in the General Assembly:**

Section 1. Short title. This Act may be cited as the Debt Settlement Consumer Protection Act.

Section 5. Purpose and construction. The purpose of this Act is to protect consumers who enter into agreements with debt settlement providers and to regulate debt settlement providers. This Act shall be construed as a consumer protection law for all purposes. This Act shall be liberally construed to effectuate its purpose.

Section 10. Definitions. As used in this Act:

"Consumer" means any person who purchases or contracts for the purchase of debt settlement services.

"Consumer settlement account" means any account or other means or device in which payments, deposits, or other transfers from a consumer are arranged, held, or transferred by or to a debt settlement provider for the accumulation of the consumer's funds in anticipation of proffering an adjustment or settlement of a debt or obligation of the consumer to a creditor on behalf of the consumer.

"Debt settlement provider" means any person or entity engaging in, or holding itself out as engaging in, the business of providing debt settlement service in exchange for any fee or compensation, or any person who solicits for or acts on behalf of any person or entity engaging in, or holding itself out as engaging in, the business of providing debt settlement service in exchange for any fee or compensation. "Debt settlement provider" does not include:

(1) attorneys licensed, or otherwise authorized, to practice in Illinois who are engaged in the practice of law;

(2) escrow agents, accountants, broker dealers in securities, or investment advisors in securities, when acting in the ordinary practice of their professions and through the entity used in the ordinary practice of their profession;

(3) any bank, agent of a bank, operating subsidiary of a bank, affiliate of a bank, trust company, savings and loan association, savings bank, credit union, crop credit association, development credit corporation, industrial development corporation, title insurance company, title insurance agent, independent escrowee or insurance company operating or organized under the laws of a state or the United States, or any other person authorized to make loans under State law while acting in the ordinary practice of that business;

(4) any person who performs credit services for his or

her employer while receiving a regular salary or wage when the employer is not engaged in the business of offering or providing debt settlement service;

(5) a collection agency licensed pursuant to the Collection Agency Act that is collecting a debt on its own behalf or on behalf of a third party;

(6) an organization that is described in Section 501(c)(3) and subject to Section 501(q) of Title 26 of the United States Code and exempt from tax under Section 501(a) of Title 26 of the United States Code and governed by the Debt Management Service Act;

(7) public officers while acting in their official capacities and persons acting under court order;

(8) any person while performing services incidental to the dissolution, winding up, or liquidating of a partnership, corporation, or other business enterprise; or

(9) persons licensed under the Real Estate License Act of 2000 when acting in the ordinary practice of their profession and not holding themselves out as debt settlement providers.

"Debt settlement service" means:

(1) offering to provide advice or service, or acting as an intermediary between or on behalf of a consumer and one or more of a consumer's creditors, where the primary purpose of the advice, service, or action is to obtain a settlement, adjustment, or satisfaction of the consumer's unsecured debt to a creditor in an amount less than the full amount of the principal amount of the debt or in an amount less than the current outstanding balance of the debt; or

(2) offering to provide services related to or providing services advising, encouraging, assisting, or counseling a consumer to accumulate funds for the primary purpose of proposing or obtaining or seeking to obtain a settlement, adjustment, or satisfaction of the consumer's unsecured debt to a creditor in an amount less than the full amount of the principal amount of the debt or in an amount less than the current outstanding balance of the debt.

"Debt settlement service" does not include (A) the services of attorneys licensed, or otherwise authorized, to practice in Illinois who are engaged in the practice of law or (B) debt management service as defined in the Debt Management Service Act.

"Enrollment or set up fee" means any fee, obligation, or compensation paid or to be paid by the consumer to a debt settlement provider in consideration of or in connection with establishing a contract or other agreement with a consumer related to the provision of debt settlement service.

"Maintenance fee" means any fee, obligation, or compensation paid or to be paid by the consumer on a periodic basis to a debt settlement provider in consideration of maintaining the relationship and services to be provided by a debt settlement provider in accordance with a contract with a consumer related to the provision of debt settlement service.

"Principal amount of the debt" means the total amount or outstanding balance owed by a consumer to one or more creditors for a debt that is included in a contract for debt settlement service at the time when the consumer enters into a contract for debt settlement service.

"Savings" means the difference between the principal amount of the debt and the amount paid by the debt settlement provider to the creditor or negotiated by the debt settlement provider and paid by the consumer to the creditor pursuant to a settlement negotiated by the debt settlement provider on behalf of the consumer as full and complete satisfaction of the creditor's claim with regard to that debt.

"Secretary" means the Secretary of Financial and Professional Regulation.

"Settlement fee" means any fee, obligation, or compensation paid or to be paid by the consumer to a debt settlement provider in consideration of or in connection with a completed agreement or other arrangement on the part of a creditor to accept less than the principal amount of the debt as satisfaction of the creditor's claim against the consumer.

Section 15. Requirement of license. It shall be unlawful for any person or entity to act as a debt settlement provider except as authorized by this Act and without first having obtained a license under this Act.

Section 20. Application for license. An application for a license to operate as a debt settlement provider in this State shall be made to the Secretary and shall be in writing, under oath, and in the form prescribed by the Secretary.

Each applicant, at the time of making such application, shall pay to the Secretary the required fee as set by rule.

Every applicant shall submit to the Secretary, at the time of the application for a license, a bond to be approved by the Secretary in which the applicant shall be the obligor, in the sum of \$100,000 or an additional amount as required by the Secretary, and in which an insurance company, which is duly authorized by the State of Illinois to transact the business of fidelity and surety insurance, shall be a surety.

The bond shall run to the Secretary for the use of the Department or of any person or persons who may have a cause of action against the obligor in said bond arising out of any violation of this Act or rules by a debt settlement provider. Such bond shall be conditioned that the obligor must faithfully conform to and abide by the provisions of this Act and of all rules, regulations, and directions lawfully made by the Secretary and pay to the Secretary or to any person or persons any and all money that may become due or owing to the State or to such person or persons, from the obligor under and by virtue of the provisions of this Act.

Section 25. Qualifications for license. Upon the filing of the application and the approval of the bond and the payment of the specified fees, the Secretary may issue a license if he or she finds all of the following:

(1) The financial responsibility, experience, character, and general fitness of the applicant, the managers, if the applicant is a limited liability company, the partners, if the applicant is a partnership, and the officers and directors, if the applicant is a corporation or a not for profit corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated fairly, honestly, and efficiently within the purposes of this Act.

(2) The applicant, if an individual, the managers, if

the applicant is a limited liability company, the partners, if the applicant is a partnership, and the officers and directors, if the applicant is a corporation, have not been convicted of a felony or a misdemeanor or disciplined with respect to a license or are not currently the subject of a license disciplinary proceeding concerning allegations involving dishonesty or untrustworthiness.

(3) The person or persons have not had a record of having defaulted in the payment of money collected for others, including the discharge of those debts through bankruptcy proceedings.

(4) The applicant, or any officers, directors, partners, or managers have not previously violated any provision of this Act or any rule lawfully made by the Secretary.

(5) The applicant has not made any false statement or representation to the Secretary in applying for a license under this Section.

The Secretary shall deliver a license to the applicant to operate as a debt settlement provider in accordance with the provisions of this Act at the location specified in the application. The license shall remain in full force and effect until it is surrendered by the debt settlement provider or revoked by the Secretary as provided in this Act; provided, however, that each license shall expire by its terms on January 1 next following its issuance unless it is renewed as provided in this Act. A license, however, may not be surrendered without the approval of the Secretary.

More than one license may be issued to the same person for separate places of business, but separate applications shall be made for each location conducting business with Illinois residents.

Section 30. Renewal of license.

(a) Each debt settlement provider under the provisions of this Act may make application to the Secretary for renewal of its license, which application for renewal shall be on the form prescribed by the Secretary and shall be accompanied by a fee of \$1,000 together with a bond or other surety as required, in a minimum amount of \$100,000 or an amount as required by the Secretary based on the amount of disbursements made by the licensee in the previous year. The application must be received by the Department no later than December 1 of the year preceding the year for which the application applies.

Section 33. Annual report; debt settlement provider disclosure of statistical information; Secretary to report statistical information.

(a) A debt settlement provider must file an annual report with the Secretary that must include all of the following data:

- (1) for each Illinois resident:
 - (i) the number of accounts enrolled;
 - (ii) the principal amount of debt at the time each account was enrolled;
 - (iii) the status of each account (for example, active or terminated);
 - (iv) whether the account has been settled, and if so, the settlement amount and the corresponding principal amount of debt enrolled for that account;
 - (v) the total amount of fees paid to the debt

settlement service provider;

(vi) whether the creditor has filed suit on the account debt;

(vii) the date the resident is expected to complete the debt settlement program; and

(viii) the date the resident canceled, terminated, or became inactive in the program, if applicable.

(2) for persons completing the program during the reporting period, the median and mean percentage of savings and the median and mean fees paid to the debt settlement service provider;

(3) for persons who cancelled, became inactive, or terminated the program during the reporting period, the median and mean percentage of the savings and the median and mean fees paid to the debt settlement service provider;

(4) the percentage of Illinois residents who canceled, terminated, became inactive, or completed the program without the settlement of all of the enrolled debt; and

(5) the total amount of fees collected from Illinois residents.

The annual report must contain a declaration executed by an official authorized by the debt settlement provider under penalty of perjury that states that the report complies with this Section.

(b) The Secretary may prepare and make available to the public an annual consolidated report of all the data debt settlement providers are required to report pursuant to subsection (a) of this Section.

Section 35. License; display and location of license. Each license issued shall be kept conspicuously posted in the place of business of the debt settlement provider. The business location may be changed by any debt settlement provider upon 10 days prior written notice to the Secretary. A debt settlement provider must operate under the name as stated in its original application.

Section 45. Denial of license. Any complete application for a license shall be approved or denied within 60 days after the filing of the complete application with the Secretary.

Section 50. Revocation or suspension of license.

(a) The Secretary may revoke or suspend any license if he or she finds that:

(1) any debt settlement provider has failed to pay the annual license fee or to maintain in effect the bond required under the provisions of this Act;

(2) the debt settlement provider has violated any provisions of this Act or any rule lawfully made by the Secretary under the authority of this Act;

(3) any fact or condition exists that, if it had existed at the time of the original application for a license, would have warranted the Secretary in refusing its issuance; or

(4) any applicant has made any false statement or representation to the Secretary in applying for a license under this Act.

(b) In every case in which a license is suspended or revoked or an application for a license or renewal of a license is denied, the Secretary shall serve notice of his or her

action, including a statement of the reasons for his or her actions, either personally or by certified mail, return receipt requested. Service by mail shall be deemed completed if the notice is deposited in the U.S. Mail.

(c) In the case of a denial of an application or renewal of a license, the applicant or debt settlement provider may request, in writing, a hearing within 30 days after the date of service. In the case of a denial of a renewal of a license, the license shall be deemed to continue in force until 30 days after the service of the notice of denial, or if a hearing is requested during that period, until a final administrative order is entered.

(d) An order of revocation or suspension of a license shall take effect upon service of the order unless the debt settlement provider requests, in writing, a hearing within 10 days after the date of service. In the event a hearing is requested, the order shall be stayed until a final administrative order is entered.

(e) If the debt settlement provider requests a hearing, then the Secretary shall schedule the hearing within 30 days after the request for a hearing unless otherwise agreed to by the parties.

(f) The hearing shall be held at the time and place designated by the Secretary. The Secretary and any administrative law judge designated by the Secretary have the power to administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of books, papers, correspondence, and other records or information that the Secretary considers relevant or material to the injury.

(g) The costs for the administrative hearing shall be set by rule.

Section 55. Contracts, books, records, and contract cancellation. Each debt settlement provider shall furnish to the Secretary, when requested, a copy of the contract entered into between the debt settlement provider and the debtor. The debt settlement provider shall furnish the debtor with a copy of the written contract at the time of execution, which shall set forth the charges, if any, agreed upon for the services of the debt settlement provider.

Each debt settlement provider shall maintain records and accounts that will enable any debtor contracting with the debt settlement provider, at any reasonable time, to ascertain the status of all the debtor's accounts with the debt settlement service provider, including, but not limited to, the amount of any fees paid by the debtor, amount held in trust (if applicable), settlement offers made and received on each of the debtor's accounts, and legally enforceable settlements reached with the debtor's creditors. A statement showing the total amount received and the total disbursements to each creditor shall be furnished by the debt settlement provider to any individual within 7 days after a request therefor by the said debtor. Each debt settlement provider shall issue a receipt for each payment made by the debtor at a debt settlement provider office. Each debt settlement provider shall prepare and retain in the file of each debtor a written analysis of the debtor's income and expenses to substantiate that the plan of payment is feasible and practical.

Section 60. Examination of debt settlement provider; duty to disclose a post-license event.

(a) The Secretary at any time, either in person or through an appointed representative, may examine the condition and affairs of a debt settlement provider. In connection with any examination, the Secretary may examine on oath any debt settlement provider and any director, officer, employee, customer, manager, partner, member, creditor, or stockholder of a debt settlement provider concerning the affairs and business of the debt settlement provider. The Secretary shall ascertain whether the debt settlement provider transacts its business in the manner prescribed by law and the rules issued thereunder. The debt settlement provider shall pay the cost of the examination as determined by the Secretary by administrative rule. Failure to pay the examination fee within 30 days after receipt of demand from the Secretary may result in the suspension of the license until the fee is paid. The Secretary shall have the right to investigate and examine any person, whether licensed or not, who is engaged in the debt settlement service business. The Secretary shall have the power to subpoena the production of any books and records pertinent to any investigation.

(b) Each debt settlement provider shall disclose promptly to the Secretary, but in no event more than 30 days after the occurrence of the event, any change in any of the criteria listed in Section 25 of this Act for the issuance of a license.

Section 65. Trust funds; requirements and restrictions.

(a) All funds received by a debt settlement provider or his agent from and for the purpose of paying bills, invoices, or accounts of a debtor shall constitute trust funds owned by and belonging to the debtor from whom they were received. All such funds received by the debt settlement provider shall be separated from the funds of the debt settlement provider not later than the end of the business day following receipt by the debt settlement provider. All such funds shall be kept separate and apart at all times from funds belonging to the debt settlement provider or any of its officers, employees, or agents and may be used for no purpose other than paying bills, invoices, or accounts of the debtor. All such trust funds received at the main or branch offices of a debt settlement provider shall be deposited in a bank in an account in the name of the debt settlement provider-designated trust account, or by some other appropriate name indicating that the funds are not the funds of the debt settlement provider or its officers, employees, or agents, on or before the close of the business day following receipt.

(b) Such funds are not subject to attachment, lien, levy of execution, or sequestration by order of court except by a debtor for whom a debt settlement provider is acting as an agent in paying bills, invoices, or accounts.

(c) At least once every month, the debt settlement provider shall render an accounting to the debtor that shall itemize the total amount received from the debtor, the total amount paid each creditor, the amount of charges deducted, and any amount held in reserve, if applicable, and the status of each of the debtors' enrolled accounts. A debt settlement provider shall, in addition, provide such an accounting to a debtor within 7 days after written demand, but not more than 3 times per 6-month period.

(d) Nothing in this Act requires the establishment of a trust account if no consumer funds other than earned settlement fees are held or controlled by a debt settlement provider.

Section 75. Rules. The Secretary shall adopt and enforce all reasonable rules necessary or appropriate for the administration of this Act. The rulemaking shall be subject to the provisions of the Illinois Administrative Procedure Act.

Section 80. Penalties.

(a) Any person who operates as a debt settlement provider without a license shall be guilty of a Class 4 felony.

(b) Any contract of debt settlement service as defined in this Act made by an unlicensed person shall be null and void and of no legal effect.

(c) The Secretary may, after 10 days notice by registered mail to the debt settlement service provider at the address on the license or unlicensed entity engaging in the debt settlement service business, stating the contemplated action and in general the grounds therefore, fine such debt settlement service provider or unlicensed entity an amount not exceeding \$10,000 per violation, and revoke or suspend any license issued hereunder if he or she finds that:

(1) The debt settlement service provider has failed to comply with any provision of this Act or any order, decision, finding, rule, regulation or direction of the Secretary lawfully made pursuant to the authority of this Act; or

(2) Any fact or condition exists which, if it had existed at the time of the original application for the license, clearly would have warranted the Secretary in refusing to issue the license.

Section 83. Additional liability for unlicensed activity. Any person who, without the required license, engages in conduct requiring a license under this Act without the required license shall be liable to the Department in an amount equal to the greater of (1) \$1,000 or (2) an amount equal to four times the amount of consumer debt enrolled. The Department shall cause any funds so recovered to be deposited in the Debt Settlement Consumer Protection Fund.

Section 85. Injunction. To engage in debt settlement service, render financial service, or accept debtors' funds, as defined in this Act, without a valid license to do so, is hereby declared to be inimical to the public welfare and to constitute a public nuisance. The Secretary may, in the name of the people of the State of Illinois, through the Attorney General of the State of Illinois, file a complaint for an injunction in the circuit court to enjoin such person from engaging in that business. An injunction proceeding shall be in addition to, and not in lieu of, penalties and remedies otherwise provided in this Act.

Section 90. Review. All final administrative decisions of the Secretary under this Act shall be subject to judicial review pursuant to the provisions of the Administrative Review Law, including all amendments, modifications, and adopted rules.

Section 95. Cease and desist orders.

(a) The Secretary may issue a cease and desist order to any debt settlement provider or other person doing business without the required license when, in the opinion of the Secretary, the debt settlement provider or other person is violating or is about to violate any provision of the Act or any rule or condition imposed in writing by the Department.

(b) The Secretary may issue a cease and desist order prior to a hearing.

(c) The Secretary shall serve notice of his or her action, including a statement of the reasons for his or her action either personally or by certified mail, return receipt requested. Service by mail shall be deemed completed if the notice is deposited in the U.S. Mail.

(d) Within 10 days after service of the cease and desist order, the licensee or other person may request, in writing, a hearing.

(e) The Secretary shall schedule a hearing within 30 days after the request for a hearing unless otherwise agreed to by the parties.

(f) If it is determined that the Secretary had the authority to issue the cease and desist order, then he or she may issue such orders as may be reasonably necessary to correct, eliminate, or remedy that conduct.

(g) The powers vested in the Secretary by this Section are additional to any and all other powers and remedies vested in the Secretary by law, and nothing in this Section shall be construed as requiring that the Secretary shall employ the power conferred in this Section instead of or as a condition precedent to the exercise of any other power or remedy vested in the Secretary.

(h) The cost for the administrative hearing shall be set by rule.

Section 100. Moneys received; Financial Institution Fund. All moneys received by the Division of Financial Institutions under this Act, except for moneys received for the Debt Settlement Consumer Protection Fund, shall be deposited in the Financial Institution Fund created under Section 6z-26 of the State Finance Act.

Section 103. Debt Settlement Consumer Protection Fund.

(a) A special income-earning fund is hereby created in the State Treasury, known as the Debt Settlement Consumer Protection Fund. This Fund is not subject to appropriation by the Illinois General Assembly.

(b) All moneys paid into the Fund together with all accumulated, undistributed income thereon shall be held as a special Fund in the State Treasury. All interest earned on the Fund is non-distributable and shall be returned to the Fund, and shall be invested and re-invested in the Fund by the Treasurer or his or her designee. The Fund shall be used solely for the purpose of providing restitution to consumers who have suffered monetary loss arising out of a transaction regulated by this Act.

(c) The Fund shall be applied only to restitution when restitution has been ordered by the Secretary. Restitution shall not exceed the amount actually lost by the consumer. The Fund shall not be used for the payment of any attorney or other fees.

(d) The Fund shall be subrogated to the amount of the restitution, and the Secretary shall request the Attorney General to engage in all reasonable collection steps to collect restitution from the party responsible for the loss and reimburse the Fund.

(e) Notwithstanding any other provisions of this Section, the payment of restitution from the Fund shall be a matter of grace and not right, and no consumer shall have any vested rights in the Fund as a beneficiary or otherwise. Before seeking restitution from the Fund, the consumer or beneficiary seeking payment of restitution shall apply for restitution on a form provided by the Secretary. The form shall include any information the Secretary may reasonably require in order to determine that restitution is appropriate. All documentation required by the Secretary, including the form, is subject to audit. Distributions from the Fund shall be made solely at the discretion of the Secretary, except that no payments or distributions may be made under any circumstance if the Fund is depleted.

(f) All deposits to this Fund shall be made pursuant to Section 83 of this Act.

(g) Notwithstanding any other law to the contrary, the Fund is not subject to administrative charges or charge-backs that would in any way transfer moneys from the Fund into any other fund of the State.

Section 105. Advertising and marketing practices.

(a) A debt settlement provider shall not represent, expressly or by implication, any results or outcomes of its debt settlement services in any advertising, marketing, or other communication to consumers unless the debt settlement provider possesses substantiation for such representation at the time such representation is made.

(b) A debt settlement provider shall not, expressly or by implication, make any unfair or deceptive representations, or any omissions of material facts, in any of its advertising or marketing communications concerning debt settlement services.

(c) All advertising and marketing communications concerning debt settlement services shall disclose the following material information clearly and conspicuously:

"Debt settlement services are not appropriate for everyone. Failure to pay your monthly bills in a timely manner will result in increased balances and will harm your credit rating. Not all creditors will agree to reduce principal balance, and they may pursue collection, including lawsuits."

Section 110. Individualized financial analysis.

(a) Prior to entering into a written contract with a consumer, a debt settlement provider shall prepare and provide to the consumer in writing and retain a copy of:

(1) an individualized financial analysis, including the individual's income, expenses, and debts; and

(2) a statement containing a good faith estimate of the length of time it will take to complete the debt settlement program, the total amount of debt owed to each creditor included in the debt settlement program, the total savings estimated to be necessary to complete the debt settlement program, and the monthly targeted savings amount estimated to be necessary to complete the debt settlement program.

(b) A debt settlement provider shall not enter into a written contract with a consumer unless it makes written determinations, supported by the financial analysis, that:

(1) the consumer can reasonably meet the requirements of the proposed debt settlement program, including the fees and the periodic savings amounts set forth in the savings goals; and

(2) the debt settlement program is suitable for the consumer at the time the contract is to be signed.

Section 115. Required pre-sale consumer disclosures and warnings.

(a) Before the consumer signs a contract, the debt settlement provider shall provide an oral and written notice to the consumer that clearly and conspicuously discloses all of the following:

(1) Debt settlement services may not be suitable for all consumers.

(2) Using a debt settlement service likely will harm the consumer's credit history and credit score.

(3) Using a debt settlement service does not stop creditor collection activity, including creditor lawsuits and garnishments.

(4) Not all creditors will accept a reduction in the balance, interest rate, or fees a consumer owes.

(5) The consumer should inquire about other means of dealing with debt, including, but not limited to, nonprofit credit counseling and bankruptcy.

(6) The consumer remains obligated to make periodic or scheduled payments to creditors while participating in a debt settlement plan, and that the debt settlement provider will not make any periodic or scheduled payments to creditors on behalf of the consumer.

(7) The failure to make periodic or scheduled payments to a creditor is likely to:

(A) harm the consumer's credit history, credit rating, or credit score;

(B) lead the creditor to increase lawful collection activity, including litigation, garnishment of the consumer's wages, and judgment liens on the consumer's property; and

(C) lead to the imposition by the creditor of interest charges, late fees, and other penalty fees, increasing the principal amount of the debt.

(8) The amount of time estimated to be necessary to achieve the represented results.

(9) The estimated amount of money or the percentage of debt the consumer must accumulate before a settlement offer will be made to each of the consumer's creditors.

(b) The consumer shall sign and date an acknowledgment form entitled "Consumer Notice and Rights Form" that states: "I, the debtor, have received from the debt settlement provider a copy of the form entitled "Consumer Notice and Rights Form"." The debt settlement provider or its representative shall also sign and date the acknowledgment form, which includes the name and address of the debt settlement services provider. The acknowledgment form shall be in duplicate and incorporated into the "Consumer Notice and Rights Form". The original acknowledgment form shall be retained by the debt settlement provider, and the duplicate copy shall be retained within the

form by the consumer.

If the acknowledgment form is in electronic form, then it shall contain the consumer disclosures required by Section 101(c) of the federal Electronic Signatures in Global and National Commerce Act.

(c) The requirements of this Section are satisfied if the provider provides the following warning verbatim, both orally and in writing, with the caption "CONSUMER NOTICE AND RIGHTS FORM" in at least 28-point font and the remaining portion in at least 14-point font, to a consumer before the consumer signs a contract for the debt settlement provider's services:

"CONSUMER NOTICE AND RIGHTS FORM

CAUTION

We CANNOT GUARANTEE that you successfully will reduce or eliminate your debt.

If you stop paying your creditors, there is a strong likelihood some or all of the following may happen:

- CREDITORS MAY STILL CONTACT YOU AND TRY TO COLLECT.
- CREDITORS MAY STILL SUE YOU FOR THE MONEY YOU OWE.
- YOUR WAGES OR BANK ACCOUNT MAY STILL BE GARNISHED.
- YOUR CREDIT RATING AND CREDIT SCORE LIKELY WILL BE HARMED.
- NOT ALL CREDITORS WILL AGREE TO ACCEPT A BALANCE REDUCTION.
- YOU SHOULD CONSIDER ALL YOUR OPTIONS FOR ADDRESSING YOUR DEBT, SUCH AS CREDIT COUNSELING AND BANKRUPTCY FILING.
- THE AMOUNT OF MONEY YOU OWE MAY INCREASE DUE TO CREDITOR IMPOSITION OF INTEREST CHARGES, LATE FEES, AND OTHER PENALTY FEES.
- EVEN IF WE DO SETTLE YOUR DEBT, YOU MAY STILL BE REQUIRED TO PAY TAXES ON THE AMOUNT FORGIVEN.

YOUR RIGHT TO CANCEL

If you sign a contract with a Debt Settlement Provider, you have the right to cancel at any time and receive a full refund of all unearned fees you have paid to the provider and all funds placed in your settlement fund that have not been paid to any creditors.

IF YOU ARE DISSATISFIED
OR YOU HAVE QUESTIONS

If you are dissatisfied with a debt settlement provider or have any questions, please bring it to the attention of the Illinois Attorney General's Office and the Department of Financial and Professional Regulation.

Attorney General Toll-Free Numbers:

Carbondale (800) 243-0607
Springfield (800) 243-0618
Chicago (800) 386-5438

Website for Department of Financial and Professional Regulation: www.idfpr.com

I, the debtor, have received from the debt settlement provider a copy of the form entitled Consumer Notice and Rights Form."

Section 120. Debt settlement contract.

(a) A debt settlement provider shall not provide debt settlement service to a consumer without a written contract

signed and dated by both the consumer and the debt settlement provider.

(b) Any contract for the provision of debt settlement service entered into in violation of the provisions of this Section is void.

(c) A contract between a debt settlement provider and a consumer for the provision of debt settlement service shall disclose all of the following clearly and conspicuously:

(1) The name and address of the consumer.

(2) The date of execution of the contract.

(3) The legal name of the debt settlement provider, including any other business names used by the debt settlement provider.

(4) The corporate address and regular business address, including a street address, of the debt settlement provider.

(5) The telephone number at which the consumer may speak with a representative of the debt settlement provider during normal business hours.

(6) A complete list of the consumer's accounts, debts, and obligations to be included in the provision of debt settlement service, including the name of each creditor and principal amount of each debt.

(7) A description of the services to be provided by the debt settlement provider, including the expected time frame for settlement for each account, debt, or obligation included in item (6) of this subsection (c).

(8) An itemized list of all fees to be paid by the consumer to the debt settlement provider, and the date, approximate date, or circumstances under which each fee will become due.

(9) A good faith estimate of the total amount of all fees and compensation, not to exceed the amounts specified in Section 125 of this Act, to be collected by the debt settlement provider from the consumer for the provision of debt settlement service contemplated by the contract.

(10) A statement of the proposed savings goals for the consumer, stating the amount to be saved per month or other period, time period over which savings goal extends, and the total amount of the savings expected to be paid by the consumer pursuant to the terms of the contract.

(11) The amount of money or the percentage of debt the consumer must accumulate before a settlement offer will be made to each of the consumer's creditors.

(12) The written individualized financial analysis required by Section 110 of this Act.

(13) The contents of the "Consumer Notice and Rights Form" provided in Section 115.

(14) A written notice to the consumer that the consumer may cancel the contract at any time until after the debt settlement provider has fully performed each service the debt settlement provider contracted to perform or represented he or she would perform, and upon that event:

(A) the consumer shall be entitled to a full refund of all unearned fees and compensation paid by the consumer to the debt settlement provider, and a full refund of all funds provided by the consumer to the debt settlement provider for a consumer settlement account, except for funds actually paid to a creditor on behalf of the consumer, under the terms of the

contract for debt settlement service; and

(B) all powers of attorney granted to the debt settlement provider by the consumer shall be considered revoked and voided.

(15) A form the consumer may use to cancel the contract pursuant to the provisions of Section 135 of this Act. The form shall include the name and mailing address of the debt settlement provider and shall disclose clearly and conspicuously how the consumer can cancel the contract, including applicable addresses, telephone numbers, facsimile numbers, and electronic mail addresses the consumer can use to cancel the contract.

(d) If a debt settlement provider communicates with a consumer primarily in a language other than English, then the debt settlement provider shall furnish to the consumer a translation of all the disclosures and documents required by this Act in that other language.

Section 125. Fees.

(a) A debt settlement provider shall not charge fees of any type or receive compensation from a consumer in a type, amount, or timing other than fees or compensation permitted in this Section.

(b) A debt settlement provider shall not charge or receive from a consumer any enrollment fee, set up fee, up front fee of any kind, or any maintenance fee, except for a one-time enrollment fee of no more than \$50.

(c) A debt settlement provider may charge a settlement fee, which shall not exceed an amount greater than 15% of the savings. If the amount paid by the debt settlement provider to the creditor or negotiated by the debt settlement provider and paid by the consumer to the creditor pursuant to a settlement negotiated by the debt settlement provider on behalf of the consumer as full and complete satisfaction of the creditor's claim with regard to that debt is greater than the principal amount of the debt, then the debt settlement provider shall not be entitled to any settlement fee.

(d) A debt settlement provider shall not collect any settlement fee from a consumer until a creditor enters into a legally enforceable agreement to accept funds in a specific dollar amount as full and complete satisfaction of the creditor's claim with regard to that debt and those funds are provided by the debt settlement provider on behalf of the consumer or are provided directly by the consumer to the creditor pursuant to a settlement negotiated by the debt settlement provider

Section 130. Consumer settlement accounts and monthly accounting.

(a) A debt settlement provider who receives funds from a consumer shall hold all funds received for a consumer settlement account in a properly designated trust account in a federally insured depository institution. The funds shall remain the property of the consumer until the debt settlement provider disburses the funds to a creditor on behalf of the consumer as full or partial satisfaction of the consumer's debt to the creditor or the creditor's claim against the consumer. Any interest earned on such account shall be credited to the consumer.

(b) A debt settlement provider shall not be named on a

consumer's bank account, take a power of attorney in a consumer's bank account, create a demand draft on a consumer's bank account, or exercise any control over any bank account held by or on behalf of the consumer.

(c) A debt settlement provider shall, no less than monthly, provide each consumer with which it has a contract for the provision of debt settlement service a statement of account balances, fees paid, settlements completed, and remaining debts.

Section 135. Cancellation of contract and right to fee and settlement fund refunds.

(a) A consumer may cancel a contract with a debt settlement provider at any time before the debt settlement provider has fully performed each service the debt settlement provider contracted to perform or represented it would perform.

(b) If a consumer cancels a contract with a debt settlement provider, or at any time upon a material violation of this Act on the part of the debt settlement provider, then the debt settlement provider shall refund all fees and compensation, with the exception of the application fee and any earned settlement fee, as well as all funds paid by the consumer to the debt settlement provider that have accumulated in a consumer settlement account and that the debt settlement provider has not disbursed to creditors. Upon cancellation, all powers of attorney and direct debit authorizations granted to the debt settlement provider by the consumer shall be considered revoked and voided.

(c) A debt settlement provider shall make any refund required under this Section within 5 business days after the notice of cancellation, and shall include with the refund a full statement of account showing fees received, fees refunded, savings held, payments to creditors, settlement fees earned if any, and savings refunded.

(d) Upon the cancellation of a contract under this Section, the debt settlement provider shall provide timely notice of the cancellation of the contract to each of the creditors with whom the debt settlement provider has had any prior communication on behalf of the consumer in connection with the provision of any debt settlement service.

Section 140. Obligation of good faith. A debt settlement provider shall act in good faith in all matters under this Act.

Section 145. Prohibited practices. A debt settlement provider shall not do any of the following:

(1) Charge or collect from a consumer any fee not permitted by, in an amount in excess of the maximum amount permitted by, or at a time earlier than permitted by Section 125 of this Act.

(2) Advise or represent, expressly or by implication, that consumers should stop making payments to their creditors.

(3) Advise or represent, expressly or by implication, that consumers should stop communicating with their creditors.

(4) Change the mailing address on any of a consumer's creditor's statements.

(5) Make loans or offer credit or solicit or accept any note, mortgage, or negotiable instrument other than a check

signed by the consumer and dated no later than the date of signature.

(6) Take any confession of judgment or power of attorney to confess judgment against the consumer or appear as the consumer or on behalf of the consumer in any judicial proceedings.

(7) Take any release or waiver of any obligation to be performed on the part of the debt settlement provider or any right of the consumer.

(8) Advertise, display, distribute, broadcast, or televise services or permit services to be displayed, advertised, distributed, broadcasted, or televised, in any manner whatsoever, that contains any false, misleading, or deceptive statements or representations with regard to any matter, including services to be performed, the fees to be charged by the debt settlement provider, or the effect those services will have on a consumer's credit rating or on creditor collection efforts.

(9) Receive any cash, fee, gift, bonus, premium, reward, or other compensation from any person other than the consumer explicitly for the provision of debt settlement service to that consumer.

(10) Offer or provide gifts or bonuses to consumers for signing a debt settlement service contract or for referring another potential customer or customer.

(11) Disclose to anyone the name or any personal information of a consumer for whom the debt settlement provider has provided or is providing debt settlement service other than to a consumer's own creditors or the debt settlement provider's agents, affiliates, or contractors for the purpose of providing debt settlement service without the prior consent of the consumer.

(12) Enter into a contract with a consumer without first providing the disclosures and financial analysis and making the determinations required by this Section.

(13) Misrepresent any material fact, make a material omission, or make a false promise directed to one or more consumers in connection with the solicitation, offering, contracting, or provision of debt settlement service.

(14) Violate the provisions of applicable do not call statutes.

(15) Purchase debts or engage in the practice or business of debt collection.

(16) Include in a debt settlement agreement any secured debt.

(17) Employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information.

(18) Engage in any practice that prohibits or limits the consumer or any creditor from communication directly with one another.

(19) Represent or imply to a person participating in or considering debt settlement that purchase of any ancillary goods or services is required.

Section 150. Noncompliance with the Act.

(a) Any waiver by any consumer of any protection provided by or any right of the consumer under this Act:

(1) shall be treated as void; and

(2) may not be enforced by any federal or State court

or any other person.

(b) Any attempt by any person to obtain a waiver from any consumer of any protection provided by or any right or protection of the consumer or any obligation or requirement of the debt settlement provider under this Act shall be a violation of this Act.

(c) Any contract for debt settlement service that does not comply with the applicable provisions of this Act:

(1) shall be treated as void; and

(2) may not be enforced by any federal or State court or any other person; and

Upon notice of a void contract, a refund by the debt settlement provider to the consumer shall be made as if the contract had been cancelled as provided in Section 135 of this Act.

Section 155. Civil remedies.

(a) A violation of Section 105, 110, 115, 120, 125, 130, 135, 140, 145, or 150 of this Act constitutes an unlawful practice under the Consumer Fraud and Deceptive Business Practices Act. All remedies, penalties, and authority granted to the Attorney General or State's Attorney by the Consumer Fraud and Deceptive Business Practices Act shall be available to him or her for the enforcement of this Act.

(b) A consumer who suffers loss by reason of a violation of Section 105, 110, 115, 120, 125, 130, 135, 140, 145, or 150 of this Act may bring a civil action in accordance with the Consumer Fraud and Deceptive Business Practices Act to enforce that provision. All remedies and rights granted to a consumer by the Consumer Fraud and Deceptive Business Practices Act shall be available to the consumer bringing such an action. The remedies and rights provided for in this Act are not exclusive, but cumulative, and all other applicable claims are specifically preserved.

Section 900. The State Finance Act is amended by changing Section 6z-26 and by adding Sections 5.755 and 5.756 as follows:

(30 ILCS 105/5.755 new)

Sec. 5.755. The Debt Management Service Consumer Protection Fund.

(30 ILCS 105/5.756 new)

Sec. 5.756. The Debt Settlement Consumer Protection Fund.

(30 ILCS 105/6z-26)

Sec. 6z-26. The Financial Institution Fund. All moneys received by the Department of Financial and Professional Regulation under the Safety Deposit License Act, the Foreign Exchange License Act, the Pawnshops Societies Act, the Sale of Exchange Act, the Currency Exchange Act, the Sales Finance Agency Act, the Debt Management Service Act, the Consumer Installment Loan Act, the Illinois Development Credit Corporation Act, the Title Insurance Act, the Debt Settlement Consumer Protection Act, the Debt Management Service Consumer Protection Fund, and any other Act administered by the Department of Financial and Professional Regulation as the successor of the Department of Financial Institutions now or in the future (unless an Act specifically provides otherwise)

shall be deposited in the Financial Institution Fund (hereinafter "Fund"), a special fund that is hereby created in the State Treasury.

Moneys in the Fund shall be used by the Department, subject to appropriation, for expenses incurred in administering the above named and referenced Acts.

The Comptroller and the State Treasurer shall transfer from the General Revenue Fund to the Fund any monies received by the Department after June 30, 1993, under any of the above named and referenced Acts that have been deposited in the General Revenue Fund.

As soon as possible after the end of each calendar year, the Comptroller shall compare the balance in the Fund at the end of the calendar year with the amount appropriated from the Fund for the fiscal year beginning on July 1 of that calendar year. If the balance in the Fund exceeds the amount appropriated, the Comptroller and the State Treasurer shall transfer from the Fund to the General Revenue Fund an amount equal to the difference between the balance in the Fund and the amount appropriated.

Nothing in this Section shall be construed to prohibit appropriations from the General Revenue Fund for expenses incurred in the administration of the above named and referenced Acts.

Moneys in the Fund may be transferred to the Professions Indirect Cost Fund, as authorized under Section 2105-300 of the Department of Professional Regulation Law of the Civil Administrative Code of Illinois.
(Source: P.A. 94-91, eff. 7-1-05.)

Section 905. The Debt Management Service Act is amended by changing Sections 2, 4, 5, 6, 7, 8.5, 9, 10, 11, 11.5, 12, 12.1, 13, 14, 15, 16, 17, 18, 20, and 20.5 and by adding Sections 1.5, 16.5, and 16.6 as follows:

(205 ILCS 665/1.5 new)

Sec. 1.5. Purpose and construction. The purpose of this Act is to protect consumers who enter into agreements with debt management service providers and to regulate debt management service providers. This Act shall be construed as a consumer protection law for all purposes. This Act shall be liberally construed to effectuate its purpose.

(205 ILCS 665/2) (from Ch. 17, par. 5302)

Sec. 2. Definitions. As used in this Act:

"Credit counselor" means an individual, corporation, or other entity that is not a debt management service that provides (1) guidance, educational programs, or advice for the purpose of addressing budgeting, personal finance, financial literacy, saving and spending practices, or the sound use of consumer credit; or (2) assistance or offers to assist individuals and families with financial problems by providing counseling; or (3) a combination of the activities described in items (1) and (2) of this definition.

"Debt management service" means the planning and management of the financial affairs of a debtor for a fee and the receiving of money from the debtor for the purpose of distributing it, ~~directly or indirectly,~~ to the debtor's creditors in payment or partial payment of the debtor's obligations or soliciting financial contributions from

creditors. The business of debt management is conducted in this State if the debt management business, its employees, or its agents are located in this State or if the debt management business solicits or contracts with debtors located in this State. "Debt management service" does not include "debt settlement service" as defined in the Debt Settlement Consumer Protection Act.

This term shall not include the following when engaged in the regular course of their respective businesses and professions:

(a) Attorneys at law licensed, or otherwise authorized to practice, in Illinois who are engaged in the practice of law.

(b) Banks, operating subsidiaries of banks, affiliates of banks, fiduciaries, credit unions, savings and loan associations, and savings banks as duly authorized and admitted to transact business in the State of Illinois and performing credit and financial adjusting service in the regular course of their principal business.

(c) Title insurers, title agents, independent escrowees, and abstract companies, while doing an escrow business.

(d) Judicial officers or others acting pursuant to court order.

(e) Employers for their employees, except that no employer shall retain the services of an outside debt management service to perform this service unless the debt management service is licensed pursuant to this Act.
~~Employers for their employees.~~

(f) Bill payment services, as defined in the Transmitters of Money Act.

(g) Credit counselors, only when providing services described in the definition of credit counselor in this Section.

~~"Director" means Director of Financial Institutions.~~

"Debtor" means the person or persons for whom the debt management service is performed.

"Person" means an individual, firm, partnership, association, limited liability company, corporation, or not-for-profit corporation.

"Licensee" means a person licensed under this Act.

"Secretary" means the Secretary of Financial and Professional Regulation.

(Source: P.A. 95-331, eff. 8-21-07.)

(205 ILCS 665/4) (from Ch. 17, par. 5304)

Sec. 4. Application for license. Application for a license to engage in the debt management service business in this State shall be made to the Secretary ~~Director~~ and shall be in writing, under oath, and in the form prescribed by the Secretary ~~Director~~.

Each applicant, at the time of making such application, shall pay to the Secretary ~~Director~~ the sum of \$30.00 as a fee for investigation of the applicant, and the additional sum of \$100.00 as a license fee.

Every applicant shall submit to the Secretary ~~Director~~, at the time of the application for a license, a bond to be approved by the Secretary ~~Director~~ in which the applicant shall be the obligor, in the sum of \$25,000 or such additional amount as required by the Secretary ~~Director~~ based on the amount of

disbursements made by the licensee in the previous year, and in which an insurance company, which is duly authorized by the State of Illinois, to transact the business of fidelity and surety insurance shall be a surety.

The bond shall run to the Secretary ~~Director~~ for the use of the Department or of any person or persons who may have a cause of action against the obligor in said bond arising out of any violation of this Act or rules by a licensee. Such bond shall be conditioned that the obligor will faithfully conform to and abide by the provisions of this Act and of all rules, regulations and directions lawfully made by the Secretary ~~Director~~ and will pay to the Secretary ~~Director~~ or to any person or persons any and all money that may become due or owing to the State or to such person or persons, from said obligor under and by virtue of the provisions of this Act. (Source: P.A. 92-400, eff. 1-1-02.)

(205 ILCS 665/5) (from Ch. 17, par. 5305)

Sec. 5. Qualifications for license. Upon the filing of the application and the approval of the bond and the payment of the specified fees, the Secretary ~~may~~ ~~Director~~ shall issue a license if he finds:

(1) That the financial responsibility, experience, character and general fitness of the applicant, the managers thereof, if the applicant is a limited liability company, the partners thereof, if the applicant is a partnership, and of the officers and directors thereof, if the applicant is a corporation or a not-for-profit corporation, are such as to command the confidence of the community and to warrant belief that the business will be operated fairly, honestly and efficiently within the purposes of this Act, and

(2) That the applicant, if an individual, the managers thereof, if the applicant is a limited liability company, the partners thereof, if the applicant is a partnership, and the officers and directors thereof, if the applicant is a corporation, have not been convicted of a felony or a misdemeanor involving dishonesty or untrustworthiness, and

(3) That the person or persons have not had a record of having defaulted in the payment of money collected for others, including the discharge of such debts through bankruptcy proceedings, and

(4) The applicant, or any officers, directors, partners or managers, have not previously violated any provision of this Act or any rule lawfully made by the Secretary ~~Director~~, and

(5) The applicant has not made any false statement or representation to the Secretary ~~Director~~ in applying for a license hereunder.

The Secretary ~~Director~~ shall deliver a license to the applicant to engage in the debt management service business in accordance with the provisions of this Act at the location specified in the said application, which license shall remain in full force and effect until it is surrendered by the licensee or revoked by the Secretary ~~Director~~ as herein provided; provided, however, that each license shall expire by the terms thereof on January 1 next following the issuance thereof unless the same be renewed as hereinafter provided. A license, however, may not be surrendered without the approval of the Secretary ~~Director~~.

More than one license may be issued to the same person for separate places of business, but separate applications shall be

made for each location conducting business with Illinois residents ~~place of business~~.

(Source: P.A. 90-545, eff. 1-1-98.)

(205 ILCS 665/6) (from Ch. 17, par. 5306)

Sec. 6. Renewal of license. Each debt management service provider ~~licensee~~ under the provisions of this Act may make application to the Secretary ~~Director~~ for renewal of its license, which application for renewal shall be on the form prescribed by the Secretary ~~Director~~ and shall be accompanied by a fee of \$100.00 together with a bond or other surety as required, in a minimum amount of \$25,000 or such an amount as required by the Secretary ~~Director~~ based on the amount of disbursements made by the licensee in the previous year. The application must be received by the Department no later than December 1 of the year preceding the year for which the application applies.

(Source: P.A. 92-400, eff. 1-1-02.)

(205 ILCS 665/7) (from Ch. 17, par. 5307)

Sec. 7. License, display and location. Each license issued shall be kept conspicuously posted in the place of business of the debt management service provider ~~licensee~~. The business location may be changed by any licensee upon 10 days prior written notice to the Secretary ~~Director~~. A license must operate under the name as stated in its original application.

(Source: P.A. 90-545, eff. 1-1-98.)

(205 ILCS 665/8.5)

Sec. 8.5. Temporary location. The Secretary ~~Director~~ may approve a temporary additional business location for the purpose of allowing a debt management service provider ~~licensee~~ to conduct business outside the licensed location.

(Source: P.A. 90-545, eff. 1-1-98.)

(205 ILCS 665/9) (from Ch. 17, par. 5309)

Sec. 9. Denial of license. Any application for a license shall be approved or denied within 60 days of the filing of a completed ~~an~~ application with the Secretary ~~Director~~.

(Source: P.A. 90-545, eff. 1-1-98.)

(205 ILCS 665/10) (from Ch. 17, par. 5310)

Sec. 10. Revocation, ~~or~~ suspension, or refusal to renew ~~of~~ license.

(a) The Secretary ~~Director~~ may revoke or suspend or refuse to renew any license if he finds that:

(1) any licensee has failed to pay the annual license fee, or to maintain in effect the bond required under the provisions of this Act;

(2) the licensee has violated any provisions of this Act or any rule, lawfully made by the Secretary ~~Director~~ within the authority of this Act;

(3) any fact or condition exists which, if it had existed at the time of the original application for a license, would have warranted the Secretary ~~Director~~ in refusing its issuance; or

(4) any applicant has made any false statement or representation to the Secretary ~~Director~~ in applying for a license hereunder.

(b) In every case in which a license is suspended or

revoked or an application for a license or renewal of a license is denied, the ~~Secretary~~ Director shall serve notice of his action, including a statement of the reasons for his actions, either personally or by certified mail, return receipt requested. Service by mail shall be deemed completed if the notice is deposited in the U.S. Mail.

(c) In the case of a denial of an application or renewal of a license, the applicant or licensee may request in writing, within 30 days after the date of service, a hearing. In the case of a denial of a renewal of a license, the license shall be deemed to continue in force until 30 days after the service of the notice of denial, or if a hearing is requested during that period, until a final administrative order is entered.

(d) An order of revocation or suspension of a license shall take effect upon service of the order unless the licensee requests, in writing, within 10 days after the date of service, a hearing. In the event a hearing is requested, the order shall be stayed until a final administrative order is entered.

(e) If the licensee requests a hearing, the ~~Secretary~~ Director shall schedule either a status date or a ~~the~~ hearing within 30 days after the request for a hearing unless otherwise agreed to by the parties.

(f) The hearing shall be held at the time and place designated by the ~~Secretary~~ Director. The ~~Secretary~~ Director and any administrative law judge designated by him have the power to administer oaths and affirmations, subpoena witnesses and compel their attendance, take evidence, and require the production of books, papers, correspondence, and other records or information that he considers relevant or material to the injury.

(g) The costs for the administrative hearing shall be set by rule and shall be borne by the respondent.

~~(h) The Director shall have the authority to prescribe rules for the administration of this Section.~~

(Source: P.A. 90-545, eff. 1-1-98.)

(205 ILCS 665/11) (from Ch. 17, par. 5311)

Sec. 11. Contracts, books, records and contract cancellation. Each debt management service provider licensee shall furnish to the ~~Secretary~~ Director, when requested, a copy of the contract entered into between the debt management service provider licensee and the debtor. The debt management service provider licensee shall furnish the debtor with a copy of the written contract, at the time of execution, which shall set forth the charges, if any, agreed upon for the services of the debt management service provider licensee.

Each debt management service provider licensee shall maintain records and accounts which will enable any debtor contracting with the debt management service provider licensee, at any reasonable time, to ascertain the amounts paid to creditors of the debtor. A statement showing the total amount received and the total disbursements to each creditor shall be furnished by the debt management service provider licensee to any individual within seven days of a request therefor by the said debtor. Each debt management service provider licensee shall issue a receipt for each payment made by the debtor at a debt management service provider's licensee's office. Each debt management service provider licensee shall prepare and retain in the file of each debtor a written analysis of debtor's income and expenses to

substantiate that the plan of payment is feasible and practical.

(Source: P.A. 90-545, eff. 1-1-98.)

(205 ILCS 665/11.5)

Sec. 11.5. Examination of debt management service provider licensee. The Secretary Director at any time, either in person or through an appointed representative, may examine the condition and affairs of a debt management service provider licensee. In connection with any examination, the Secretary Director may examine on oath any debt management service provider licensee and any director, officer, employee, customer, manager, partner, member, creditor or stockholder of a licensee concerning the affairs and business of the debt management service provider licensee. The Secretary Director shall ascertain whether the debt management service provider licensee transacts its business in the manner prescribed by law and the rules issued thereunder. The debt management service provider licensee shall pay the cost of the examination as determined by the Secretary Director by administrative rule. Failure to pay the examination fee within 30 days after receipt of demand from the Secretary Director may result in the suspension of the license until the fee is paid. The Secretary Director shall have the right to investigate and examine any person, whether licensed or not, who is engaged in the debt management service business. The Secretary Director shall have the power to subpoena the production of any books and records pertinent to any investigation.

(Source: P.A. 90-545, eff. 1-1-98.)

(205 ILCS 665/12) (from Ch. 17, par. 5312)

Sec. 12. Fees and charges of debt management service providers licensees. A debt management service provider licensee may not charge a debtor any fees or penalties except the following:

(1) an initial counseling fee not to exceed \$50 per debtor counseled, ~~provided the average initial counseling fee does not exceed \$30 per debtor for all debtors counseled; and~~

(2) additional fees at the completion of the initial counseling services which shall not exceed \$50 per month, ~~provided the average monthly fee does not exceed \$30 per debtor for all debtors counseled.~~

(Source: P.A. 90-545, eff. 1-1-98.)

(205 ILCS 665/12.1)

Sec. 12.1. All moneys received by the Department of Financial Institutions under this Act, except moneys received for the Debt Management Service Consumer Protection Fund, shall be deposited in the Financial Institutions Fund created under Section 6z-26 of the State Finance Act.

(Source: P.A. 88-13.)

(205 ILCS 665/13) (from Ch. 17, par. 5313)

Sec. 13. Prohibitions.

(1) No licensee shall advertise, in any manner whatsoever, any statement or representation with regard to the rates, terms or conditions of debt management service which is false, misleading, or deceptive.

(2) No licensee shall require as a part of the agreement between the licensee and any debtor, the purchase of any stock,

insurance, commodity, service or other property or any interest therein.

(3) No licensee shall, directly or indirectly, accept payment or any other consideration, whether in cash or in kind, from any entity for referring applicants to that entity. The licensee shall not, directly or indirectly, make payments in any form, whether in cash or in kind, to any person, corporation, or other entity for referring applicants or clients to the licensee.

(4) No licensee shall make any loans.

(5) No licensee shall issue credit cards or act as an agent in procuring customers for a credit card company or any financial institution.

(6) No licensee shall act as a loan broker.

(7) No licensee shall operate any other business at the licensed location. ~~without another business authorization from the Director, pursuant to Section 13.5.~~

(Source: P.A. 90-545, eff. 1-1-98.)

(205 ILCS 665/14) (from Ch. 17, par. 5314)

Sec. 14. Trust funds; requirements and restrictions.

(a) All funds received by a debt management service provider licensee or his agent from and for the purpose of paying bills, invoices, or accounts of a debtor shall constitute trust funds owned by and belonging to the debtor from whom they were received. All such funds received by a debt management service provider licensee shall be separated from the funds of the debt management service provider licensee not later than the end of the business day following receipt by the debt management service provider licensee. All such funds shall be kept separate and apart at all times from funds belonging to the debt management service provider licensee or any of its officers, employees or agents and may be used for no purpose other than paying bills, invoices, or accounts of the debtor. All such trust funds received at the main or branch offices of a debt management service provider licensee shall be deposited in a bank in an account in the name of the debt management service provider licensee designated "trust account", or by some other appropriate name indicating that the funds are not the funds of the debt management service provider licensee or its officers, employees, or agents, on or before the close of the business day following receipt.

(b) If a consumer's funds are kept in an interest earning trust account, then any interest earned on the consumer funds shall belong to the consumer. If multiple consumers funds are kept in a single interest earning trust account, then the interest earned shall belong to the consumers and shall be deposited pro rata among the consumers whose funds are in the account. Prior to separation and deposit by the licensee, such funds may be used by the licensee only for the making of change or the cashing of checks in the normal course of its business. Such funds are not subject to attachment, lien, levy of execution, or sequestration by order of court except by a debtor for whom a licensee is acting as an agent in paying bills, invoices, or accounts.

(c) Each debt management service provider licensee shall make remittances within 30 days after initial receipt of funds, and thereafter remittances shall be made within 15 days of receipt, less fees and costs, unless the reasonable payment of one or more of the debtor's obligations requires that the funds

be held for a longer period so as to accumulate a sum certain.

(d) At least once every quarter, the debt management service provider licensee shall render an accounting to the debtor which shall itemize the total amount received from the debtor, the total amount paid each creditor, the amount of charges deducted, and any amount held in reserve. A debt management service provider licensee shall, in addition thereto, provide such an accounting to a debtor within 7 days after written demand, but not more than 3 times per 6 month period.

(Source: P.A. 90-545, eff. 1-1-98.)

(205 ILCS 665/15) (from Ch. 17, par. 5315)

Sec. 15. Rules.) The Secretary Director shall make and enforce all reasonable rules as shall be necessary for the administration of this Act. Such rulemaking shall be subject to the provisions of the Illinois Administrative Procedure Act.

(Source: P.A. 81-1403.)

(205 ILCS 665/16) (from Ch. 17, par. 5319)

Sec. 16. Penalties.

(a) Any person who engages in the business of debt management service without a license shall be guilty of a Class 4 felony.

(b) Any contract of debt management service as defined in this Act, made by an unlicensed person, shall be null and void and of no legal effect.

(c) The Secretary Director may, after 10 days notice by registered mail to the debt management service provider at the address on the license or unlicensed entity engaging in the debt management service business, stating the contemplated action and in general the grounds therefore, fine that debt management service provider or unlicensed entity an amount not exceeding \$10,000 per violation, and revoke or suspend any license issued if he or she finds that either:

(1) the debt management service provider or unlicensed entity has failed to comply with any provision of this Act or any order, decision, finding, rule, regulation, or direction of the Secretary lawfully made pursuant to the authority of this Act; or

(2) any fact or condition exists which, if it had existed at the time of the original application for the license, clearly would have warranted the Secretary in refusing to issue the license. ~~set by rule monetary penalties for violation of this Act.~~

(Source: P.A. 90-545, eff. 1-1-98.)

(205 ILCS 665/16.5 new)

Sec. 16.5. Additional liability for unlicensed activity. Any person who, without the required license, engages in conduct requiring a license under this Act, shall be liable to the Department in an amount equal to the greater of (1) \$1,000 or (2) an amount equal to 4 times the amount of consumer debt enrolled. The Department shall cause any funds so recovered to be deposited in the Debt Management Service Consumer Protection Fund.

(205 ILCS 665/16.6 new)

Sec. 16.6. Debt Management Service Consumer Protection Fund.

(a) A special non-appropriated income-earning fund is hereby created in the State Treasury, known as the Debt Management Service Consumer Protection Fund. This Fund is not subject to appropriation by the Illinois General Assembly.

(b) All moneys paid into the Fund together with all accumulated, undistributed interest thereon shall be held as a special Fund in the State Treasury. All interest earned on the Fund is non-distributable and shall be returned to the Fund, and shall be invested and re-invested in the Fund by the Treasurer or his or her designee. The Fund shall be used solely for the purpose of providing restitution to consumers who have suffered monetary loss arising out of a transaction regulated by this Act.

(c) The Fund shall be applied only to restitution when restitution has been ordered by the Secretary. Restitution shall not exceed the amount actually lost by the consumer. The Fund shall not be used for the payment of any attorney or other fees.

(d) The Fund shall be subrogated to the amount of the restitution, and the Secretary shall request the Attorney General to engage in all reasonable collection steps to collect restitution from the party responsible for the loss and reimburse the Fund.

(e) Notwithstanding any other provision of this Section, the payment of restitution from the Fund shall be a matter of grace and not of right, and no consumer shall have any vested rights in the Fund as a beneficiary or otherwise. Before seeking restitution from the Fund, the consumer or beneficiary seeking payment of restitution shall apply for restitution on a form provided by the Secretary. The form shall include any information the Secretary may reasonably require in order to determine that restitution is appropriate. All documentation required by the Secretary, including the form, is subject to audit. Distributions from the Fund shall be made solely at the discretion of the Secretary, except that no payments or distributions may be made under any circumstance if the Fund is depleted.

(f) All deposits to this Fund shall be made pursuant to Section 16.5 of this Act.

(g) Notwithstanding any other law to the contrary, the Fund is not subject to administrative charges or charge-backs that would in any way transfer moneys from the Fund into any other fund of the State.

(205 ILCS 665/17) (from Ch. 17, par. 5320)

Sec. 17. Injunction. To engage in debt management service, render financial service, or accept debtors' funds, as defined in this Act, without a valid license so to do, is hereby declared to be inimical to the public welfare and to constitute a public nuisance. The ~~Secretary~~ Director may, in the name of the people of the State of Illinois, through the Attorney General of the State of Illinois, file a complaint for an injunction in the circuit court to enjoin such person, from engaging in said business. Such injunction proceeding shall be in addition to, and not in lieu of, penalties and remedies otherwise in this Act provided.

(Source: P.A. 90-545, eff. 1-1-98.)

(205 ILCS 665/18) (from Ch. 17, par. 5321)

Sec. 18. Review. All final administrative decisions of the

Secretary Director hereunder shall be subject to judicial review pursuant to the provisions of the Administrative Review Law, and all amendments and modifications thereof and the rules adopted pursuant thereto.

(Source: P.A. 90-545, eff. 1-1-98.)

(205 ILCS 665/20) (from Ch. 17, par. 5323)
Sec. 20. Cease and desist orders.

(a) The Secretary Director may issue a cease and desist order to any licensee, or other person doing business without the required license, when in the opinion of the Secretary Director, the licensee, or other person, is violating or is about to violate any provision of the Act or any rule or condition imposed in writing by the Department.

(b) The Secretary Director may issue a cease and desist order prior to a hearing.

(c) The Secretary Director shall serve notice of his action, including a statement of the reasons for his action either personally or by certified mail, return receipt requested. Service by mail shall be deemed completed if the notice is deposited in the U.S. Mail.

(d) Within 10 days after service of the cease and desist order, the licensee or other person may request, in writing, a hearing.

(e) The Secretary Director shall schedule either a status date or a hearing within 30 days after the request for a hearing unless otherwise agreed to by the parties.

~~(f) The Director shall have the authority to prescribe rules for the administration of this Section.~~

(g) If it is determined that the Secretary Director had the authority to issue the cease and desist order, he may issue such orders as may be reasonably necessary to correct, eliminate, or remedy such conduct.

(h) The powers vested in the Secretary Director by this Section are additional to any and all other powers and remedies vested in the Secretary Director by law, and nothing in this Section shall be construed as requiring that the Secretary Director shall employ the power conferred in this Section instead of or as a condition precedent to the exercise of any other power or remedy vested in the Secretary Director.

(i) The cost for the administrative hearing shall be set by rule and shall be borne by the respondent.

(Source: P.A. 90-545, eff. 1-1-98.)

(205 ILCS 665/20.5)
Sec. 20.5. Receivership.

(a) If the Secretary Director determines that a licensee is insolvent or is violating this Act, he or she may appoint a receiver. Under the direction of the Secretary Director, the receiver shall, for the purpose of receivership, take possession of and title to the books, records, and assets of the licensee. The Secretary Director may require the receiver to provide security in an amount the Secretary Director deems proper. Upon appointment of the receiver, the Secretary Director shall have published, once each week for 4 consecutive weeks in a newspaper having a general circulation in the community, a notice informing all persons who have claims against the licensee to present them to the receiver. Within 10 days after the receiver takes possession, the licensee may apply to the Circuit Court of Sangamon County to enjoin further

proceedings. The receiver may operate the business until the Secretary Director determines that possession should be restored to the licensee or that the business should be liquidated.

(b) If the Secretary Director determines that a business in receivership should be liquidated, he or she shall direct the Attorney General to file a complaint in the Circuit Court of the county in which the business is located, in the name of the People of the State of Illinois, for the orderly liquidation and dissolution of the business and for an injunction restraining the licensee and its officers and directors from continuing the operation of the business. Within 30 days after the day the Secretary Director determines that the business should be liquidated, the receiver shall file with the Secretary Director and with the clerk of the court that has charge of the liquidation a correct list of all creditors, as shown by the licensee's books and records, who have not presented their claims. The list shall state the amount of the claim after allowing all just credits, deductions, and set-offs as shown by the licensee's books. These claims shall be deemed proven unless some interested party files an objection within the time fixed by the Secretary Director or court that has charge of the liquidation.

(c) The General Assembly finds and declares that debt management services provide an important service and vital services to Illinois citizens. It is therefore declared to be the policy of this State that customers who receive these services must be protected from interruptions of services. To carry out this policy and to insure that customers of a licensee are protected if it is determined that a business in receivership should be liquidated, the Secretary Director shall make a distribution of moneys collected by the receiver in the following order of priority:

(1) Allowed claims for the actual necessary expenses of the receivership of the business being liquidated, including:

(A) reasonable receiver's fees and receiver's attorney's fees approved by the Secretary Director;

(B) all expenses of any preliminary or other examinations into the condition of the receivership;

(C) all expenses incurred by the Secretary Director that are incident to possession and control of any property or records of the licensee's business; and

(D) reasonable expenses incurred by the Secretary Director as the result of business agreements or contractual arrangements necessary to insure that the services of the licensee are delivered to the community without interruption. These business agreements or contractual arrangements may include, but are not limited to, agreements made by the Secretary Director, or by the receiver with the approval of the Secretary Director, with banks, bonding companies, and other types of financial institutions.

(1.5) Secured claims.

(2) Allowed unsecured claims for wages or salaries, excluding vacation, severance, and sick leave pay earned by employees within 90 days before the appointment of a receiver.

(3) Allowed unsecured claims of any tax, and interest and penalty on the tax.

(4) Allowed unsecured claims, other than a kind specified in items (1), (2), and (3) of this subsection, filed with the Secretary Director within the time the Secretary Director fixes for filing claims.

(5) Allowed unsecured claims, other than a kind specified in items (1), (2), and (3) of this subsection, filed with the Secretary Director after the time fixed for filing claims by the Secretary Director.

(6) Allowed creditor claims asserted by an owner, member, or stockholder of the business in liquidation.

(7) After one year from the final dissolution of the licensee's business, all assets not used to satisfy allowed claims shall be distributed pro rata to the owner, owners, members, or stockholders of the business.

The Secretary Director shall pay all claims of equal priority according to the schedule established in this subsection and shall not pay claims of lower priority until all higher priority claims are satisfied. If insufficient assets are available to meet all claims of equal priority, those assets shall be distributed pro rata among those claims. All unclaimed assets of a licensee and the licensee's business shall be deposited with the Secretary Director to be paid out when proper claims are presented to the Secretary Director.

(d) Upon the order of the circuit court of the county in which the business being liquidated is located, the receiver may sell or compound any bad or doubtful debt, and on like order may sell the personal property of the business on such terms as the court approves. The receiver shall succeed to whatever rights or remedies the unsecured creditors of the business may have against the owner or owners, operators, stockholders, directors, members, managers, or officers, arising out of their claims against the licensee's business, but nothing contained in this Section shall prevent those creditors from filing their claims in the liquidation proceeding. The receiver may enforce those rights or remedies in any court of competent jurisdiction.

(e) At the close of a receivership, the receiver shall turn over to the Secretary Director all books of account and ledgers of the business for preservation. The Secretary Director shall hold all records of receiverships received at any time for a period of 2 years after the close of the receivership. The records may be destroyed at the termination of the 2-year period. All expenses of the receivership including, but not limited to, reasonable receiver's and attorney's fees approved by the Secretary Director, all expenses of any preliminary or other examinations into the condition of the licensee's business or the receivership, and all expenses incident to the possession and control of any property or records of the business incurred by the Secretary Director shall be paid out of the assets of the licensee's business. These expenses shall be paid before all other claims.

(f) Upon the filing of a complaint by the Attorney General for the orderly liquidation and dissolution of a debt management service provider's licensee's business, as provided in this Act, all pending suits and actions upon unsecured claims against the business shall abate. Nothing contained in this Act, however, prevents these claimants from filing their claims in the liquidation proceeding. If a suit or an action is instituted or maintained by the receiver on any bond or policy of insurance issued pursuant to the requirements of this Act,

the bonding or insurance company sued shall not have the right to interpose or maintain any counterclaim based upon subrogation, upon any express or implied agreement of, or right to, indemnity or exoneration, or upon any other express or implied agreement with, or right against, the debt management service provider's licensee's business. Nothing contained in this Act prevents the bonding or insurance company from filing this type of claim in the liquidation proceeding.

(g) A debt management service provider licensee may not terminate its affairs and close up its business unless it has first deposited with the Secretary Director an amount of money equal to all of its debts, liabilities, and lawful demands against it including the costs and expenses of a proceeding under this Section, surrendered to the Secretary Director its license, and filed with the Secretary Director a statement of termination signed by the debt management service provider licensee containing a pronouncement of intent to close up its business and liquidate its liabilities and containing a sworn list itemizing in full all of its debts, liabilities, and lawful demands against it. Corporate licensees must attach to, and make a part of the statement of termination, a copy of a resolution providing for the termination and closing up of the licensee's affairs, certified by the secretary of the licensee and duly adopted at a shareholders' meeting by the holders of at least two-thirds of the outstanding shares entitled to vote at the meeting. Upon the filing with the Secretary Director of a statement of termination, the Secretary Director shall cause notice of that action to be published once each week for 3 consecutive weeks in a public newspaper of general circulation published in the city or village where the business is located, and if no newspaper is published in that place, then in a public newspaper of general circulation nearest to that city or village. The publication shall give notice that the debts, liabilities, and lawful demands against the business will be redeemed by the Secretary Director upon demand in writing made by the owner thereof, at any time within 3 years after the date of first publication. After the expiration of the 3-year period, the Secretary Director shall return to the person or persons designated in the statement of termination to receive repayment, and in the proportion specified in that statement, any balance of money remaining in his or her possession after first deducting all unpaid costs and expenses incurred in connection with a proceeding under this Section. The Secretary Director shall receive for his or her services, exclusive of costs and expenses, 2% of any amount up to \$5,000 and 1% of any amount in excess of \$5,000 deposited with him or her under this Section by any business. Nothing contained in this Section shall affect or impair the liability of any bonding or insurance company on any bond or insurance policy issued under this Act relating to the business.

(Source: P.A. 92-400, eff. 1-1-02.)

Section 910. The Consumer Fraud and Deceptive Business Practices Act is amended by adding Section 2III as follows:

(815 ILCS 505/2III new)

Sec. 2III. Violations of the Debt Settlement Consumer Protection Act. Any person who violates the Debt Settlement Consumer Protection Act commits an unlawful practice within the meaning of this Act.

(205 ILCS 665/13.5 rep.)

(205 ILCS 665/15.1 rep.)

(205 ILCS 665/15.2 rep.)

(205 ILCS 665/15.3 rep.)

Section 915. The Debt Management Service Act is amended by repealing Sections 13.5, 15.1, 15.2, and 15.3.

Section 970. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

Section 999. Effective date. This Act takes effect upon becoming law.