

HOUSE SUBSTITUTE FOR  
SENATE BILL NO. 664

A bill to amend 1975 PA 148, entitled  
"Debt management act,"  
by amending the title and sections 2, 4, 5, 6, 8, 11, 12, 13, 14,  
15, 16, 17, 18, 19, 20, and 26 (MCL 451.412, 451.414, 451.415,  
451.416, 451.418, 451.421, 451.422, 451.423, 451.424, 451.425,  
451.426, 451.427, 451.428, 451.429, 451.430, and 451.436), sections  
2, 4, 5, 6, 8, 11, 12, 13, 14, 15, 16, 17, 18, and 19 as amended by  
2000 PA 255, and by adding section 8a.

**THE PEOPLE OF THE STATE OF MICHIGAN ENACT:**

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TITLE

An act to regulate the business of debt management; to require  
licenses and ~~to fix fees therefor;~~ **ESTABLISH LICENSE FEES;** to  
prescribe the powers and duties of ~~the department of commerce and~~  
~~its director;~~ **CERTAIN STATE AGENCIES AND OFFICIALS;** to prescribe

1 ~~conditions~~ **ESTABLISH REQUIREMENTS** for debt management contracts; to  
 2 provide for the disposition of revenues; to provide penalties; and  
 3 to repeal ~~certain~~ acts and parts of acts.

4 Sec. 2. As used in this act:

5 (a) "Business of debt management" means providing or offering  
 6 to provide debt management to 1 or more residents of this state.

7 **(B) "CERTIFIED COUNSELOR" MEANS AN INDIVIDUAL WHO IS CERTIFIED**  
 8 **BY A TRAINING PROGRAM OR CERTIFYING ORGANIZATION, APPROVED BY THE**  
 9 **DIRECTOR, THAT AUTHENTICATES THE COMPETENCE OF INDIVIDUALS WHO**  
 10 **PROVIDE EDUCATION AND ASSISTANCE TO OTHER INDIVIDUALS IN CONNECTION**  
 11 **WITH DEBT COUNSELING AND FINANCIAL COUNSELING FUNCTIONS.**

12 (C) ~~(b)~~ "Counselor" means **A CERTIFIED COUNSELOR WHO IS** an  
 13 employee or agent of a licensee who engages in **FINANCIAL** counseling  
 14 and ~~budget analysis~~ **DEBT COUNSELING** functions. ~~and scheduling of~~  
 15 ~~debtor's funds.~~

16 (D) ~~(e)~~ "Creditor" means a person for whose benefit **A LICENSEE**  
 17 **COLLECTS AND DISPENSES** money. ~~is being collected and disbursed by a~~  
 18 ~~licensee. A licensee is not a creditor for purposes of this act.~~ **THE**  
 19 **TERM DOES NOT INCLUDE A LICENSEE.**

20 (E) ~~(d)~~ "Debt management" means the planning and management of  
 21 the financial affairs of a debtor and the receipt of money from the  
 22 debtor for distribution to ~~a creditor~~ **1 OR MORE OF THE DEBTOR'S**  
 23 **CREDITORS** in payment or partial payment of the debtor's  
 24 obligations.

25 (F) ~~(e)~~ "Debtor" means a person from ~~whom~~ **WHICH** money is being  
 26 collected for the benefit of a creditor of the debtor.

27 **(G) "DEBTOR'S OBLIGATION" MEANS ANY CURRENT OR PAST-DUE**

1 MONETARY OBLIGATION OF THE DEBTOR, INCLUDING, BUT NOT LIMITED TO,  
2 AMOUNTS OWED FOR PAYMENT OF CREDIT CARDS, UTILITIES, MORTGAGES,  
3 STUDENT LOANS, HOME EQUITY LOANS, PERSONAL LOANS, JUDGMENTS,  
4 GARNISHMENTS, PROPERTY TAXES, RENT, OR VEHICLE LOANS OR LEASES OR  
5 ANY OTHER OBLIGATION WHETHER SECURED OR UNSECURED OR WHETHER OR NOT  
6 THE OBLIGATION HAS A PRINCIPAL AND INTEREST COMPONENT.

7 (H) ~~(f)~~-"Department" means the ~~office of financial and~~  
8 ~~insurance services.~~ DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES.

9 (I) ~~(g)~~-"Director" means the ~~commissioner~~ DIRECTOR of the  
10 department or his or her authorized representative.

11 (J) "FAIR SHARE PROGRAM" MEANS A PROGRAM IN WHICH VOLUNTARY  
12 CONTRIBUTIONS ARE MADE BY SOME CREDITORS TO A LICENSEE BASED ON A  
13 PERCENTAGE OF THE AMOUNT DISBURSED BY THE LICENSEE ON BEHALF OF A  
14 DEBTOR.

15 (K) ~~(h)~~-"Fees and charges of the licensee" means the total  
16 amount of money ~~to be~~ charged a debtor by ~~the~~ A licensee, including  
17 the ~~\$25.00~~ \$50.00 initial payment and any charges for advice,  
18 ~~materials,~~ CREDIT REPORTS, EDUCATIONAL MATERIALS AND RESOURCES, or  
19 referrals.

20 (L) ~~(i)~~-"License" means a written certificate or exemption  
21 order issued by the director UNDER THIS ACT.

22 (M) ~~(j)~~-"Licensee" means a person THAT IS licensed, OR IS  
23 REQUIRED TO BE LICENSED, under this act to perform debt management  
24 services and IS located inside or outside the boundaries of this  
25 state.

26 (N) "LOCATOR SERVICE" MEANS A TELEPHONE SERVICE THAT  
27 AUTOMATICALLY CONNECTS CALLERS TO A NETWORK OF MEMBER SERVICE

1 **PROVIDERS, BASED ON GEOGRAPHIC LOCATION OR ANOTHER PARAMETER.**

2 (O) ~~(k)~~ "Office" means each location, **DESCRIBED** by street  
3 name, building number, city, and state, where a person engages in  
4 the business of debt management.

5 ~~(l) "Office manager" means an employee or owner charged with~~  
6 ~~the supervision, oversight, or approval of the functions of budget~~  
7 ~~analysis, counseling, or scheduling.~~

8 (P) ~~(m)~~ "Person" means an individual, corporation,  
9 partnership, association, joint stock company, trust ~~where~~ **IF** the  
10 interests of the beneficiaries are evidenced by a security, limited  
11 liability company, or other legal entity.

12 (Q) ~~(n)~~ "Sweep arrangement" means an arrangement that provides  
13 for a temporary or permanent transfer of funds from 1 trust account  
14 to another trust account when a predetermined time, account  
15 balance, or other condition occurs or is fulfilled.

16 Sec. 4. (1) ~~After January 1, 1976, a~~ **A** person located within  
17 or outside of the boundaries of this state shall not engage in the  
18 business of debt management without first obtaining a license ~~as~~  
19 ~~required in~~ **UNDER** this act. A contract ~~of~~ **TO PROVIDE** debt  
20 management ~~as defined by this act~~ made by a person without a  
21 license is null and void.

22 (2) ~~A person who is performing a~~ **THE DEPARTMENT MAY GRANT A**  
23 **PERSON THAT PROVIDES** debt management ~~service~~ **SERVICES** and ~~receiving~~  
24 **RECEIVES** compensation primarily from governmental organizations,  
25 governmentally sponsored organizations, charitable trusts, or  
26 foundations ~~tax exempt pursuant to~~ **THAT HAVE TAX-EXEMPT STATUS**  
27 **UNDER** section 501(c) of the internal revenue code of 1986, ~~upon a~~

1 ~~showing of safeguards in the handling of debtor funds, may be~~  
2 ~~granted~~ 26 USC 501, an exemption from any provision of this act if  
3 **THE PERSON DEMONSTRATES THAT THE PERSON HAS SAFEGUARDS IN THE**  
4 **HANDLING OF DEBTOR FUNDS AND THE DEPARTMENT FINDS THAT** the  
5 exemption is ~~found to be~~ in the public interest.

6 Sec. 5. (1) An applicant for a license to engage in the  
7 business of debt management shall file an application with the  
8 director in writing and under oath that includes all of the  
9 following:

10 (a) The name and exact address of the applicant and the name  
11 and address of each of the following, as applicable:

12 (i) If the applicant is a corporation, its officers and  
13 directors.

14 (ii) If the applicant is an association, its officers and  
15 directors.

16 (iii) If the applicant is a partnership, its partners.

17 (iv) If the applicant is a limited liability company, its  
18 manager or managers.

19 (v) If the applicant is any other legal entity, its manager or  
20 other person designated to control the operation of that legal  
21 entity.

22 (b) A copy of a certificate of an assumed name, if applicable.

23 (c) One or more of the following, as applicable:

24 (i) If the applicant is a corporation, a copy of the articles  
25 of incorporation.

26 (ii) If the applicant is an association, a copy of the  
27 organizational documents of the association.

1 (iii) If the applicant is a partnership, a copy of the  
2 partnership agreement.

3 (iv) If the applicant is a limited liability company, a copy of  
4 the articles of organization.

5 (2) ~~Upon filing the application,~~ **AT THE TIME AN APPLICANT**  
6 **FILES AN APPLICATION UNDER THIS SECTION,** the applicant shall do all  
7 of the following:

8 (a) Pay to the department a license fee of \$50.00 for each  
9 office.

10 (b) Pay to the department an investigation fee of \$50.00.

11 (c) Furnish a surety bond, ~~to~~ **APPROVED BY THE DIRECTOR, FOR**  
12 **THE BENEFIT OF** the people of the state of Michigan. The amount of  
13 the surety bond must equal or exceed the total amount of Michigan  
14 clients' funds in the applicant's or licensee's trust account at  
15 the time of application for license or renewal, as determined by  
16 the department, ~~but in no event shall a~~ **EXCEPT THAT THE AMOUNT OF**  
17 **THE** surety bond **SHALL NOT** be less than \$25,000.00 or ~~be~~ greater  
18 than \$100,000.00. The surety bond shall be conditioned ~~upon~~ **ON** the  
19 faithful accounting of all money collected ~~upon~~ **ON** accounts  
20 entrusted to a licensee engaged in the business of debt management  
21 or the licensee's employees and agents. ~~The surety bond shall be~~  
22 ~~approved by the department.~~ In lieu of a surety bond, the  
23 department may by rule provide for an appropriate deposit of cash  
24 or securities, a letter of credit, or the assignment of coverage of  
25 other bonds if the department is satisfied that comparable or more  
26 extensive coverage results.

27 (d) File an appointment of the director as the agent of the

1 applicant for service of process in this state.

2 (3) Service of process ~~upon~~**ON** the director ~~shall be~~**IS**  
3 considered service ~~upon~~**ON** an applicant or licensee, including an  
4 applicant ~~who~~**THAT** complies with or fails to comply with subsection  
5 (2) (d).

6 (4) Unless surrendered, revoked, or suspended, a license  
7 issued under this act expires on December 31 of the year for which  
8 it is issued. A licensee may renew a license before the expiration  
9 date as provided under this act.

10 (5) A licensee shall create, maintain, and preserve accurate  
11 and complete books and records relating to the licensee's business.  
12 The books and records shall be maintained according to generally  
13 accepted accounting principles. A licensee or an applicant shall  
14 notify the department in writing of the address where the books and  
15 records are kept. If a licensee changes the location of the books  
16 and records, the licensee shall notify the department in writing  
17 within 10 business days after the change. The director may  
18 prescribe by rule or order the form and contents of books and  
19 records relating to a licensee's business.

20 (6) An applicant shall file a financial statement with an  
21 application for a debt management license. The director may require  
22 that the financial statement be audited or reviewed by an  
23 independent certified public accountant.

24 (7) If a licensee has a board of directors or the equivalent,  
25 the director shall not require that the licensee provide  
26 information concerning a member of the board of directors or  
27 equivalent, ~~nor~~**OR** require that the member satisfy the examination

1 provisions of this act, if that member does not receive a salary,  
 2 stock dividend, or other financial benefit from that corporation  
 3 other than reimbursement of the actual expenses incurred in  
 4 carrying out the duties of a director of that corporation.

5       Sec. 6. (1) ~~Upon receiving the~~ **IF IT RECEIVES A LICENSE**  
 6 application and ~~approving~~ **UNDER THIS ACT AND APPROVES** the fees and  
 7 surety bond, the department shall investigate the applicant's  
 8 responsibility, experience, character, and general fitness. If the  
 9 result of the investigation warrants a belief that the ~~business~~  
 10 ~~will be operated~~ **APPLICANT WILL OPERATE THE BUSINESS** fairly, and  
 11 ~~honestly, within the provisions of~~ **AND AS REQUIRED UNDER** this act,  
 12 the department shall issue a license. The investigation of the  
 13 applicant shall at least include investigation of the following as  
 14 applicable:

15       (a) If the applicant is a corporation, its officers and  
 16 directors.

17       (b) If the applicant is a partnership, its partners.

18       (c) If the applicant is an association, its officers.

19       (d) If the applicant is a limited liability company, its  
 20 manager or managers.

21       (e) If the applicant is any other legal entity, its manager or  
 22 other person designated to control the operation of that legal  
 23 entity.

24       (2) ~~A~~ **THE DEPARTMENT SHALL NOT ISSUE A** license ~~shall not be~~  
 25 ~~issued~~ if the investigation reveals 1 or more of the following:

26       (a) That an individual investigated under subsection (1) meets  
 27 any of the following:



1 (i) Was ever convicted of a crime involving moral turpitude  
2 including forgery, embezzlement, obtaining money under false  
3 pretenses, larceny, extortion, conspiracy to defraud, or any other  
4 similar offense.

5 (ii) Violated or failed to comply with this act or a rule  
6 promulgated under this act.

7 (iii) Had a license to engage in the business of debt management  
8 revoked or suspended for any reason other than failure to pay  
9 licensing fees in this state or another state.

10 (iv) Defaulted in the payment of money collected for others,  
11 including the discharge of debts through bankruptcy proceedings.  
12 The director may, ~~at~~**IN** his or her discretion, waive this  
13 restriction if provided with evidence of justifiable cause for the  
14 bankruptcy, plus convincing evidence of the fitness of the bankrupt  
15 party to carry out his or her functions under this act.

16 (b) An individual applicant is not at least 18 years of age  
17 and a citizen of the United States.

18 (c) An applicant that is a partnership, corporation, limited  
19 liability company, association, or other legal entity required by  
20 statute to obtain authority to do business in this state has not  
21 been granted authority to do business in this state.

22 (d) The applicant is an employee or owner of a collection  
23 agency as defined in section 901 of the occupational code, 1980 PA  
24 299, MCL 339.901, or process serving business or in any manner is  
25 affiliated with a collection agency or process serving business.  
26 The director may, in his or her discretion, waive this restriction  
27 on a showing of sufficient safeguards in the operation of the

1 collection agency.

2 (3) ~~An~~ **IF AN APPLICANT IS AN INDIVIDUAL, THE** applicant shall  
 3 ~~pass an examination administered by the director or his or her~~  
 4 ~~designee~~ **MUST PROVIDE EVIDENCE TO THE DIRECTOR THAT THE APPLICANT**  
 5 **IS CERTIFIED AS A CERTIFIED COUNSELOR** before the director grants a  
 6 license to the applicant under this act. ~~A~~ **IF AN APPLICANT IS A**  
 7 **PERSON THAT IS NOT AN INDIVIDUAL, EACH** counselor shall ~~pass an~~  
 8 ~~examination~~ **WHO IS EMPLOYED BY THAT PERSON SHALL BECOME A CERTIFIED**  
 9 **COUNSELOR** within the first 180 days of **HIS OR HER** employment.  
 10 ~~administered by the director or his or her designee. The~~  
 11 ~~examination may be oral or written, or partly oral and partly~~  
 12 ~~written, and shall be practical in nature and sufficiently thorough~~  
 13 ~~to ascertain the applicant's fitness. Questions on bookkeeping,~~  
 14 ~~credit adjusting, business ethics, agency, contracts, debtor and~~  
 15 ~~creditor relationships, trust funds, and the provisions of this act~~  
 16 ~~and rules promulgated under this act may be included in the~~  
 17 ~~examination. The director may charge an examination fee of \$25.00~~  
 18 ~~for administering this examination.~~

19 Sec. 8. (1) Before December 1 of each year, a licensee shall  
 20 file an application with the department for renewal of its license.  
 21 The application shall be on the form prescribed by the department.  
 22 ~~and shall be accompanied by a fee~~ **THE LICENSEE SHALL INCLUDE WITH**  
 23 **THE APPLICATION A RENEWAL FEE** of \$50.00 for each office ~~together~~  
 24 ~~with~~ **AND** a surety bond in the same manner as an original  
 25 application. The application shall cover each branch office that is  
 26 under the ownership and control of the applying entity. ~~Financial~~

27 (2) **A LICENSEE SHALL FILE** statements ~~shall be filed with the~~

1 AN application for renewal of a license UNDER THIS SECTION. The  
2 director may require that the financial statements be audited or  
3 reviewed by an independent certified public accountant.

4 (3) IF A DEBT MANAGEMENT LICENSE RENEWAL FEE DESCRIBED IN  
5 SUBSECTION (1) IS NOT RECEIVED BY THE DEPARTMENT ON OR BEFORE  
6 DECEMBER 31, THE LICENSEE IS SUBJECT TO A PENALTY OF \$25.00 FOR  
7 EACH DAY THE FEE IS DELINQUENT, OR \$1,000.00, WHICHEVER IS LESS.

8 (4) IF A LICENSEE DOES NOT PAY A FEE OR PENALTY THAT THE  
9 LICENSEE IS REQUIRED TO PAY UNDER THIS ACT, OR DOES NOT PAY THAT  
10 FEE OR PENALTY WITHIN ANY TIME PERIOD ESTABLISHED UNDER THIS ACT  
11 FOR PAYMENT OF THAT FEE OR PENALTY, THE DIRECTOR MAY MAINTAIN AN  
12 ACTION AGAINST THE DELINQUENT LICENSEE FOR THE RECOVERY OF THE FEES  
13 OR PENALTIES TOGETHER WITH INTEREST AND COSTS.

14 SEC. 8A. (1) IF IN THE OPINION OF THE DIRECTOR AN INDIVIDUAL  
15 HAS ENGAGED IN FRAUD, THE DIRECTOR MAY SERVE ON THAT INDIVIDUAL A  
16 WRITTEN NOTICE OF INTENTION TO PROHIBIT THAT INDIVIDUAL FROM BEING  
17 LICENSED UNDER THIS ACT, LICENSED OR REGISTERED UNDER ANY OF THE  
18 FINANCIAL LICENSING ACTS, OR EMPLOYED BY, AN AGENT OF, OR A CONTROL  
19 PERSON OF A LICENSEE.

20 (2) A NOTICE ISSUED UNDER SUBSECTION (1) SHALL CONTAIN A  
21 STATEMENT OF THE FACTS SUPPORTING THE PROHIBITION AND SHALL SET A  
22 HEARING ON A DATE WITHIN 60 DAYS AFTER THE DATE OF THE NOTICE. IF  
23 THE INDIVIDUAL DOES NOT APPEAR AT THE HEARING, HE OR SHE IS  
24 CONSIDERED TO HAVE CONSENTED TO THE ISSUANCE OF AN ORDER IN  
25 ACCORDANCE WITH THE NOTICE.

26 (3) IF THE DIRECTOR FINDS AFTER A HEARING HELD UNDER  
27 SUBSECTION (2) THAT ANY OF THE GROUNDS SPECIFIED IN THE NOTICE HAVE

1 BEEN ESTABLISHED, THE DIRECTOR MAY ISSUE AN ORDER OF SUSPENSION OR  
2 PROHIBITION FROM BEING LICENSED UNDER THIS ACT OR EMPLOYED BY, AN  
3 AGENT OF, OR A CONTROL PERSON OF A LICENSEE.

4 (4) AN ORDER ISSUED UNDER SUBSECTION (2) OR (3) IS EFFECTIVE  
5 WHEN SERVED ON AN INDIVIDUAL. THE DIRECTOR SHALL ALSO SERVE A COPY  
6 OF THE ORDER ON THE LICENSEE OF WHICH THE INDIVIDUAL IS AN EMPLOYEE  
7 OR AGENT. AN ORDER ISSUED UNDER SUBSECTION (2) OR (3) REMAINS IN  
8 EFFECT UNTIL IT IS STAYED, MODIFIED, TERMINATED, OR SET ASIDE BY  
9 THE DIRECTOR OR A REVIEWING COURT.

10 (5) AFTER 5 YEARS FROM THE DATE OF AN ORDER ISSUED UNDER  
11 SUBSECTION (2) OR (3), THE INDIVIDUAL SUBJECT TO THE ORDER MAY  
12 APPLY TO THE DIRECTOR TO TERMINATE THE ORDER.

13 (6) IF THE DIRECTOR CONSIDERS THAT AN INDIVIDUAL SERVED A  
14 NOTICE UNDER SUBSECTION (1) POSES AN IMMINENT THREAT OF FINANCIAL  
15 LOSS TO CUSTOMERS, THE DIRECTOR MAY SERVE ON THAT INDIVIDUAL AN  
16 ORDER OF SUSPENSION FROM BEING EMPLOYED BY, AN AGENT OF, OR A  
17 CONTROL PERSON OF A LICENSEE. A SUSPENSION IS EFFECTIVE ON THE DATE  
18 THE ORDER IS ISSUED AND, UNLESS STAYED BY A COURT, REMAINS IN  
19 EFFECT UNTIL THE DIRECTOR COMPLETES THE REVIEW REQUIRED UNDER THIS  
20 SECTION AND THE DIRECTOR HAS DISMISSED THE CHARGES SPECIFIED IN THE  
21 ORDER.

22 (7) UNLESS OTHERWISE AGREED TO BY THE DIRECTOR AND THE  
23 INDIVIDUAL SERVED WITH AN ORDER ISSUED UNDER SUBSECTION (6), THE  
24 DIRECTOR SHALL HOLD A HEARING REQUIRED UNDER SUBSECTION (2) TO  
25 REVIEW A SUSPENSION NOT EARLIER THAN 5 DAYS OR LATER THAN 20 DAYS  
26 AFTER THE DATE OF THE NOTICE.

27 (8) IF AN INDIVIDUAL IS CONVICTED OF A FELONY INVOLVING FRAUD,

1 DISHONESTY, OR BREACH OF TRUST, THE DIRECTOR MAY ISSUE AN ORDER  
2 SUSPENDING OR PROHIBITING HIM OR HER FROM BEING LICENSED UNDER THIS  
3 ACT OR EMPLOYED BY, AN AGENT OF, OR A CONTROL PERSON OF A LICENSEE.  
4 AFTER 5 YEARS FROM THE DATE OF THE ORDER, THE INDIVIDUAL SUBJECT TO  
5 THE ORDER MAY APPLY TO THE DIRECTOR TO TERMINATE THE ORDER.

6 (9) THE DIRECTOR SHALL MAIL A COPY OF ANY NOTICE OR ORDER  
7 ISSUED UNDER THIS SECTION TO THE EMPLOYER OR PRINCIPAL OF THE  
8 INDIVIDUAL WHO IS SUBJECT TO THE NOTICE OR ORDER.

9 (10) WITHIN 30 DAYS AFTER THE DIRECTOR HAS NOTIFIED THE  
10 PARTIES THAT A MATTER DESCRIBED IN THIS SECTION HAS BEEN SUBMITTED  
11 TO HIM OR HER, THE DIRECTOR SHALL RENDER A DECISION THAT INCLUDES  
12 FINDINGS OF FACT SUPPORTING THE DECISION AND SERVE ON EACH PARTY TO  
13 THE PROCEEDING A COPY OF THE DECISION AND AN ORDER CONSISTENT WITH  
14 THE DECISION.

15 (11) EXCEPT FOR A CONSENT ORDER, A PARTY TO THE PROCEEDING OR  
16 A PERSON AFFECTED BY AN ORDER ISSUED UNDER THIS SECTION MAY OBTAIN  
17 A JUDICIAL REVIEW OF THE ORDER. A CONSENT ORDER MAY BE REVIEWED AS  
18 PROVIDED UNDER THE ADMINISTRATIVE PROCEDURES ACT OF 1969, 1969 PA  
19 306, MCL 24.201 TO 24.328. EXCEPT FOR AN ORDER UNDER JUDICIAL  
20 REVIEW, THE DIRECTOR MAY TERMINATE OR SET ASIDE ANY ORDER. THE  
21 DIRECTOR MAY TERMINATE OR SET ASIDE AN ORDER UNDER JUDICIAL REVIEW  
22 WITH THE PERMISSION OF THE COURT.

23 (12) UNLESS ORDERED BY THE COURT, THE COMMENCEMENT OF  
24 PROCEEDINGS FOR JUDICIAL REVIEW UNDER SUBSECTION (11) DOES NOT STAY  
25 THE DIRECTOR'S ORDER.

26 (13) THE DIRECTOR MAY APPLY TO THE CIRCUIT COURT OF INGHAM  
27 COUNTY FOR THE ENFORCEMENT OF ANY OUTSTANDING ORDER ISSUED UNDER

1 THIS SECTION.

2 (14) ANY INDIVIDUAL WHO VIOLATES A FINAL ORDER ISSUED UNDER  
3 THIS SECTION IS GUILTY OF A MISDEMEANOR PUNISHABLE BY A FINE OF NOT  
4 MORE THAN \$5,000.00 OR IMPRISONMENT FOR NOT MORE THAN 1 YEAR, OR  
5 BOTH.

6 (15) AS USED IN THIS SECTION:

7 (A) "FINANCIAL LICENSING ACT" MEANS THE CONSUMER FINANCIAL  
8 SERVICES ACT, 1988 PA 161, MCL 487.2051 TO 487.2072; ANY OF THE  
9 ACTS LISTED IN SECTION 2 OF THE CONSUMER FINANCIAL SERVICES ACT,  
10 1988 PA 161, MCL 487.2052; THE DEFERRED PRESENTMENT SERVICE  
11 TRANSACTIONS ACT, 2005 PA 244, MCL 487.2121 TO 487.2173; AND THE  
12 MORTGAGE LOAN ORIGINATOR LICENSING ACT, 2009 PA 75, MCL 493.131 TO  
13 493.171.

14 (B) "FRAUD" INCLUDES ACTIONABLE FRAUD, ACTUAL OR CONSTRUCTIVE  
15 FRAUD, CRIMINAL FRAUD, OR EXTRINSIC OR INTRINSIC FRAUD, OR FRAUD IN  
16 THE EXECUTION, IN THE INDUCEMENT, IN FACT, OR IN LAW, OR ANY OTHER  
17 FORM OF FRAUD.

18 Sec. 11. All of the following apply to a license:

19 (a) The director shall prescribe the form and size of a  
20 license.

21 (b) A license shall show the name of the licensee and the  
22 address at which the business of debt management is to be  
23 conducted.

24 (c) A license shall show the date of expiration of the license  
25 as December 31, and show **ANY** other information prescribed by the  
26 director.

27 (d) While **THE LICENSE IS** in force, the ~~license~~**LICENSEE** shall

1 at all times ~~be conspicuously displayed~~ **DISPLAY THE LICENSE** in the  
2 outer office of the licensee or branch office of the licensee, **IF**  
3 **THAT OFFICE OFFERS IN-PERSON SERVICES TO CONSUMERS, AND STATE ON AN**  
4 **INTERNET WEBSITE THAT IS AVAILABLE TO THE PUBLIC THAT THE LICENSEE**  
5 **IS LICENSED IN THIS STATE.**

6 (e) A license is not transferable or assignable.

7 (f) A **LICENSEE SHALL SURRENDER A** license ~~shall be surrendered~~  
8 to the department within 5 **BUSINESS** days after the date that the  
9 licensee either ceases to engage in the business of debt management  
10 or ~~has its~~ **THE DATE THE** license **IS** revoked.

11 Sec. 12. (1) ~~Before a contract is formed between a licensee~~  
12 ~~and a debtor, a thorough and written budget analysis shall be~~  
13 ~~compiled and a copy delivered to the debtor. A licensee shall not~~  
14 ~~accept an account unless a written and thorough budget analysis~~  
15 ~~indicates that the debtor can reasonably meet the requirements~~  
16 ~~required by the budget analysis. The~~ **A LICENSEE MAY ENTER INTO A**  
17 **CONTRACT OR AGREEMENT TO PROVIDE DEBT MANAGEMENT SERVICES TO A**  
18 **DEBTOR ONLY IF THE LICENSEE HAS CONDUCTED A WRITTEN AND THOROUGH**  
19 **BUDGET ANALYSIS OF THE DEBTOR AND MADE A DETERMINATION, BASED ON**  
20 **THE ANALYSIS OF THE INFORMATION PROVIDED BY THE DEBTOR OR OTHERWISE**  
21 **AVAILABLE TO THE LICENSEE, THAT A DEBT MANAGEMENT PLAN IS A**  
22 **SUITABLE SOLUTION FOR THE DEBTOR AND THAT THE DEBTOR WILL BE ABLE**  
23 **TO MEET THE PAYMENT OBLIGATIONS UNDER THE PLAN. IF THE LICENSEE**  
24 **DETERMINES THAT A PLAN IS SUITABLE FOR A DEBTOR WHOSE CURRENT**  
25 **MONTHLY EXPENSE AND DEBT PAYMENTS EXCEED THE DEBTOR'S NET INCOME,**  
26 **THE LICENSEE MUST ESTABLISH A WRITTEN PLAN OUTLINING HOW THE DEBTOR**  
27 **WILL MEET THE PAYMENT OBLIGATIONS UNDER THE PLAN BEFORE ENTERING**

1 INTO A CONTRACT OR AGREEMENT TO PROVIDE DEBT MANAGEMENT SERVICES TO  
2 THE DEBTOR.

3 (2) A budget analysis DESCRIBED IN SUBSECTION (1) shall  
4 contain all of the following information about the debtor:

5 (a) Name and address.

6 (b) ~~Marital status and number~~ NUMBER of dependents.

7 (c) Amount ~~and source~~ of all employment compensation, payments  
8 from government programs, child support and alimony payments, and  
9 other income AND THE DEBTOR'S NET MONTHLY INCOME. EXCEPT AS  
10 PROVIDED IN THIS SUBDIVISION, A DEBTOR IS ONLY REQUIRED TO PROVIDE  
11 INFORMATION TO A LICENSEE ABOUT THE AMOUNT OF HIS OR HER INCOME AND  
12 IS NOT REQUIRED TO PROVIDE ANY INFORMATION ABOUT THE SOURCE OF THAT  
13 INCOME.

14 ~~—— (d) Number of exemptions claimed on the debtor's most recent  
15 federal income tax return.~~

16 ~~—— (e) Gross income per pay period, type and amount of all  
17 payroll deductions, and net income per pay period.~~

18 (D) ~~(f)~~ Monthly home mortgage or rental payment, IF ANY. If  
19 the home mortgage payment does not include an escrow for real  
20 estate taxes, the budget analysis shall contain ~~the amount and due  
21 dates of the~~ AN ESTIMATE OF THE ANNUAL AMOUNT OF THE real estate  
22 taxes on the property, IF THE AMOUNT IS AVAILABLE FROM THE DEBTOR  
23 OR PUBLIC SOURCE.

24 (E) ~~(g)~~ Type and amount of all ~~other fixed periodic  
25 payments.~~ OF THE DEBTOR'S OBLIGATIONS INCLUDED IN THE DEBT  
26 MANAGEMENT PLAN, INCLUDING, BUT NOT LIMITED TO, A DESCRIPTION OF  
27 AND AMOUNT OWED FOR ANY OUTSTANDING GARNISHMENTS AND JUDGMENTS, AND



1 THE TYPE AND AMOUNT OF THE DEBTOR'S OBLIGATIONS THAT ARE KNOWN TO  
2 THE DEBTOR AND ARE NOT INCLUDED IN THE DEBT MANAGEMENT PLAN.

3 ~~—— (h) Type and amount of food, clothing, utility, vehicle,  
4 insurance, and all other living expenses.~~

5 (F) AMOUNT OF HOUSEHOLD EXPENSES, INCLUDING, BUT NOT LIMITED  
6 TO, EXPENSES FOR FOOD, UTILITIES, VEHICLES, INSURANCE, AND OTHER  
7 LIVING EXPENSES.

8 (G) ~~(i) List~~ A LIST of THE creditors included in TO WHICH  
9 PAYMENTS WILL BE MADE UNDER the plan.

10 ~~—— (j) A description of and amount owed for any outstanding  
11 garnishments and judgments.~~

12 ~~—— (k) Periodic amount available for payment toward a debt  
13 management plan.~~

14 Sec. 13. (1) ~~Upon establishing~~ WHEN A LICENSEE ESTABLISHES a  
15 debt management plan for a debtor, a THE licensee may charge and  
16 receive an initial fee of \$25.00. However, unless \$50.00.

17 (2) A LICENSEE SHALL ATTEMPT TO OBTAIN CONSENT TO PARTICIPATE  
18 IN A DEBT MANAGEMENT PLAN FROM AT LEAST 51%, ~~or more~~ in number and  
19 OR dollar amount, of all the debtor's creditors ~~consent to the debt  
20 management program within 45-90 days of~~ AFTER establishing the debt  
21 management plan. ~~, the fee shall be returned to the debtor and the  
22 debtor's account closed.~~ IF THE REQUIRED CONSENT IS NOT ACTUALLY  
23 RECEIVED BY THE LICENSEE, THE LICENSEE SHALL PROVIDE NOTICE TO THE  
24 DEBTOR OF THE LACK OF REQUIRED CONSENT AND THE DEBTOR MAY, AT ITS  
25 OPTION, CLOSE THE ACCOUNT. IF THE DEBTOR DECIDES TO CLOSE THE  
26 ACCOUNT, ANY UNEXPENDED FUNDS SHALL BE RETURNED TO THE DEBTOR OR  
27 DISBURSED AS DIRECTED BY THE DEBTOR.

1 ~~———— (2) Consent from a creditor shall be recorded on a separate~~  
 2 ~~form. The form shall contain all of the following.~~

3 ~~———— (a) A list of all the creditors.~~

4 ~~———— (b) The manner in which consent was sought.~~

5 ~~———— (c) The date of each contact.~~

6 ~~———— (d) The name of the person contacted, if applicable.~~

7 ~~———— (e) The response obtained from the person contacted.~~

8 ~~———— (f) Any revised or special conditions or arrangements that~~  
 9 ~~condition the consent.~~

10 ~~———— (g) The date on which the required consent was secured.~~

11 (3) ~~The~~ **FOR PURPOSES OF SUBSECTION (2), A LICENSEE MAY SEEK**  
 12 **THE** consent of a creditor ~~may be sought~~ **TO PARTICIPATE IN A DEBT**  
 13 **MANAGEMENT PLAN** by sending a notice of a debt management plan to a  
 14 **THE** creditor by an appropriate means including by telephone,  
 15 facsimile, electronic mail, ~~mail,~~ **MEANS,** or first-class mail. If the  
 16 creditor does not respond within 14 days after the ~~sending of the~~  
 17 notice **IS SENT,** ~~it may be presumed~~ **THE LICENSEE MAY PRESUME** that  
 18 the creditor has given consent. **HOWEVER, THIS SUBSECTION DOES NOT**  
 19 **REQUIRE THAT A LICENSEE SEND NOTICE OF A DEBT MANAGEMENT PLAN TO**  
 20 **ALL OF A DEBTOR'S CREDITORS.**

21 (4) If a payment under the debt management plan is sent to a  
 22 **THE** creditor, **THE LICENSEE MAY PRESUME** acceptance of the payment ~~or~~  
 23 **AND** plan ~~may be presumed~~ **BY THE CREDITOR** 7 days after sending the  
 24 payment. **AS AN ALTERNATIVE TO SENDING NOTICE UNDER SUBSECTION (3),**  
 25 **A LICENSEE MAY SEEK THE CONSENT OF A CREDITOR FOR PURPOSES OF**  
 26 **SUBSECTION (2) BY SENDING A PAYMENT TO THE CREDITOR UNDER THE TERMS**  
 27 **OF THE DEBT MANAGEMENT PLAN.**

1           Sec. 14. (1) A contract between a licensee and debtor shall  
2 include all of the following:

3           (a) Each creditor to ~~whom~~**WHICH** payments will be made and the  
4 amount owed each creditor. **A LICENSEE MAY RELY ON RECORDS OF THE**  
5 **DEBTOR AND OTHER INFORMATION AVAILABLE TO IT TO DETERMINE THE**  
6 **AMOUNT OWED TO A CREDITOR.**

7           (b) The total amount of the licensee's charges.

8           (c) The beginning and ~~ending~~**TERMINATION** dates of the  
9 contract.

10           (d) The ~~number of months and the total principal amount plus~~  
11 **AND** approximate interest charges ~~required to liquidate in full the~~  
12 ~~debts, except mortgage or land contract interest payments,~~  
13 **described in the contract. OF THE DEBTOR'S OBLIGATIONS TO BE PAID**  
14 **UNDER THE DEBT MANAGEMENT PLAN.**

15           (e) The name and address of the licensee and of the debtor.

16           (f) ~~Other~~**ANY OTHER** provisions or disclosures that the  
17 director determines are necessary for the protection of the debtor  
18 and the proper conduct of business by a licensee.

19           (2) Unless otherwise approved by the department and except for  
20 an amount due for 1 or more monthly fees, ~~or~~a closeout fee, **CREDIT**  
21 **REPORTS, OR EDUCATIONAL PRODUCTS OR MATERIALS,** a licensee shall  
22 distribute to the creditors of the debtor, at least monthly, all  
23 money received from a debtor or on behalf of a debtor **UNLESS**  
24 **OTHERWISE DIRECTED BY THE DEBTOR.**

25           (3) **BY SUBMITTING A WRITTEN REQUEST TO THE LICENSEE, A DEBTOR**  
26 **MAY ADD OR REMOVE 1 OR MORE DEBT OBLIGATIONS FROM A CONTRACT AT ANY**  
27 **TIME. IF THE LICENSEE DETERMINES AFTER PREPARING AN UPDATED BUDGET**

1 ANALYSIS THAT THE DEBTOR CAN REASONABLY FULFILL THE REQUIREMENTS OF  
2 THE DEBT MANAGEMENT PLAN, THE LICENSEE MAY AMEND THE CONTRACT AS  
3 REQUESTED BY THE DEBTOR.

4 (4) IF A DEBTOR'S CONTRACT WITH A LICENSEE EXPIRES AND 1 OR  
5 MORE DEBT OBLIGATIONS INCLUDED IN THAT CONTRACT ARE NOT YET  
6 LIQUIDATED, THE LICENSEE MAY EXTEND OR ENTER INTO AN ADDITIONAL  
7 CONTRACT WITH THE DEBTOR IF THE LICENSEE DETERMINES THAT THE DEBT  
8 MANAGEMENT PLAN IS SUITABLE FOR THE DEBTOR.

9 Sec. 15. (1) Subject to subsection ~~(5)~~, ~~(6)~~, payments received  
10 by a licensee from or on behalf of a debtor for the benefit of a  
11 creditor shall be held in ~~A trust in a separate account maintained~~  
12 ~~for the benefit of the licensee's Michigan clients~~ at a financial  
13 institution whose deposits are insured by an agency of the United  
14 States government. ~~Disbursements whether~~ **EACH LICENSEE SHALL ENSURE**  
15 **THAT IT MAINTAINS RECORDS OF ALL DEBTOR FUNDS IT HOLDS IN TRUST FOR**  
16 **RESIDENTS OF THIS STATE AND ALL FUNDS DISBURSED ON BEHALF OF THOSE**  
17 **DEBTORS AND SHALL PROVIDE THE DEPARTMENT WITH A FULL ACCOUNTING OF**  
18 **THOSE FUNDS AND THE DISBURSEMENT OF THOSE FUNDS ON REQUEST OF THE**  
19 **DEPARTMENT.**

20 (2) **ANY DISBURSEMENTS BY A LICENSEE** to the debtor or to the  
21 creditors of the debtor shall be made from ~~the~~ **A trust account**  
22 **ESTABLISHED UNDER THIS SECTION. A LICENSEE SHALL DEPOSIT A payment**  
23 **from a debtor or on behalf of a debtor** ~~shall be deposited in the~~  
24 **account not later than 2 business days after receipt of** ~~RECEIVING~~  
25 **the payment. A LICENSEE MAY UTILIZE A sweep arrangement** ~~may be~~  
26 ~~utilized~~ **if the trust account is insured for 100% or more of the**  
27 **balance in the trust account.**

1           (3) ~~(2) The A LICENSEE SHALL RECONCILE A~~ trust account shall  
2 ~~be reconciled not less than once a month. ESTABLISHED UNDER THIS~~  
3 **SECTION AT LEAST EVERY MONTH.** The reconciliation shall ascertain  
4 the actual cash balance in the account and compare it with the sum  
5 of the escrow balances ~~in each debtor's~~ **ATTRIBUTABLE TO THE DEBTOR**  
6 **OR DEBTORS WHOSE FUNDS ARE INCLUDED IN THE** account. The  
7 ~~reconciliation may be done~~ **THE LICENSEE MAY RECONCILE THE ACCOUNT**  
8 electronically or by any other appropriate method and shall ~~be done~~  
9 ~~not more than~~ **COMPLETE THE RECONCILIATION WITHIN** 45 business days  
10 after ~~receipt of~~ **RECEIVING** the bank statement **FOR THE ACCOUNT.** An  
11 **THE LICENSEE SHALL KEEP AN** electronic or other appropriate notation  
12 of the reconciliation shall ~~be kept as a permanent record of the~~  
13 ~~licensee. and shall be considered as in compliance with this~~  
14 ~~section. Each~~ **THE LICENSEE SHALL INDIVIDUALLY SCHEDULE EACH**  
15 **DEBTOR'S** trust account shall ~~be individually scheduled~~ **BALANCE** in a  
16 **THE** licensee's reconciliation records. **ON REQUEST, THE LICENSEE**  
17 **SHALL MAKE THE RECONCILIATION OF THE TOTAL ACCOUNT, INCLUDING THE**  
18 **BALANCE FOR EACH DEBTOR WHOSE FUNDS ARE INCLUDED IN THE ACCOUNT,**  
19 **AVAILABLE TO THE DEPARTMENT.**

20           (4) ~~(3) The A~~ trust account **ESTABLISHED UNDER THIS SECTION**  
21 shall at all times have an actual cash balance equal to or greater  
22 than the sum of the escrow balances of each debtor's account, and  
23 failure to maintain that amount is cause for a summary suspension  
24 of ~~the A~~ license **UNLESS THE FAILURE IS THE RESULT OF AN INADVERTENT**  
25 **CLERICAL OR HUMAN ERROR.**

26           (5) ~~(4) If a trust account fails to~~ **ESTABLISHED UNDER THIS**  
27 **SECTION DOES NOT** contain sufficient funds to cover the debtor

1 escrow balances, the licensee shall immediately ~~upon~~**ON** discovery  
2 notify the director by telephone, facsimile, electronic mail, or  
3 other method approved by the department. The licensee shall also  
4 provide written notice ~~including~~**TO THE DIRECTOR THAT INCLUDES** a  
5 description of the remedial action taken **BY THE LICENSEE**.

6 (6) ~~(5)~~—If ~~the~~**A** trust account described in subsection (1) is  
7 maintained at a financial institution described in subsection (1)  
8 **THAT IS** located outside of this state, the licensee shall furnish a  
9 surety bond or irrevocable letter of credit ~~to~~**FOR THE BENEFIT OF**  
10 the people of the state of Michigan, in an amount **THAT IS** equal to  
11 or ~~exceeding~~**EXCEEDS** 100% of the average amount of deposits held in  
12 the trust account from month to month and **IS** in a form approved by  
13 the department. This requirement is in addition to an applicant's  
14 obligation under section 5(2)(c).

15 Sec. 16. (1) A licensee shall do all of the following:

16 (a) Create and maintain records of the accounts, **CONTRACTS**,  
17 correspondence, memoranda, papers, books, and other records of the  
18 debt management business. If the licensee elects not to retain  
19 original records, the licensee may utilize electronic, photocopy,  
20 or computerized methods of record keeping. The licensee shall  
21 preserve the records created under this subdivision for at least 6  
22 years after they are created.

23 (b) Make all the records created and maintained under  
24 subdivision (a) available for examination by examiners of the  
25 department.

26 (c) ~~Upon contracting~~**WHEN IT ENTERS INTO A CONTRACT** with a  
27 debtor, give a copy of the contract to the debtor.

1 (d) Deliver a receipt to a debtor ~~upon receiving~~ **WHEN IT**  
 2 **RECEIVES** cash from a debtor, ~~or within 3 business days after~~  
 3 ~~receiving a noncash payment from a debtor,~~ and at least monthly  
 4 beginning with the first month after contracting with a debtor  
 5 deliver a statement that includes the dates and amounts received  
 6 and disbursed on behalf of the debtor **AND THE FEES COLLECTED BY THE**  
 7 **LICENSEE ON THOSE AMOUNTS.**

8 (e) Within 5 business days after a request from a debtor,  
 9 provide a written statement that includes all of the following:

10 (i) All transactions concerning the money received from or on  
 11 behalf of the debtor.

12 (ii) The total amount paid to each creditor.

13 (iii) The total amount of ~~charges deducted from the payments~~  
 14 ~~received.~~ **FEES COLLECTED BY THE LICENSEE ON THE AMOUNTS DESCRIBED IN**  
 15 **SUBPARAGRAPH (ii).**

16 (iv) The amount held in reserve.

17 (f) At least every 90 days after contracting with a debtor,  
 18 provide a written statement to the debtor that includes all of the  
 19 following:

20 (i) The total amount received from and on behalf of the debtor.

21 (ii) The total amount paid to each creditor.

22 (iii) The total amount ~~deducted from the payments received.~~ **OF**  
 23 **FEES COLLECTED BY THE LICENSEE ON THE AMOUNTS DESCRIBED IN**  
 24 **SUBPARAGRAPH (ii).**

25 (iv) The amount held in reserve.

26 (g) ~~At~~ **SUBJECT TO SUBSECTION (2), AT** least annually, ~~verify or~~  
 27 ~~cause the verification of payments to selected creditor accounts~~

1 ~~and~~ do, or designate **OR DIRECT** 1 or more persons to do, all of the  
2 following:

3 ~~(i) Review each debtor's account file.~~

4 ~~(ii) Review checks paid by the licensee.~~

5 (i) ~~(iii)~~ Review procedures used by the licensee for processing  
6 checks and handling cash.

7 ~~(iv) Review the complaint file maintained by the licensee.~~

8 ~~(v) Verify payments to selected creditor accounts.~~

9 ~~(vi) Review selected counselor records and work papers.~~

10 (ii) **VERIFY THAT PAYMENTS TO SELECTED CREDITOR ACCOUNTS ARE**  
11 **PROPERLY DISBURSED.**

12 (iii) **VERIFY THAT CONSUMER COMPLAINTS ARE PROPERLY HANDLED.**

13 (iv) **REVIEW SELECTED CLIENT FILES TO CONFIRM THAT THEY CONTAIN**  
14 **THE PROPER DOCUMENTATION.**

15 (h) If a contract with a debtor is lawfully sold, transferred,  
16 or assigned to a licensee ~~from~~ **BY** another licensee, furnish to the  
17 debtor a written notice of the sale, transfer, or assignment. The  
18 notice shall contain the name, ~~and~~ address, **AND CONTACT TELEPHONE**  
19 **NUMBER** of the licensee. ~~and the name of the counselor authorized by~~  
20 ~~the licensee to manage the contract.~~

21 (2) **A LICENSEE THAT HAS PROPER CONTROLS IN PLACE TO ENSURE**  
22 **THAT THE ACTIONS DESCRIBED IN SUBSECTION (1) (G) (i) TO (iv) ARE DONE**  
23 **MEETS THE REQUIREMENTS OF SUBSECTION (1) (G).**

24 (3) **ANNUALLY, ON OR BEFORE A DATE ESTABLISHED BY THE DIRECTOR,**  
25 **EACH LICENSEE SHALL FILE WITH THE DIRECTOR A REPORT, ON A FORM**  
26 **PROVIDED BY THE DIRECTOR, STATING THE LICENSEE'S VOLUME AND TYPE OF**  
27 **BUSINESS ACTIVITIES FOR THE IMMEDIATELY PRECEDING CALENDAR YEAR.**



1           Sec. 17. The department may examine, without notice, the  
2 condition and affairs of a licensee. In connection with an  
3 examination, the department may examine ~~on~~**UNDER** oath a licensee  
4 and any director, officer, employee, customer, creditor, manager,  
5 member, partner, or stockholder of ~~the~~**A** licensee concerning the  
6 affairs and business of the licensee. The department shall  
7 ascertain whether the licensee transacts its business in the manner  
8 ~~prescribed by~~**REQUIRED UNDER** this act and the rules promulgated  
9 under this act. The licensee shall pay **AN EXAMINATION FEE, IN AN**  
10 **AMOUNT EQUAL TO** the actual cost of the examination as determined by  
11 the department, ~~which fee shall be deposited~~**AND THE DEPARTMENT**  
12 **SHALL DEPOSIT THAT FEE** in the state treasury to the credit of the  
13 department. Failure to pay the examination fee within 30 days after  
14 ~~receipt of~~**RECEIVING A** demand **FOR PAYMENT** from the department shall  
15 automatically suspend the license of the licensee until the fee is  
16 paid.

17           Sec. 18. (1) ~~A~~**IN ADDITION TO THE FEE DESCRIBED IN SECTION**  
18 **13(1), A** licensee may charge a reasonable fee **FOR PROVIDING DEBT**  
19 **MANAGEMENT SERVICES** under a debt management ~~services contract.~~  
20 **PLAN.** ~~The fees and charges of the licensee~~**FEE UNDER THIS**  
21 **SUBSECTION** shall not exceed 15% of the amount of the debt to be  
22 liquidated during the express term of the ~~contract.~~ ~~The licensee~~  
23 ~~may require the debtor to make an initial payment of not more than~~  
24 ~~\$25.00, which is part of the fees and charges of the licensee. The~~  
25 ~~initial payment may be deducted from the amount of a subsequent fee~~  
26 ~~that is amortized, if any.~~**PLAN.**

27           **(2) A LICENSEE MAY OFFER A DEBTOR THE OPTION TO PURCHASE**

1 CREDIT REPORTS OR EDUCATIONAL MATERIALS AND PRODUCTS, AND CHARGE A  
2 FEE TO THE DEBTOR IF THE DEBTOR ELECTS TO PURCHASE ANY OF THOSE  
3 ITEMS FROM THE LICENSEE. FEES CHARGED UNDER THIS SUBSECTION ARE NOT  
4 SUBJECT TO THE 15% LIMITATION ON FEES DESCRIBED IN SUBSECTION (1).

5 (3) ~~(2)~~—Except for a cancellation described in subsection ~~(3)~~,  
6 ~~for which a licensee may not collect the additional fee described~~  
7 ~~in this subsection,~~ (4), in the event of cancellation **OF** or default  
8 ~~en~~**IN** the performance of the contract by the debtor before its  
9 successful completion, ~~the~~**A** licensee may collect \$25.00 in  
10 addition to **ANY** fees and charges of the licensee previously  
11 received **BY THE LICENSEE**. This \$25.00 fee is not subject to the 15%  
12 limitation on fees and charges ~~of the licensee in~~**UNDER** subsection  
13 (1).

14 (4) ~~(3)~~—A contract is in effect when it is signed by the  
15 licensee and the debtor and the debtor has made a payment **OF ANY**  
16 **AMOUNT** to the licensee. The debtor has the right to cancel the  
17 contract until 12 midnight of the third business day after the  
18 first day the contract is in effect by delivering written notice of  
19 cancellation to the licensee. **A CANCELLATION DESCRIBED IN THIS**  
20 **SECTION IS NOT SUBJECT TO, AND A LICENSEE SHALL NOT COLLECT, THE**  
21 **FEE DESCRIBED IN SUBSECTION (3).**

22 (5) ~~(4)~~—If a debtor fails to make a payment **OF ANY AMOUNT** to a  
23 licensee within 60 days after the date a payment is due under a  
24 contract, ~~the contract is considered canceled by the debtor. A~~  
25 ~~debtor may file a letter of continuation of a contract even if the~~  
26 ~~debtor did not make a payment within 60 days after a payment was~~  
27 ~~due. All of the following apply to a letter of continuation of a~~

1 ~~contract.~~LICENSEE MAY, IN ITS DISCRETION, CANCEL THE DEBT  
2 MANAGEMENT CONTRACT IF IT DETERMINES THAT THE PLAN IS NO LONGER  
3 SUITABLE FOR THE DEBTOR, THE DEBTOR FAILS TO AFFIRMATIVELY  
4 COMMUNICATE TO THE LICENSEE THE DEBTOR'S DESIRE TO CONTINUE THE  
5 PLAN, OR THE CREDITORS OF THE DEBTOR REFUSE TO CONTINUE ACCEPTING  
6 PAYMENTS UNDER THE PLAN.

7 ~~—— (a) A debtor may file only 1 letter of continuation with a~~  
8 ~~licensee for any contract.~~

9 ~~—— (b) A letter of continuation must contain a detailed~~  
10 ~~explanation of the reason or reasons for the missed payment or~~  
11 ~~payments.~~

12 ~~—— (c) A contract for which a letter of continuation that meets~~  
13 ~~the requirements of this subsection is filed remains in effect and~~  
14 ~~subject to cancellation for any future failure to make a payment or~~  
15 ~~payments as described in this subsection.~~

16 ~~—— (d) A contract between a licensee and a debtor shall clearly~~  
17 ~~provide for 1 letter of continuation by a debtor.~~

18 ~~—— (e) A debtor may not file a letter of continuation with a~~  
19 ~~licensee at the beginning of a contract.~~

20 (6) ~~(5)~~A licensee shall not contract for, receive, or charge  
21 a debtor an amount greater than authorized by this act. A person  
22 ~~who~~**THAT** violates this subsection, except as the result of an  
23 inadvertent clerical or computer error, shall return to the debtor  
24 the amount of the payments received from or on behalf of the debtor  
25 and not distributed to creditors, and, as a penalty, an amount  
26 equal to the amount overcharged.

27 Sec. 19. A licensee shall not do any of the following:

1 (a) Purchase from a creditor any obligation of a debtor.

2 (b) Execute a contract or agreement to be signed by the debtor  
3 unless the contract or agreement is fully and completely filled in  
4 and finished.

5 (c) Lend money or credit except under a plan approved by the  
6 department.

7 (d) Take a confession of judgment or power of attorney to  
8 confess judgment against the debtor or appear as the debtor in a  
9 judicial proceeding.

10 (e) Receive or charge a fee in the form of a promissory note  
11 or other promise to pay, or receive or accept a mortgage or other  
12 security in real or personal property for a fee, or both.

13 (f) ~~Take, concurrent~~ **CONCURRENTLY** with the signing of the  
14 contract or as a part of the contract or as part of the application  
15 for the contract, **TAKE** a release of an obligation ~~to be performed~~  
16 ~~on the part of the licensee~~ **IS OR WAS TO PERFORM.**

17 (g) Offer, pay, or give any cash, fee, gift, bonus, premiums,  
18 reward, or other compensation to a person for referring a  
19 prospective customer to the licensee. **HOWEVER, ANY OF THE FOLLOWING**  
20 **PAYMENTS ARE NOT SUBJECT TO THIS SUBDIVISION:**

21 (i) A payment by the licensee for the lawful sale, transfer, or  
22 assignment of a contract to the licensee from another licensee. ~~is~~  
23 ~~not subject to this subdivision.~~

24 (ii) **A PAYMENT BY THE LICENSEE TO CREDIT COUNSELING**  
25 **ASSOCIATIONS SUCH AS THE NATIONAL FOUNDATION FOR CREDIT COUNSELING**  
26 **OR THE ASSOCIATION OF INDEPENDENT CONSUMER CREDIT COUNSELING**  
27 **AGENCIES TO PARTICIPATE IN A LOCATOR SERVICE.**

1 (h) Receive any cash, fee, gift, bonus, premium, reward, or  
2 other compensation from a person other than the debtor or a person  
3 in the debtor's behalf in connection with the licensee's business  
4 of debt management, except under a plan approved by order of the  
5 department. **HOWEVER, A PAYMENT RECEIVED BY A LICENSEE FROM A  
6 CREDITOR, FINANCIAL INSTITUTION, OR OTHER THIRD PARTY AS PART OF A  
7 FAIR SHARE PROGRAM, GRANT PROGRAM, OR ANOTHER SIMILAR PROGRAM IS  
8 NOT SUBJECT TO THIS SUBDIVISION.**

9 (i) Disclose the **IDENTITY OF** debtors who have contracted with  
10 the licensee, ~~other than~~ **EXCEPT** to the director or his or her  
11 authorized representative, or disclose the **IDENTITY OF** creditors of  
12 a debtor to anyone other than the debtor, or the director or his or  
13 her authorized representative, or another creditor of the debtor  
14 and then only to the extent necessary to secure the cooperation of  
15 the creditor in a debt management plan. **HOWEVER, THIS SUBDIVISION  
16 DOES NOT PROHIBIT A LICENSEE FROM SHARING INFORMATION ABOUT A  
17 DEBTOR'S DEBT MANAGEMENT PLAN OR THE CREDITORS OF THE DEBTOR WITH  
18 ANY PERSON WITH WHICH THE DEBTOR HAS SPECIFICALLY AUTHORIZED THE  
19 LICENSEE IN WRITING TO SHARE THAT INFORMATION.**

20 (j) Use or permit the use of a false, misleading, or deceptive  
21 statement or representation with regard to the services or charges  
22 of the licensee in any ~~advertisement, display, broadcast, or offer~~  
23 of the licensee's services.

24 **(K) IN ANY MANNER, ADVERTISE, PRINT, DISPLAY, PUBLISH,  
25 DISTRIBUTE, OR BROADCAST ANY STATEMENT OR REPRESENTATION WITH  
26 REGARD TO PROVIDING SERVICES UNDER THIS ACT THAT IS FALSE,  
27 MISLEADING, OR DECEPTIVE OR PERMIT ANOTHER PERSON TO VIOLATE THIS**

1 **SUBDIVISION.**

2 (I) ~~(k)~~ Use an advertisement that gives a telephone number or  
3 post office box without identifying the licensee and the licensee's  
4 office address.

5 (M) ~~(l)~~ Use ~~advertisements containing~~ **AN ADVERTISEMENT THAT**  
6 **CONTAINS** any of the following representations:

7 (i) That the licensee will provide funds to pay bills or  
8 prevent attachments.

9 (ii) That a certain payment schedule will handle a certain  
10 amount or range of indebtedness.

11 (iii) That garnishment, attachment, repossession, or loss of job  
12 will be prevented.

13 (N) ~~(m)~~ Fail to provide to the debtor the full benefit of a  
14 compromise of a debt arranged by the licensee with a creditor.

15 (O) ~~(n)~~ ~~In~~ **DO ANY OF THE FOLLOWING IN** connection with the  
16 making of a debt management contract or with operation of the  
17 debtor's account:

18 (i) Employ any device, scheme, or artifice to defraud.

19 (ii) Make any untrue statement of a material fact or omit to  
20 state a material fact necessary in order to make the statements  
21 made, in the light of the circumstances under which they are made,  
22 not misleading.

23 (iii) Engage in any act, practice, or course of business that  
24 operates or would operate as a fraud or deceit ~~upon~~ **ON** any person.

25 (P) ~~(o)~~ Conduct the business of debt management without a  
26 surety bond, or **A** deposit or assignment satisfactory to the  
27 department in lieu of a surety bond, ~~as described in~~ **UNDER** section

1 5(2) ~~in place.~~

2 Sec. 20. ~~(1) A person shall not publish or circulate a~~  
 3 ~~pamphlet, circular, form letter, advertisement, or other sales~~  
 4 ~~literature or advertising communication addressed to or intended~~  
 5 ~~for distribution to prospective debtors unless a true copy has been~~  
 6 ~~filed with the department at least 10 business days prior to the~~  
 7 ~~first publication, and the department has given its approval for~~  
 8 ~~use, or unless the advertisement or class of advertising has been~~  
 9 ~~exempted by rule of the department. The department may allow a~~  
 10 ~~shorter filing period.~~

11 (1) ~~(2) Nothing in this act shall~~ **THIS ACT DOES NOT** impose any  
 12 liability, civil or criminal, ~~upon~~ **ON** a person or publisher **THAT IS**  
 13 regularly engaged in the business of publishing a bona fide  
 14 newspaper or operating a radio or television station **AND THAT**, ~~and~~  
 15 acting solely in his ~~official capacity, who~~ **THE COURSE OF THAT**  
 16 **BUSINESS**, publishes an advertisement in good faith and without  
 17 knowledge that the advertisement or publication constitutes a  
 18 violation of ~~this act.~~ **SECTION 19(K), (L), OR (M).**

19 (2) ~~(3)~~ A person shall not publish an advertisement concerning  
 20 the offer of debt management services in this state after the  
 21 department **BY ORDER** finds that the advertisement contains a  
 22 statement that is false or misleading or omits to make any  
 23 necessary statement in order to make the statements made, in light  
 24 of the circumstances under which they were made, not misleading and  
 25 ~~so~~ notifies the person **OF THAT FINDING** in writing. The **DEPARTMENT**  
 26 **MAY GIVE THIS** notification ~~may be given~~ summarily, without notice  
 27 of hearing. At any time after the issuance of a notification under

1 this section, the person ~~desiring~~ **THAT DESIRES** to use the  
2 advertisement may request in writing that the **DEPARTMENT RESCIND**  
3 **THE** order. ~~be rescinded. Upon the receipt of~~ **IF IT RECEIVES** a  
4 written request ~~, the matter will be set for~~ **UNDER THIS SUBSECTION,**  
5 **THE DEPARTMENT SHALL SCHEDULE** a hearing **ON THE MATTER** to commence  
6 within 45 days unless the person ~~making~~ **THAT MADE** the request  
7 consents to a later date. After the hearing the department shall  
8 determine whether to affirm and continue or to rescind the order.

9       Sec. 26. The fees collected under this act shall be paid  
10 promptly into the state treasury to the credit of the ~~general~~  
11 ~~fund.~~ **DEPARTMENT.**

12       Enacting section 1. This amendatory act takes effect 90 days  
13 after the date it is enacted into law.