

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, 11, 12, 13, 14, 15,
16, 17, 18, 19, 20, and 26 (MCL 451.412, 451.414, 451.415, 451.416,
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, 11,
12, 13, 14, 15, 16, 17, 18, and 19 as amended by 2000 PA 255.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1
2
3
4
5
6

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
~~conditions~~ **ESTABLISH REQUIREMENTS** for debt management contracts; to

1 provide for the disposition of revenues; to provide penalties; and
 2 to repeal ~~certain~~ acts and parts of acts.

3 Sec. 2. As used in this act:

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

6 (b) "Counselor" means an employee or agent of a licensee who
 7 engages in **FINANCIAL** counseling and ~~budget analysis~~ **DEBT COUNSELING**
 8 functions. ~~and scheduling of debtor's funds.~~

9 (c) "Creditor" means a person for whose benefit **A LICENSEE**
 10 **COLLECTS AND DISPENSES** money. ~~is being collected and disbursed by a~~
 11 ~~licensee. A licensee is not a creditor for purposes of this act.~~ **THE**
 12 **TERM DOES NOT INCLUDE A LICENSEE.**

13 (d) "Debt management" means the planning and management of the
 14 financial affairs of a debtor and the receipt of money from the
 15 debtor for distribution to ~~a creditor~~ **1 OR MORE OF THE DEBTOR'S**
 16 **CREDITORS** in payment or partial payment of the debtor's
 17 obligations.

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

20 (F) **"DEBTOR'S OBLIGATION" MEANS ANY CURRENT OR PAST-DUE**
 21 **MONETARY OBLIGATION OF THE DEBTOR, INCLUDING, BUT NOT LIMITED TO,**
 22 **AMOUNTS OWED FOR PAYMENT OF CREDIT CARDS, UTILITIES, MORTGAGES,**
 23 **STUDENT LOANS, HOME EQUITY LOANS, PERSONAL LOANS, JUDGMENTS,**
 24 **GARNISHMENTS, PROPERTY TAXES, RENT, OR VEHICLE LOANS OR LEASES OR**
 25 **ANY OTHER OBLIGATION WHETHER SECURED OR UNSECURED OR WHETHER OR NOT**
 26 **THE OBLIGATION HAS A PRINCIPAL AND INTEREST COMPONENT.**

27 (G) ~~(f)~~ "Department" means the ~~office of financial and~~

1 ~~insurance services.~~ **DEPARTMENT OF INSURANCE AND FINANCIAL SERVICES.**

2 (H) ~~(g)~~ "Director" means the ~~commissioner~~ **DIRECTOR** of the
3 department or his or her authorized representative.

4 (I) **"FAIR SHARE PROGRAM" MEANS A PROGRAM IN WHICH VOLUNTARY**
5 **CONTRIBUTIONS ARE MADE BY SOME CREDITORS TO A LICENSEE BASED ON A**
6 **PERCENTAGE OF THE AMOUNT DISBURSED BY THE LICENSEE ON BEHALF OF A**
7 **DEBTOR.**

8 (J) ~~(h)~~ "Fees and charges of the licensee" means the total
9 amount of money ~~to be charged~~ a debtor by ~~the~~ **A** licensee, including
10 the ~~\$25.00~~ **\$50.00** initial payment and any charges for advice,
11 ~~materials,~~ **CREDIT REPORTS, EDUCATIONAL MATERIALS AND RESOURCES,** or
12 referrals.

13 (K) ~~(i)~~ "License" means a written certificate or exemption
14 order issued by the director **UNDER THIS ACT.**

15 (L) ~~(j)~~ "Licensee" means a person **THAT IS** licensed under this
16 act to perform debt management services and **IS** located inside or
17 outside the boundaries of this state.

18 (M) **"LOCATOR SERVICE" MEANS A TELEPHONE SERVICE THAT**
19 **AUTOMATICALLY CONNECTS CALLERS TO A NETWORK OF MEMBER SERVICE**
20 **PROVIDERS, BASED ON GEOGRAPHIC LOCATION OR ANOTHER PARAMETER.**

21 (N) ~~(k)~~ "Office" means each location, **DESCRIBED** by street
22 name, building number, city, and state, where a person engages in
23 the business of debt management.

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

27 (O) ~~(m)~~ "Person" means an individual, corporation,

1 partnership, association, joint stock company, trust ~~where~~ **IF** the
 2 interests of the beneficiaries are evidenced by a security, limited
 3 liability company, or other legal entity.

4 (P) ~~(n)~~ "Sweep arrangement" means an arrangement that provides
 5 for a temporary or permanent transfer of funds from 1 trust account
 6 to another trust account when a predetermined time, account
 7 balance, or other condition occurs or is fulfilled.

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

14 (2) ~~A person who is performing a~~ **THE DEPARTMENT MAY GRANT A**
 15 **PERSON THAT PROVIDES** debt management ~~service~~ **SERVICES** and receiving
 16 **RECEIVES** compensation primarily from governmental organizations,
 17 governmentally sponsored organizations, charitable trusts, or
 18 foundations ~~tax exempt pursuant to~~ **THAT HAVE TAX-EXEMPT STATUS**
 19 **UNDER** section 501(c) of the internal revenue code of 1986, ~~upon a~~
 20 ~~showing of safeguards in the handling of debtor funds, may be~~
 21 ~~granted~~ **26 USC 501**, an exemption from any provision of this act if
 22 **THE PERSON DEMONSTRATES THAT THE PERSON HAS SAFEGUARDS IN THE**
 23 **HANDLING OF DEBTOR FUNDS AND THE DEPARTMENT FINDS THAT** the
 24 exemption is ~~found to be~~ in the public interest.

25 Sec. 5. (1) An applicant for a license to engage in the
 26 business of debt management shall file an application with the
 27 director in writing and under oath that includes all of the

1 following:

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

4 (i) If the applicant is a corporation, its officers and
5 directors.

6 (ii) If the applicant is an association, its officers and
7 directors.

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

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

11 (v) If the applicant is any other legal entity, its manager or
12 other person designated to control the operation of that legal
13 entity.

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

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

16 (i) If the applicant is a corporation, a copy of the articles
17 of incorporation.

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

20 (iii) If the applicant is a partnership, a copy of the
21 partnership agreement.

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

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

27 (a) Pay to the department a license fee of \$50.00 for each

1 office.

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

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

19 (d) File an appointment of the director as the agent of the
20 applicant for service of process in this state.

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

25 (4) Unless surrendered, revoked, or suspended, a license
26 issued under this act expires on December 31 of the year for which
27 it is issued. A licensee may renew a license before the expiration

1 date as provided under this act.

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

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

16 (7) If a licensee has a board of directors or the equivalent,
17 the director shall not require that the licensee provide
18 information concerning a member of the board of directors or
19 equivalent, ~~nor~~ **OR** require that the member satisfy the examination
20 provisions of this act, if that member does not receive a salary,
21 stock dividend, or other financial benefit from that corporation
22 other than reimbursement of the actual expenses incurred in
23 carrying out the duties of a director of that corporation.

24 Sec. 6. (1) ~~Upon receiving the~~ **IF IT RECEIVES A LICENSE**
25 application and ~~approving~~ **UNDER THIS ACT AND APPROVES** the fees and
26 surety bond, the department shall investigate the applicant's
27 responsibility, experience, character, and general fitness. If the

1 result of the investigation warrants a belief that the ~~business~~
2 ~~will be operated~~ **APPLICANT WILL OPERATE THE BUSINESS** fairly, and
3 honestly, ~~within the provisions of~~ **AND AS REQUIRED UNDER** this act,
4 the department shall issue a license. The investigation of the
5 applicant shall at least include investigation of the following as
6 applicable:

7 (a) If the applicant is a corporation, its officers and
8 directors.

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

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

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

13 (e) If the applicant is any other legal entity, its manager or
14 other person designated to control the operation of that legal
15 entity.

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

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

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

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

26 (iii) Had a license to engage in the business of debt management
27 revoked or suspended for any reason other than failure to pay

1 licensing fees in this state or another state.

2 (iv) Defaulted in the payment of money collected for others,
3 including the discharge of debts through bankruptcy proceedings.

4 The director may, ~~at~~**IN** his or her discretion, waive this
5 restriction if provided with evidence of justifiable cause for the
6 bankruptcy, plus convincing evidence of the fitness of the bankrupt
7 party to carry out his or her functions under this act.

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

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

14 (d) The applicant is an employee or owner of a collection
15 agency as defined in section 901 of the occupational code, 1980 PA
16 299, MCL 339.901, or process serving business or in any manner is
17 affiliated with a collection agency or process serving business.
18 The director may, in his or her discretion, waive this restriction
19 on a showing of sufficient safeguards in the operation of the
20 collection agency.

21 (3) ~~An~~**IF AN APPLICANT IS AN INDIVIDUAL, THE** applicant shall
22 **MUST** pass an examination administered by the director or his or her
23 designee before the director grants a license to the applicant
24 under this act. ~~A~~**IF AN APPLICANT IS A PERSON THAT IS NOT AN**
25 **INDIVIDUAL, EACH** counselor **EMPLOYED BY THAT PERSON** shall pass an
26 examination within the first 180 days of employment administered by
27 the director or his or her designee. **ALL OF THE FOLLOWING APPLY TO**

1 **THE EXAMINATION:**

2 (A) The examination may be oral or written, or partly oral and
3 partly written. ~~and~~

4 (B) **THE EXAMINATION** shall be practical in nature and
5 sufficiently thorough to ascertain the applicant's ~~fitness~~.

6 **UNDERSTANDING OF THIS ACT AS IT PERTAINS TO THE JOB OF A COUNSELOR.**

7 (C) Questions on bookkeeping, credit adjusting, business
8 ethics, agency, contracts, debtor and creditor relationships, trust
9 funds, and the provisions of this act and rules promulgated under
10 this act may be included in the examination.

11 (D) The director may charge an examination fee of \$25.00 for
12 administering this examination.

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

14 (a) The director shall prescribe the form and size of a
15 license.

16 (b) A license shall show the name of the licensee and the
17 address at which the business of debt management is to be
18 conducted.

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

22 (d) While **THE LICENSE IS** in force, the ~~license~~**LICENSEE** shall
23 at all times ~~be conspicuously displayed~~**DISPLAY THE LICENSE** in the
24 outer office of the licensee or branch office of the licensee, **IF**
25 **THAT OFFICE OFFERS IN-PERSON SERVICES TO CONSUMERS, AND STATE ON AN**
26 **INTERNET WEBSITE THAT IS AVAILABLE TO THE PUBLIC THAT THE LICENSEE**
27 **IS LICENSED IN THIS STATE.**

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

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

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

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

27 (a) Name and address.

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

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

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

11 ~~(e) Gross income per pay period, type and amount of all~~
12 ~~payroll deductions, and net income per pay period.~~

13 (D) ~~(f)~~ Monthly home mortgage or rental payment, **IF ANY.** If
14 the home mortgage payment does not include an escrow for real
15 estate taxes, the budget analysis shall contain ~~the amount and due~~
16 ~~dates of the~~ **AN ESTIMATE OF THE ANNUAL AMOUNT OF THE** real estate
17 taxes on the property, **IF THE DEBTOR KNOWS THAT AMOUNT.**

18 (E) ~~(g)~~ Type and amount of all ~~other fixed periodic~~
19 ~~payments.~~ **OF THE DEBTOR'S OBLIGATIONS INCLUDED IN THE DEBT**
20 **MANAGEMENT PLAN, INCLUDING, BUT NOT LIMITED TO, A DESCRIPTION OF**
21 **AND AMOUNT OWED FOR ANY OUTSTANDING GARNISHMENTS AND JUDGMENTS, AND**
22 **THE TYPE AND AMOUNT OF THE DEBTOR'S OBLIGATIONS THAT ARE KNOWN TO**
23 **THE DEBTOR AND ARE NOT INCLUDED IN THE DEBT MANAGEMENT PLAN.**

24 ~~(h) Type and amount of food, clothing, utility, vehicle,~~
25 ~~insurance, and all other living expenses.~~

26 (F) **AMOUNT OF HOUSEHOLD EXPENSES, INCLUDING, BUT NOT LIMITED**
27 **TO, EXPENSES FOR FOOD, UTILITIES, VEHICLES, INSURANCE, AND OTHER**

1 **LIVING EXPENSES.**

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

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

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

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

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

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

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

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

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

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

1 ~~_____ (e) The response obtained from the person contacted.~~

2 ~~_____ (f) Any revised or special conditions or arrangements that~~
 3 ~~condition the consent.~~

4 ~~_____ (g) The date on which the required consent was secured.~~

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

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

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

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

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

2 (c) The beginning and ~~ending~~ **TERMINATION** dates of the
3 contract.

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

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

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

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

19 (3) **BY SUBMITTING A WRITTEN REQUEST TO THE LICENSEE, A DEBTOR**
20 **MAY ADD OR REMOVE 1 OR MORE DEBT OBLIGATIONS FROM A CONTRACT AT ANY**
21 **TIME.**

22 (4) **IF A DEBTOR'S CONTRACT WITH A LICENSEE EXPIRES AND 1 OR**
23 **MORE DEBT OBLIGATIONS INCLUDED IN THAT CONTRACT ARE NOT YET**
24 **LIQUIDATED, THE LICENSEE MAY ENTER INTO 1 OR MORE ADDITIONAL**
25 **CONTRACTS WITH THE DEBTOR IF THE LICENSEE DETERMINES THAT THE DEBT**
26 **MANAGEMENT PLAN IS SUITABLE FOR THE DEBTOR.**

27 Sec. 15. (1) Subject to subsection ~~(5)~~, **(6)**, payments received

1 by a licensee from or on behalf of a debtor for the benefit of a
2 creditor shall be held in ~~A trust in a separate account maintained~~
3 ~~for the benefit of the licensee's Michigan clients~~ at a financial
4 institution whose deposits are insured by an agency of the United
5 States government. ~~Disbursements whether~~ **EACH LICENSEE SHALL ENSURE**
6 **THAT IT MAINTAINS RECORDS OF ALL DEBTOR FUNDS IT HOLDS IN TRUST FOR**
7 **RESIDENTS OF THIS STATE AND ALL FUNDS DISBURSED ON BEHALF OF THOSE**
8 **DEBTORS AND SHALL PROVIDE THE DEPARTMENT WITH A FULL ACCOUNTING OF**
9 **THOSE FUNDS AND THE DISBURSEMENT OF THOSE FUNDS ON REQUEST OF THE**
10 **DEPARTMENT.**

11 (2) **ANY DISBURSEMENTS BY A LICENSEE** to the debtor or to the
12 creditors of the debtor shall be made from ~~the A trust account~~
13 **ESTABLISHED UNDER THIS SECTION. A LICENSEE SHALL DEPOSIT A** payment
14 from a debtor or on behalf of a debtor ~~shall be deposited in the~~
15 account not later than 2 business days after ~~receipt of~~ **RECEIVING**
16 the payment. **A LICENSEE MAY UTILIZE A** sweep arrangement ~~may be~~
17 ~~utilized~~ if the trust account is insured for 100% or more of the
18 balance in the trust account.

19 (3) ~~(2) The A LICENSEE SHALL RECONCILE A trust account shall~~
20 ~~be reconciled not less than once a month.~~ **ESTABLISHED UNDER THIS**
21 **SECTION AT LEAST EVERY MONTH.** The reconciliation shall ascertain
22 the actual cash balance in the account and compare it with the sum
23 of the escrow balances ~~in each debtor's~~ **ATTRIBUTABLE TO THE DEBTOR**
24 **OR DEBTORS WHOSE FUNDS ARE INCLUDED IN THE** account. ~~The~~
25 ~~reconciliation may be done~~ **THE LICENSEE MAY RECONCILE THE ACCOUNT**
26 electronically or by any other appropriate method and shall ~~be done~~
27 ~~not more than~~ **COMPLETE THE RECONCILIATION WITHIN** 45 business days

1 after receipt of ~~RECEIVING~~ the bank statement **FOR THE ACCOUNT**. An
 2 **THE LICENSEE SHALL KEEP AN** electronic or other appropriate notation
 3 of the reconciliation ~~shall be kept as a permanent record of the~~
 4 licensee. ~~and shall be considered as in compliance with this~~
 5 ~~section.~~ Each **THE LICENSEE SHALL INDIVIDUALLY SCHEDULE EACH**
 6 **DEBTOR'S** trust account ~~shall be individually scheduled~~ **BALANCE** in a
 7 **THE** licensee's reconciliation records.

8 (4) ~~(3) The A~~ trust account **ESTABLISHED UNDER THIS SECTION**
 9 shall at all times have an actual cash balance equal to or greater
 10 than the sum of the escrow balances of each debtor's account, and
 11 failure to maintain that amount is cause for a summary suspension
 12 of ~~the A~~ license **UNLESS THE FAILURE IS THE RESULT OF AN INADVERTENT**
 13 **CLERICAL OR HUMAN ERROR.**

14 (5) ~~(4) If a trust account fails to~~ **ESTABLISHED UNDER THIS**
 15 **SECTION DOES NOT** contain sufficient funds to cover the debtor
 16 escrow balances **ON MORE THAN 1 OCCASION**, the licensee shall
 17 immediately ~~upon~~ **ON** discovery notify the director by telephone,
 18 facsimile, electronic mail, or other method approved by the
 19 department. The licensee shall also provide written notice
 20 ~~including~~ **TO THE DIRECTOR THAT INCLUDES** a description of the
 21 remedial action taken **BY THE LICENSEE.**

22 (6) ~~(5) If the A~~ trust account described in subsection (1) is
 23 maintained at a financial institution described in subsection (1)
 24 **THAT IS** located outside of this state, the licensee shall furnish a
 25 surety bond or irrevocable letter of credit ~~to~~ **FOR THE BENEFIT OF**
 26 the people of the state of Michigan, in an amount **THAT IS** equal to
 27 or ~~exceeding~~ **EXCEEDS** 100% of the average amount of deposits held in

1 the trust account from month to month and **IS** in a form approved by
2 the department. This requirement is in addition to an applicant's
3 obligation under section 5(2)(c).

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

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

12 (b) Make all the records created and maintained under
13 subdivision (a) available for examination by examiners of the
14 department.

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

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

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

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

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

2 (iii) The total amount of ~~charges deducted from the payments~~

3 ~~received.~~ **FEES COLLECTED BY THE LICENSEE ON THE AMOUNTS DESCRIBED IN**

4 **SUBPARAGRAPH (ii) .**

5 (iv) The amount held in reserve.

6 (f) At least every 90 days after contracting with a debtor,

7 provide a written statement to the debtor that includes all of the

8 following:

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

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

11 (iii) The total amount ~~deducted from the payments received.~~ **OF**

12 **FEES COLLECTED BY THE LICENSEE ON THE AMOUNTS DESCRIBED IN**

13 **SUBPARAGRAPH (ii) .**

14 (iv) The amount held in reserve.

15 (g) ~~At~~ **SUBJECT TO SUBSECTION (2), AT** least annually, ~~verify or~~

16 ~~cause the verification of payments to selected creditor accounts~~

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

18 following:

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

20 ~~—— (ii) Review checks paid by the licensee.~~

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

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

24 ~~—— (v) Verify payments to selected creditor accounts.~~

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

26 (ii) **VERIFY THAT PAYMENTS TO SELECTED CREDITOR ACCOUNTS ARE**

27 **PROPERLY DISBURSED.**

1 (iii) VERIFY THAT CONSUMER COMPLAINTS ARE PROPERLY HANDLED.

2 (iv) REVIEW SELECTED CLIENT FILES TO CONFIRM THAT THEY CONTAIN
3 THE PROPER DOCUMENTATION.

4 (h) If a contract with a debtor is lawfully sold, transferred,
5 or assigned to a licensee ~~from~~ BY another licensee, furnish to the
6 debtor a written notice of the sale, transfer, or assignment. The
7 notice shall contain the name, ~~and address,~~ AND CONTACT TELEPHONE
8 NUMBER of the licensee. ~~and the name of the counselor authorized by~~
9 ~~the licensee to manage the contract.~~

10 (2) A LICENSEE THAT HAS PROPER CONTROLS IN PLACE TO ENSURE
11 THAT THE ACTIONS DESCRIBED IN SUBSECTION (1) (G) (i) TO (iv) ARE DONE
12 MEETS THE REQUIREMENTS OF SUBSECTION (1) (G).

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

1 paid.

2 Sec. 18. (1) ~~A~~ **IN ADDITION TO THE FEE DESCRIBED IN SECTION**
 3 **13(1), A** licensee may charge a reasonable fee **FOR PROVIDING DEBT**
 4 **MANAGEMENT SERVICES** under a debt management ~~services contract.~~
 5 **PLAN.** ~~The fees and charges of the licensee~~ **FEE UNDER THIS**
 6 **SUBSECTION** shall not exceed 15% of the amount of the debt to be
 7 liquidated during the express term of the ~~contract.~~ ~~The licensee~~
 8 ~~may require the debtor to make an initial payment of not more than~~
 9 ~~\$25.00, which is part of the fees and charges of the licensee. The~~
 10 ~~initial payment may be deducted from the amount of a subsequent fee~~
 11 ~~that is amortized, if any.~~ **PLAN.**

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

17 (3) ~~(2)~~ Except for a cancellation described in subsection ~~(3)~~,
 18 ~~for which a licensee may not collect the additional fee described~~
 19 ~~in this subsection,~~ (4), in the event of cancellation **OF** or default
 20 ~~en~~ **IN** the performance of the contract by the debtor before its
 21 successful completion, ~~the~~ **A** licensee may collect \$25.00 in
 22 addition to **ANY** fees and charges of the licensee previously
 23 received **BY THE LICENSEE.** This \$25.00 fee is not subject to the 15%
 24 limitation on fees and charges ~~of the licensee in~~ **UNDER** subsection
 25 (1).

26 (4) ~~(3)~~ A contract is in effect when it is signed by the
 27 licensee and the debtor and the debtor has made a payment **OF ANY**

1 **AMOUNT** to the licensee. The debtor has the right to cancel the
2 contract until 12 midnight of the third business day after the
3 first day the contract is in effect by delivering written notice of
4 cancellation to the licensee. **A CANCELLATION DESCRIBED IN THIS**
5 **SECTION IS NOT SUBJECT TO, AND A LICENSEE SHALL NOT COLLECT, THE**
6 **FEE DESCRIBED IN SUBSECTION (3).**

7 (5) ~~(4)~~—If a debtor fails to make a payment **OF ANY AMOUNT** to a
8 licensee within 60 days after the date a payment is due under a
9 contract, ~~the contract is considered canceled by the debtor. A~~
10 ~~debtor may file a letter of continuation of a contract even if the~~
11 ~~debtor did not make a payment within 60 days after a payment was~~
12 ~~due. All of the following apply to a letter of continuation of a~~
13 ~~contract.~~**LICENSEE MAY, IN ITS DISCRETION, CANCEL THE DEBT**
14 **MANAGEMENT CONTRACT IF IT DETERMINES THAT THE PLAN IS NO LONGER**
15 **SUITABLE FOR THE DEBTOR, THE DEBTOR FAILS TO AFFIRMATIVELY**
16 **COMMUNICATE TO THE LICENSEE THE DEBTOR'S DESIRE TO CONTINUE THE**
17 **PLAN, OR THE CREDITORS OF THE DEBTOR REFUSE TO CONTINUE ACCEPTING**
18 **PAYMENTS UNDER THE PLAN.**

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

21 ~~—— (b) A letter of continuation must contain a detailed~~
22 ~~explanation of the reason or reasons for the missed payment or~~
23 ~~payments.~~

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

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

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

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

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

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

14 (b) Execute a contract or agreement to be signed by the debtor
15 unless the contract or agreement is fully and completely filled in
16 and finished.

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

19 (d) Take a confession of judgment or power of attorney to
20 confess judgment against the debtor or appear as the debtor in a
21 judicial proceeding.

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

25 (f) ~~Take, concurrent~~ **CONCURRENTLY** with the signing of the
26 contract or as a part of the contract or as part of the application
27 for the contract, **TAKE** a release of an obligation ~~to be performed~~

1 ~~on the part of the licensee IS OR WAS TO PERFORM.~~

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

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

9 (ii) **A PAYMENT BY THE LICENSEE TO CREDIT COUNSELING**
10 **ASSOCIATIONS SUCH AS THE NATIONAL FOUNDATION FOR CREDIT COUNSELING**
11 **OR THE ASSOCIATION OF INDEPENDENT CONSUMER CREDIT COUNSELING**
12 **AGENCIES TO PARTICIPATE IN A LOCATOR SERVICE.**

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

21 (i) Disclose the **IDENTITY OF** debtors who have contracted with
22 the licensee, ~~other than~~ **EXCEPT** to the director or his or her
23 authorized representative, or disclose the **IDENTITY OF** creditors of
24 a debtor to anyone other than the debtor, or the director or his or
25 her authorized representative, or another creditor of the debtor
26 and then only to the extent necessary to secure the cooperation of
27 the creditor in a debt management plan. **HOWEVER, THIS SUBDIVISION**

1 DOES NOT PROHIBIT A LICENSEE FROM SHARING INFORMATION ABOUT A
2 DEBTOR'S DEBT MANAGEMENT PLAN OR THE CREDITORS OF THE DEBTOR WITH
3 ANY PERSON WITH WHICH THE DEBTOR HAS SPECIFICALLY AUTHORIZED THE
4 LICENSEE TO SHARE THAT INFORMATION.

5 (j) Use or permit the use of a false, misleading, or deceptive
6 statement or representation with regard to the services or charges
7 of the licensee in any advertisement, display, broadcast, or offer
8 of the licensee's services.

9 (K) IN ANY MANNER, ADVERTISE, PRINT, DISPLAY, PUBLISH,
10 DISTRIBUTE, OR BROADCAST ANY STATEMENT OR REPRESENTATION WITH
11 REGARD TO PROVIDING SERVICES UNDER THIS ACT THAT IS FALSE,
12 MISLEADING, OR DECEPTIVE OR PERMIT ANOTHER PERSON TO VIOLATE THIS
13 SUBDIVISION.

14 (l) ~~(k)~~ Use an advertisement that gives a telephone number or
15 post office box without identifying the licensee and the licensee's
16 office address.

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

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

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

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

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

27 (O) ~~(n)~~ **In-DO ANY OF THE FOLLOWING IN** connection with the

1 making of a debt management contract or with operation of the
2 debtor's account:

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

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

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

10 **(P)** ~~(e)~~ Conduct the business of debt management without a
11 surety bond, or **A** deposit or assignment satisfactory to the
12 department in lieu of a surety bond, as ~~described in~~**UNDER** section
13 5(2) ~~,~~ in place.

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

23 ~~(1) (2) Nothing in this act shall~~**THIS ACT DOES NOT** impose any
24 liability, civil or criminal, ~~upon~~**ON** a person or publisher **THAT IS**
25 regularly engaged in the business of publishing a bona fide
26 newspaper or operating a radio or television station **AND THAT, and**
27 acting solely in his ~~official capacity, who~~**THE COURSE OF THAT**

1 **BUSINESS**, publishes an advertisement in good faith and without
 2 knowledge that the advertisement or publication constitutes a
 3 violation of ~~this act.~~**SECTION 19(K), (L), OR (M).**

4 (2) ~~(3)~~A person shall not publish an advertisement concerning
 5 the offer of debt management services in this state after the
 6 department **BY ORDER** finds that the advertisement contains a
 7 statement that is false or misleading or omits to make any
 8 necessary statement in order to make the statements made, in light
 9 of the circumstances under which they were made, not misleading and
 10 ~~so~~ notifies the person **OF THAT FINDING** in writing. The **DEPARTMENT**
 11 **MAY GIVE THIS** notification ~~may be given~~ summarily, without notice
 12 of hearing. At any time after the issuance of a notification under
 13 this section, the person ~~desiring~~**THAT DESIRES** to use the
 14 advertisement may request in writing that the **DEPARTMENT RESCIND**
 15 **THE** order. ~~be rescinded. Upon the receipt of~~**IF IT RECEIVES** a
 16 written request ~~, the matter will be set for~~**UNDER THIS SUBSECTION,**
 17 **THE DEPARTMENT SHALL SCHEDULE** a hearing **ON THE MATTER** to commence
 18 within 45 days unless the person ~~making~~**THAT MADE** the request
 19 consents to a later date. After the hearing the department shall
 20 determine whether to affirm and continue or to rescind the order.

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