

# SENATE BILL No. 664

November 6, 2013, Introduced by Senators KOWALL and ANANICH and referred to the Committee on Banking and Financial Institutions.

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, and 20 (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, and 451.430), 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:**

TITLE

An act to regulate the business of debt management; to require licenses and ~~to fix fees therefor;~~ **PAYMENT OF 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

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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, **OTHER THAN THE LICENSEE**, for  
 10 whose benefit **A LICENSEE COLLECTS AND DISPENSES** money. ~~is being~~  
 11 ~~collected and disbursed by a licensee. A licensee is not a creditor~~  
 12 ~~for purposes of this act.~~

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

9 (J) ~~(i)~~ "License" means a written certificate or exemption  
10 order issued by the director **UNDER THIS ACT.**

11 (K) ~~(j)~~ "Licensee" means a person **THAT IS** licensed under this  
12 act to perform debt management services and **IS** located inside or  
13 outside the boundaries of this state.

14 (L) ~~(k)~~ "Office" means each location, **DESCRIBED** by street name,  
15 building number, city, and state, where a person engages in the  
16 business of debt management.

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

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

24 (n) "Sweep arrangement" means an arrangement that provides for  
25 a temporary or permanent transfer of funds from 1 trust account to  
26 another trust account when a predetermined time, account balance,  
27 or other condition occurs or is fulfilled.

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

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

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

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

24           (i) If the applicant is a corporation, its officers and  
25 directors.

26           (ii) If the applicant is an association, its officers and  
27 directors.

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

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

4 (v) If the applicant is any other legal entity, its manager or  
5 other person designated to control the operation of that legal  
6 entity.

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

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

9 (i) If the applicant is a corporation, a copy of the articles  
10 of incorporation.

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

13 (iii) If the applicant is a partnership, a copy of the  
14 partnership agreement.

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

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

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

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

23 (c) Furnish a surety bond, ~~to~~ **APPROVED BY THE DIRECTOR, FOR**  
24 **THE BENEFIT OF** the people of the state of Michigan. The amount of  
25 the surety bond must equal or exceed the total amount of Michigan  
26 clients' funds in the applicant's or licensee's trust account at  
27 the time of application for license or renewal, as determined by

1 the department, ~~but in no event shall a~~ **EXCEPT THAT THE AMOUNT OF**  
2 **THE** surety bond **SHALL NOT** be less than \$25,000.00 or ~~be~~ greater  
3 than \$100,000.00. The surety bond shall be conditioned ~~upon~~ **ON** the  
4 faithful accounting of all money collected ~~upon~~ **ON** accounts  
5 entrusted to a licensee engaged in the business of debt management  
6 or the licensee's employees and agents. ~~The surety bond shall be~~  
7 ~~approved by the department.~~ In lieu of a surety bond, the  
8 department may by rule provide for an appropriate deposit of cash  
9 or securities, a letter of credit, or the assignment of coverage of  
10 other bonds if the department is satisfied that comparable or more  
11 extensive coverage results.

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

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

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

22 (5) A licensee shall create, maintain, and preserve accurate  
23 and complete books and records relating to the licensee's business.  
24 The books and records shall be maintained according to generally  
25 accepted accounting principles. A licensee or an applicant shall  
26 notify the department in writing of the address where the books and  
27 records are kept. If a licensee changes the location of the books

1 and records, the licensee shall notify the department in writing  
2 within 10 business days after the change. The director may  
3 prescribe by rule or order the form and contents of books and  
4 records relating to a licensee's business.

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

9 (7) If a licensee has a board of directors or the equivalent,  
10 the director shall not require that the licensee provide  
11 information concerning a member of the board of directors or  
12 equivalent, ~~nor require that the member satisfy the examination~~  
13 ~~provisions of this act,~~ if that member does not receive a salary,  
14 stock dividend, or other financial benefit from that corporation  
15 other than reimbursement of the actual expenses incurred in  
16 carrying out the duties of a director of that corporation.

17 Sec. 6. (1) ~~Upon receiving the~~ **IF IT RECEIVES A LICENSE**  
18 application and approving **UNDER THIS ACT AND APPROVES** the fees and  
19 surety bond, the department shall investigate the applicant's  
20 responsibility, experience, character, and general fitness. If the  
21 result of the investigation warrants a belief that the ~~business~~  
22 ~~will be operated~~ **APPLICANT WILL OPERATE THE BUSINESS** fairly, and  
23 honestly, ~~within the provisions of~~ **AND AS REQUIRED UNDER** this act,  
24 the department shall issue a license. The investigation of the  
25 applicant shall at least include investigation of the following as  
26 applicable:

27 (a) If the applicant is a corporation, its officers and

1 directors.

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

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

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

6 (e) If the applicant is any other legal entity, its manager or  
7 other person designated to control the operation of that legal  
8 entity.

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

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

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

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

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

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



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

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

7 (d) The applicant is an employee or owner of a collection  
8 agency as defined in section 901 of the occupational code, 1980 PA  
9 299, MCL 339.901, or process serving business or in any manner is  
10 affiliated with a collection agency or process serving business.  
11 The director may, in his or her discretion, waive this restriction  
12 on a showing of sufficient safeguards in the operation of the  
13 collection agency.

14 (3) ~~An~~ **IF AN APPLICANT IS AN INDIVIDUAL, THE** applicant shall  
15 **MUST** pass an examination administered by the director or his or her  
16 designee before the director grants a license to the applicant  
17 under this act. ~~A~~ **IF AN APPLICANT IS A PERSON THAT IS NOT AN**  
18 **INDIVIDUAL, EACH** counselor **EMPLOYED BY THAT PERSON** shall pass an  
19 examination within the first 180 days of employment administered by  
20 the director or his or her designee. **ALL OF THE FOLLOWING APPLY TO**  
21 **THE EXAMINATION:**

22 (A) The examination may be oral or written, or partly oral and  
23 partly written. ~~, and~~

24 (B) **THE EXAMINATION** shall be practical in nature and  
25 sufficiently thorough to ascertain the applicant's ~~fitness~~.  
26 **UNDERSTANDING OF THE JOB DUTIES OF A COUNSELOR UNDER THIS ACT.**

27 (C) Questions on ~~bookkeeping, credit adjusting, business~~

1 ~~ethics, agency, contracts, debtor and creditor relationships, trust~~  
2 ~~funds, and the~~ **RELEVANT** provisions of this act and **RELEVANT** rules  
3 promulgated under this act may be included in the examination.

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

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

7 (a) The director shall prescribe the form and size of a  
8 license.

9 (b) A license shall show the name of the licensee and the  
10 address at which the business of debt management is to be  
11 conducted.

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

15 (d) While **THE LICENSE IS** in force, the ~~license~~**LICENSEE** shall  
16 at all times ~~be conspicuously displayed~~**DISPLAY THE LICENSE** in the  
17 outer office of the licensee or branch office of the licensee, **IF**  
18 **THAT OFFICE OFFERS IN-PERSON SERVICES TO CONSUMERS.**

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

20 (f) A **LICENSEE SHALL SURRENDER A** license ~~shall be surrendered~~  
21 to the department within ~~5~~**15 BUSINESS** days after the date that the  
22 licensee either ceases to engage in the business of debt management  
23 or ~~has its~~**THE DATE THE** license **IS** revoked.

24 Sec. 12. (1) ~~Before a contract is formed between a licensee~~  
25 ~~and a debtor, a thorough and written budget analysis shall be~~  
26 ~~compiled and a copy delivered to the debtor. A licensee shall not~~  
27 ~~accept an account unless a written and thorough budget analysis~~

1 ~~indicates that the debtor can reasonably meet the requirements~~  
2 ~~required by the budget analysis. The~~ A LICENSEE MAY ENTER INTO A  
3 CONTRACT OR AGREEMENT TO PROVIDE DEBT MANAGEMENT SERVICES TO A  
4 DEBTOR ONLY IF THE LICENSEE HAS CONDUCTED A WRITTEN AND THOROUGH  
5 BUDGET ANALYSIS OF THE DEBTOR AND MADE A DETERMINATION, BASED ON  
6 THE ANALYSIS OF THE INFORMATION PROVIDED BY THE DEBTOR OR OTHERWISE  
7 AVAILABLE TO THE LICENSEE, THAT A DEBT MANAGEMENT PLAN IS A  
8 SUITABLE SOLUTION FOR THE DEBTOR AND THAT THE DEBTOR WILL BE ABLE  
9 TO MEET THE PAYMENT OBLIGATIONS UNDER THE PLAN. IF THE LICENSEE  
10 DETERMINES THAT A PLAN IS SUITABLE FOR A DEBTOR WHOSE CURRENT  
11 MONTHLY EXPENSE AND DEBT PAYMENTS EXCEED THE DEBTOR'S NET INCOME,  
12 THE LICENSEE MUST ESTABLISH A WRITTEN PLAN OUTLINING HOW THE DEBTOR  
13 WILL MEET THE PAYMENT OBLIGATIONS UNDER THE PLAN.

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

16 (a) Name and address.

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

18 (c) ~~Amount and source of all employment compensation, payments~~  
19 ~~from government programs, child support and alimony payments, and~~  
20 ~~other income.~~ THE DEBTOR'S MONTHLY INCOME. FOR PURPOSES OF THIS  
21 SUBDIVISION, A DEBTOR IS ONLY REQUIRED TO PROVIDE INFORMATION TO A  
22 LICENSEE ABOUT THE AMOUNT OF HIS OR HER INCOME AND IS NOT REQUIRED  
23 TO PROVIDE ANY INFORMATION ABOUT THE SOURCE OF THAT INCOME.

24 ~~Number of exemptions claimed on the debtor's most recent~~  
25 ~~federal income tax return.~~

26 ~~Gross income per pay period, type and amount of all~~  
27 ~~payroll deductions, and net income per pay period.~~

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

6           (E) ~~(g)~~ Type and amount of all ~~other fixed periodic~~  
 7 ~~payments.~~ **OF THE DEBTOR'S OBLIGATIONS INCLUDED IN THE DEBT**  
 8 **MANAGEMENT PLAN AND OF THOSE OBLIGATIONS THAT ARE NOT INCLUDED IN**  
 9 **THE DEBT MANAGEMENT PLAN.**

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

12           (F) ~~(i)~~ **List A LIST of THE** creditors included in ~~TO WHICH~~  
 13 **PAYMENTS WILL BE MADE UNDER** the plan.

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

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

18           Sec. 13. (1) ~~Upon establishing~~ **WHEN A LICENSEE ESTABLISHES** a  
 19 debt management plan for a debtor, ~~a~~ **THE** licensee may charge and  
 20 receive an initial fee of ~~\$25.00. However, unless~~ **\$50.00. THE FEE**  
 21 **IS NONREFUNDABLE.**

22           (2) **A LICENSEE SHALL ATTEMPT TO OBTAIN CONSENT TO PARTICIPATE**  
 23 **IN A DEBT MANAGEMENT PLAN FROM AT LEAST 51%, ~~or more~~** in number and  
 24 **OR** dollar amount, of all the debtor's creditors ~~consent to the debt~~  
 25 ~~management program within 45-90 days of~~ **AFTER** establishing the debt  
 26 management plan. ~~, the fee shall be returned to the debtor and the~~  
 27 ~~debtor's account closed.~~ **IF THE REQUIRED CONSENT IS NOT OBTAINED,**

1 THE LICENSEE SHALL PROVIDE NOTICE TO THE DEBTOR OF THE LACK OF  
 2 REQUIRED CONSENT AND THE DEBTOR MAY, AT ITS OPTION, CLOSE THE  
 3 ACCOUNT. IF THE DEBTOR DECIDES TO CLOSE THE ACCOUNT, ANY UNEXPENDED  
 4 FUNDS SHALL BE RETURNED TO THE DEBTOR OR DISBURSED AS DIRECTED BY  
 5 THE DEBTOR.

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

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

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

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

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

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

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

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

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

26 (4) If a payment under the debt management plan is sent to a  
 27 **THE** creditor, **THE LICENSEE MAY PRESUME** acceptance of the payment ~~or~~

1 ~~AND plan may be presumed~~ **BY THE CREDITOR** 7 days after sending the  
2 payment. **AS AN ALTERNATIVE TO SENDING NOTICE UNDER SUBSECTION (3),**  
3 **A LICENSEE MAY SEEK THE CONSENT OF A CREDITOR FOR PURPOSES OF**  
4 **SUBSECTION (2) BY SENDING A PAYMENT TO THE CREDITOR UNDER THE TERMS**  
5 **OF THE DEBT MANAGEMENT PLAN.**

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

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

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

13 (c) The ~~beginning and ending dates~~ **TERMINATION DATE** of the  
14 contract.

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

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

21 ~~—(f) Other provisions or disclosures that the director~~  
22 ~~determines are necessary for the protection of the debtor and the~~  
23 ~~proper conduct of business by a licensee.~~

24 (2) Unless otherwise approved by the department and except for  
25 an amount due for 1 or more monthly fees, ~~or~~ a closeout fee, **CREDIT**  
26 **REPORTS, OR EDUCATIONAL PRODUCTS OR MATERIALS,** a licensee shall  
27 distribute to the creditors of the debtor, at least monthly, all

1 money received from a debtor or on behalf of a debtor **UNLESS**  
2 **OTHERWISE DIRECTED BY THE DEBTOR.**

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

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

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

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

1 utilized if the trust account is insured for 100% or more of the  
2 balance in the trust account.

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

19       (4) ~~(3) The~~ **A** trust account **ESTABLISHED UNDER THIS SECTION**  
20 shall at all times have an actual cash balance equal to or greater  
21 than the sum of the escrow balances of each debtor's account, and **A**  
22 **LICENSEE'S REPEATED AND ADVERTENT** failure to maintain that amount  
23 is cause for a summary suspension of ~~the~~ **A** license.

24       (5) ~~(4) If a trust account fails to~~ **ESTABLISHED UNDER THIS**  
25 **SECTION DOES NOT** contain sufficient funds to cover the debtor  
26 escrow balances **ON MORE THAN 1 OCCASION,** the licensee shall  
27 immediately ~~upon~~ **ON** discovery notify the director by telephone,



1 facsimile, electronic mail, or other method approved by the  
2 department. The licensee shall also provide written notice  
3 ~~including TO THE DIRECTOR THAT INCLUDES~~ a description of the  
4 remedial action taken **BY THE LICENSEE**.

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

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

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

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

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

27 (d) Deliver a receipt to a debtor ~~upon receiving~~ **WHEN IT**

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

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

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

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

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

15 (iv) The amount held in reserve.

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

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

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

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

22 **FEES COLLECTED BY THE LICENSEE ON THE AMOUNTS DESCRIBED IN**  
 23 **SUBPARAGRAPH (ii).**

24 (iv) The amount held in reserve.

25 (g) ~~At~~ **SUBJECT TO SUBSECTION (2), AT** least annually, ~~verify or~~  
 26 ~~cause the verification of payments to selected creditor accounts~~  
 27 ~~and~~ do, or designate **OR DIRECT** 1 or more persons to do, all of the

1 following:

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

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

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

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

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

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

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

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

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

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

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

23 Sec. 17. The department may examine ~~, without notice,~~ the  
24 condition and affairs of a licensee. In connection with an  
25 examination, the department may examine ~~on~~ **UNDER** oath a licensee  
26 and any director, officer, employee, customer, creditor, manager,  
27 member, partner, or stockholder of ~~the~~ **A** licensee concerning the

1 affairs and business of the licensee. The department shall  
 2 ascertain whether the licensee transacts its business in the manner  
 3 ~~prescribed by~~ **REQUIRED UNDER** this act and the rules promulgated  
 4 under this act. The licensee shall pay **AN EXAMINATION FEE, IN AN**  
 5 **AMOUNT EQUAL TO** the actual cost of the examination as determined by  
 6 the department, ~~which fee shall be deposited~~ **AND THE DEPARTMENT**  
 7 **SHALL DEPOSIT THAT FEE** in the state treasury to the credit of the  
 8 department. Failure to pay the examination fee within 30 days after  
 9 ~~receipt of~~ **RECEIVING A** demand **FOR PAYMENT** from the department shall  
 10 automatically suspend the license of the licensee until the fee is  
 11 paid.

12       Sec. 18. (1) A licensee may charge a ~~reasonable fee under a~~  
 13 ~~debt management services contract. The fees and charges of the~~  
 14 ~~licensee shall not exceed 15% of the amount of the debt to be~~  
 15 ~~liquidated during the express term of the contract. The licensee~~  
 16 ~~may require the debtor to make an initial payment of not more than~~  
 17 ~~\$25.00, which is part of the fees and charges of the licensee. The~~  
 18 ~~initial payment may be deducted from the amount of a subsequent fee~~  
 19 ~~that is amortized, if any.~~ **DEBTOR 1 OR MORE OF THE FOLLOWING FEES**  
 20 **FOR PROVIDING DEBT MANAGEMENT SERVICES, AS DETERMINED BY THE**  
 21 **LICENSEE:**

22       (A) A MONTHLY FEE IN AN AMOUNT EQUAL TO 15% OF ANY AMOUNT PAID  
 23 BY OR ON BEHALF OF THE DEBTOR IN THAT MONTH FOR DISTRIBUTION TO A  
 24 CREDITOR OR CREDITORS OF THE DEBTOR, OR IN THE AMOUNT OF \$30.00,  
 25 WHICHEVER IS GREATER.

26       (B) AN INITIAL FEE OF NOT MORE THAN \$50.00 FOR CREATING THE  
 27 DEBTOR'S ACCOUNT.

1           (C) A FEE FOR THE PURCHASE OF CREDIT REPORTS AND EDUCATIONAL  
2 MATERIALS AND PRODUCTS IN AN AMOUNT THAT DOES NOT EXCEED \$100.00,  
3 OR WITH THE APPROVAL OF THE DIRECTOR, A LARGER FEE IF THE DIRECTOR  
4 DETERMINES THAT BASED ON THE NATURE AND EXTENT OF THE EDUCATIONAL  
5 MATERIAL AND PRODUCTS PROVIDED A LARGER FEE IS REASONABLE.

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

14           (3) A contract is in effect when it is signed by the licensee  
15 and the debtor and the debtor has made a payment **OF ANY AMOUNT** to  
16 the licensee. The debtor has the right to cancel the contract until  
17 12 midnight of the third business day after the first day the  
18 contract is in effect by delivering written notice of cancellation  
19 to the licensee. **A CANCELLATION DESCRIBED IN THIS SECTION IS NOT**  
20 **SUBJECT TO, AND A LICENSEE SHALL NOT COLLECT, THE FEE DESCRIBED IN**  
21 **SUBSECTION (2)** .

22           (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 (5) A licensee shall not contract for, receive, or charge a  
21 debtor an amount greater than authorized by this act. A person ~~who~~  
22 **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 CERTAIN NATIONAL LOCATOR LINES.**

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, GRANT, OR OTHER SIMILAR PROGRAM IS NOT SUBJECT TO THIS  
8 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 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~~ 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.