

Act No. 362
Public Acts of 2014
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**STATE OF MICHIGAN
97TH LEGISLATURE
REGULAR SESSION OF 2014**

Introduced by Senators Kowall and Ananich

ENROLLED SENATE BILL No. 664

AN ACT to amend 1975 PA 148, entitled "An act to regulate the business of debt management; to require licenses and to fix fees therefor; to prescribe the powers and duties of the department of commerce and its director; to prescribe conditions for debt management contracts; to provide for the disposition of revenues; to provide penalties; and to repeal certain acts and parts of acts," 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:

TITLE

An act to regulate the business of debt management; to require licenses and establish license fees; to prescribe the powers and duties of certain state agencies and officials; to establish requirements for debt management contracts; to provide for the disposition of revenues; to provide penalties; and to repeal acts and parts of acts.

Sec. 2. As used in this act:

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

(b) "Certified counselor" means an individual who is certified by a training program or certifying organization, approved by the director, that authenticates the competence of individuals who provide education and assistance to other individuals in connection with debt counseling and financial counseling functions.

(c) "Counselor" means a certified counselor who is an employee or agent of a licensee who engages in financial counseling and debt counseling functions.

(d) "Creditor" means a person for whose benefit a licensee collects and disperses money. The term does not include a licensee.

(e) "Debt management" means the planning and management of the financial affairs of a debtor and the receipt of money from the debtor for distribution to 1 or more of the debtor's creditors in payment or partial payment of the debtor's obligations.

(f) "Debtor" means a person from which money is collected for the benefit of a creditor of the debtor.

(g) “Debtor’s obligation” means any current or past-due monetary obligation of the debtor, including, but not limited to, amounts owed for payment of credit cards, utilities, mortgages, student loans, home equity loans, personal loans, judgments, garnishments, property taxes, rent, or vehicle loans or leases or any other obligation whether secured or unsecured or whether or not the obligation has a principal and interest component.

(h) “Department” means the department of insurance and financial services.

(i) “Director” means the director of the department or his or her authorized representative.

(j) “Fair share program” means a program in which voluntary contributions are made by some creditors to a licensee based on a percentage of the amount disbursed by the licensee on behalf of a debtor.

(k) “Fees and charges of the licensee” means the total amount of money charged a debtor by a licensee, including the \$50.00 initial payment and any charges for advice, credit reports, educational materials and resources, or referrals.

(l) “License” means a written certificate or exemption order issued by the director under this act.

(m) “Licensee” means a person that is licensed, or is required to be licensed, under this act to perform debt management services and is located inside or outside the boundaries of this state.

(n) “Locator service” means a telephone service that automatically connects callers to a network of member service providers, based on geographic location or another parameter.

(o) “Office” means each location, described by street name, building number, city, and state, where a person engages in the business of debt management.

(p) “Person” means an individual, corporation, partnership, association, joint stock company, trust if the interests of the beneficiaries are evidenced by a security, limited liability company, or other legal entity.

(q) “Sweep arrangement” means an arrangement that provides for a temporary or permanent transfer of funds from 1 trust account to another trust account when a predetermined time, account balance, or other condition occurs or is fulfilled.

Sec. 4. (1) A person located within or outside of the boundaries of this state shall not engage in the business of debt management without first obtaining a license under this act. A contract to provide debt management made by a person without a license is null and void.

(2) The department may grant a person that provides debt management services and receives compensation primarily from governmental organizations, governmentally sponsored organizations, charitable trusts, or foundations that have tax-exempt status under section 501(c) of the internal revenue code of 1986, 26 USC 501, an exemption from any provision of this act if the person demonstrates that the person has safeguards in the handling of debtor funds and the department finds that the exemption is in the public interest.

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) At the time an applicant files an application under this section, the applicant shall do all of the following:

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

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

(c) Furnish a surety bond, approved by the director, for the benefit of the people of the state of Michigan. The amount of the surety bond must equal or exceed the total amount of Michigan clients’ funds in the applicant’s or licensee’s trust account at the time of application for license or renewal, as determined by the department, except that the amount of the surety bond shall not be less than \$25,000.00 or greater than \$100,000.00. The surety bond shall be

conditioned on the faithful accounting of all money collected on accounts entrusted to a licensee engaged in the business of debt management or the licensee's employees and agents. In lieu of a surety bond, the department may by rule provide for an appropriate deposit of cash or securities, a letter of credit, or the assignment of coverage of other bonds if the department is satisfied that comparable or more extensive coverage results.

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

(3) Service of process on the director is considered service on an applicant or licensee, including an applicant that complies with or fails to comply with subsection (2)(d).

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

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

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

(7) If a licensee has a board of directors or the equivalent, the director shall not require that the licensee provide information concerning a member of the board of directors or equivalent, or require that the member satisfy the examination provisions of this act, if that member does not receive a salary, stock dividend, or other financial benefit from that corporation other than reimbursement of the actual expenses incurred in carrying out the duties of a director of that corporation.

Sec. 6. (1) If it receives a license application under this act and approves the fees and surety bond, the department shall investigate the applicant's responsibility, experience, character, and general fitness. If the result of the investigation warrants a belief that the applicant will operate the business fairly, honestly, and as required under this act, the department shall issue a license. The investigation of the applicant shall at least include investigation of the following as applicable:

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

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

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

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

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

(2) The department shall not issue a license if the investigation reveals 1 or more of the following:

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

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

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

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

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

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

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

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

(3) If an applicant is an individual, the applicant must provide evidence to the director that the applicant is certified as a certified counselor before the director grants a license to the applicant under this act. If an applicant is a person

that is not an individual, each counselor who is employed by that person shall become a certified counselor within the first 180 days of his or her employment.

Sec. 8. (1) Before December 1 of each year, a licensee shall file an application with the department for renewal of its license. The application shall be on the form prescribed by the department. The licensee shall include with the application a renewal fee of \$50.00 for each office and a surety bond in the same manner as an original application. The application shall cover each branch office that is under the ownership and control of the applying entity.

(2) A licensee shall file statements with an application for renewal of a license under this section. The director may require that the financial statements be audited or reviewed by an independent certified public accountant.

(3) If a debt management license renewal fee described in subsection (1) is not received by the department on or before December 31, the licensee is subject to a penalty of \$25.00 for each day the fee is delinquent, or \$1,000.00, whichever is less.

(4) If a licensee does not pay a fee or penalty that the licensee is required to pay under this act, or does not pay that fee or penalty within any time period established under this act for payment of that fee or penalty, the director may maintain an action against the delinquent licensee for the recovery of the fees or penalties together with interest and costs.

Sec. 8a. (1) If in the opinion of the director an individual has engaged in fraud, the director may serve on that individual a written notice of intention to prohibit that individual from being licensed under this act, licensed or registered under any of the financial licensing acts, or employed by, an agent of, or a control person of a licensee.

(2) A notice issued under subsection (1) shall contain a statement of the facts supporting the prohibition and shall set a hearing on a date within 60 days after the date of the notice. If the individual does not appear at the hearing, he or she is considered to have consented to the issuance of an order in accordance with the notice.

(3) If the director finds after a hearing held under subsection (2) that any of the grounds specified in the notice have been established, the director may issue an order of suspension or prohibition from being licensed under this act or employed by, an agent of, or a control person of a licensee.

(4) An order issued under subsection (2) or (3) is effective when served on an individual. The director shall also serve a copy of the order on the licensee of which the individual is an employee or agent. An order issued under subsection (2) or (3) remains in effect until it is stayed, modified, terminated, or set aside by the director or a reviewing court.

(5) After 5 years from the date of an order issued under subsection (2) or (3), the individual subject to the order may apply to the director to terminate the order.

(6) If the director considers that an individual served a notice under subsection (1) poses an imminent threat of financial loss to customers, the director may serve on that individual an order of suspension from being employed by, an agent of, or a control person of a licensee. A suspension is effective on the date the order is issued and, unless stayed by a court, remains in effect until the director completes the review required under this section and the director has dismissed the charges specified in the order.

(7) Unless otherwise agreed to by the director and the individual served with an order issued under subsection (6), the director shall hold a hearing required under subsection (2) to review a suspension not earlier than 5 days or later than 20 days after the date of the notice.

(8) If an individual is convicted of a felony involving fraud, dishonesty, or breach of trust, the director may issue an order suspending or prohibiting him or her from being licensed under this act or employed by, an agent of, or a control person of a licensee. After 5 years from the date of the order, the individual subject to the order may apply to the director to terminate the order.

(9) The director shall mail a copy of any notice or order issued under this section to the employer or principal of the individual who is subject to the notice or order.

(10) Within 30 days after the director has notified the parties that a matter described in this section has been submitted to him or her, the director shall render a decision that includes findings of fact supporting the decision and serve on each party to the proceeding a copy of the decision and an order consistent with the decision.

(11) Except for a consent order, a party to the proceeding or a person affected by an order issued under this section may obtain a judicial review of the order. A consent order may be reviewed as provided under the administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328. Except for an order under judicial review, the director may terminate or set aside any order. The director may terminate or set aside an order under judicial review with the permission of the court.

(12) Unless ordered by the court, the commencement of proceedings for judicial review under subsection (11) does not stay the director's order.

(13) The director may apply to the circuit court of Ingham county for the enforcement of any outstanding order issued under this section.

(14) Any individual who violates a final order issued under this section is guilty of a misdemeanor punishable by a fine of not more than \$5,000.00 or imprisonment for not more than 1 year, or both.

(15) As used in this section:

(a) "Financial licensing act" means the consumer financial services act, 1988 PA 161, MCL 487.2051 to 487.2072; any of the acts listed in section 2 of the consumer financial services act, 1988 PA 161, MCL 487.2052; the deferred presentment service transactions act, 2005 PA 244, MCL 487.2121 to 487.2173; and the mortgage loan originator licensing act, 2009 PA 75, MCL 493.131 to 493.171.

(b) "Fraud" includes actionable fraud, actual or constructive fraud, criminal fraud, or extrinsic or intrinsic fraud, or fraud in the execution, in the inducement, in fact, or in law, or any other form of fraud.

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

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

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

(c) A license shall show the date of expiration of the license as December 31, and show any other information prescribed by the director.

(d) While the license is in force, the licensee shall at all times conspicuously display the license in the outer office of the licensee or branch office of the licensee, if that office offers in-person services to consumers, and state on an internet website that is available to the public that the licensee is licensed in this state.

(e) A license is not transferable or assignable.

(f) A licensee shall surrender a license to the department within 5 business days after the date that the licensee either ceases to engage in the business of debt management or the date the license is revoked.

Sec. 12. (1) A licensee may enter into a contract or agreement to provide debt management services to a debtor only if the licensee has conducted a written and thorough budget analysis of the debtor and made a determination, based on the analysis of the information provided by the debtor or otherwise available to the licensee, that a debt management plan is a suitable solution for the debtor and that the debtor will be able to meet the payment obligations under the plan. If the licensee determines that a plan is suitable for a debtor whose current monthly expense and debt payments exceed the debtor's net income, the licensee must establish a written plan outlining how the debtor will meet the payment obligations under the plan before entering into a contract or agreement to provide debt management services to the debtor.

(2) A budget analysis described in subsection (1) shall contain all of the following information about the debtor:

(a) Name and address.

(b) Number of dependents.

(c) Amount of all employment compensation, payments from government programs, child support and alimony payments, and other income and the debtor's net monthly income. Except as provided in this subdivision, a debtor is only required to provide information to a licensee about the amount of his or her income and is not required to provide any information about the source of that income.

(d) Monthly home mortgage or rental payment, if any. If the home mortgage payment does not include an escrow for real estate taxes, the budget analysis shall contain an estimate of the annual amount of the real estate taxes on the property, if the amount is available from the debtor or public source.

(e) Type and amount of all of the debtor's obligations included in the debt management plan, including, but not limited to, a description of and amount owed for any outstanding garnishments and judgments, and the type and amount of the debtor's obligations that are known to the debtor and are not included in the debt management plan.

(f) Amount of household expenses, including, but not limited to, expenses for food, utilities, vehicles, insurance, and other living expenses.

(g) A list of the creditors to which payments will be made under the plan.

Sec. 13. (1) When a licensee establishes a debt management plan for a debtor, the licensee may charge and receive an initial fee of \$50.00.

(2) A licensee shall attempt to obtain consent to participate in a debt management plan from at least 51%, in number or dollar amount, of the debtor's creditors within 90 days after establishing the debt management plan. If the required consent is not actually received by the licensee, the licensee shall provide notice to the debtor of the lack of required consent and the debtor may, at its option, close the account. If the debtor decides to close the account, any unexpended funds shall be returned to the debtor or disbursed as directed by the debtor.

(3) For purposes of subsection (2), a licensee may seek the consent of a creditor to participate in a debt management plan by sending a notice of a debt management plan to the creditor by an appropriate means including by telephone, facsimile, electronic means, or first-class mail. If the creditor does not respond within 14 days after the notice is sent, the licensee may presume that the creditor has given consent. However, this subsection does not require that a licensee send notice of a debt management plan to all of a debtor's creditors.

(4) If a payment under the debt management plan is sent to the creditor, the licensee may presume acceptance of the payment and plan by the creditor 7 days after sending the payment. As an alternative to sending notice under subsection (3), a licensee may seek the consent of a creditor for purposes of subsection (2) by sending a payment to the creditor under the terms of the debt management plan.

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

(a) Each creditor to which payments will be made and the amount owed each creditor. A licensee may rely on records of the debtor and other information available to it to determine the amount owed to a creditor.

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

(c) The beginning and termination dates of the contract.

(d) The principal amount and approximate interest charges of the debtor's obligations to be paid under the debt management plan.

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

(f) Any other provisions or disclosures that the director determines are necessary for the protection of the debtor and the proper conduct of business by a licensee.

(2) Unless otherwise approved by the department and except for an amount due for 1 or more monthly fees, a closeout fee, credit reports, or educational products or materials, a licensee shall distribute to the creditors of the debtor, at least monthly, all money received from a debtor or on behalf of a debtor unless otherwise directed by the debtor.

(3) By submitting a written request to the licensee, a debtor may add or remove 1 or more debt obligations from a contract at any time. If the licensee determines after preparing an updated budget analysis that the debtor can reasonably fulfill the requirements of the debt management plan, the licensee may amend the contract as requested by the debtor.

(4) If a debtor's contract with a licensee expires and 1 or more debt obligations included in that contract are not yet liquidated, the licensee may extend or enter into an additional contract with the debtor if the licensee determines that the debt management plan is suitable for the debtor.

Sec. 15. (1) Subject to subsection (6), payments received by a licensee from or on behalf of a debtor for the benefit of a creditor shall be held in a trust account at a financial institution whose deposits are insured by an agency of the United States government. Each licensee shall ensure that it maintains records of all debtor funds it holds in trust for residents of this state and all funds disbursed on behalf of those debtors and shall provide the department with a full accounting of those funds and the disbursement of those funds on request of the department.

(2) Any disbursements by a licensee to the debtor or to the creditors of the debtor shall be made from a trust account established under this section. A licensee shall deposit a payment from a debtor or on behalf of a debtor in the account not later than 2 business days after receiving the payment. A licensee may utilize a sweep arrangement if the trust account is insured for 100% or more of the balance in the trust account.

(3) A licensee shall reconcile a trust account established under this section at least every month. The reconciliation shall ascertain the actual cash balance in the account and compare it with the sum of the escrow balances attributable to the debtor or debtors whose funds are included in the account. The licensee may reconcile the account electronically or by any other appropriate method and shall complete the reconciliation within 45 business days after receiving the bank statement for the account. The licensee shall keep an electronic or other appropriate notation of the reconciliation as a permanent record of the licensee. The licensee shall individually schedule each debtor's trust account balance in the licensee's reconciliation records. On request, the licensee shall make the reconciliation of the total account, including the balance for each debtor whose funds are included in the account, available to the department.

(4) A trust account established under this section shall at all times have an actual cash balance equal to or greater than the sum of the escrow balances of each debtor's account, and failure to maintain that amount is cause for a summary suspension of a license unless the failure is the result of an inadvertent clerical or human error.

(5) If a trust account established under this section does not contain sufficient funds to cover the debtor escrow balances, the licensee shall immediately on discovery notify the director by telephone, facsimile, electronic mail, or other method approved by the department. The licensee shall also provide written notice to the director that includes a description of the remedial action taken by the licensee.

(6) If a trust account described in subsection (1) is maintained at a financial institution described in subsection (1) that is located outside of this state, the licensee shall furnish a surety bond or irrevocable letter of credit for the benefit of the people of the state of Michigan, in an amount that is equal to or exceeds 100% of the average amount of deposits held in the trust account from month to month and is in a form approved by the department. This requirement is in addition to an applicant's obligation under section 5(2)(c).

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

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

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

(c) When it enters into a contract with a debtor, give a copy of the contract to the debtor.

(d) Deliver a receipt to a debtor when it receives cash from a debtor, and at least monthly beginning with the first month after contracting with a debtor deliver a statement that includes the dates and amounts received and disbursed on behalf of the debtor and the fees collected by the licensee on those amounts.

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

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

(ii) The total amount paid to each creditor.

(iii) The total amount of fees collected by the licensee on the amounts described in subparagraph (ii).

(iv) The amount held in reserve.

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

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

(ii) The total amount paid to each creditor.

(iii) The total amount of fees collected by the licensee on the amounts described in subparagraph (ii).

(iv) The amount held in reserve.

(g) Subject to subsection (2), at least annually, do, or designate or direct 1 or more persons to do, all of the following:

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

(ii) Verify that payments to selected creditor accounts are properly disbursed.

(iii) Verify that consumer complaints are properly handled.

(iv) Review selected client files to confirm that they contain the proper documentation.

(h) If a contract with a debtor is lawfully sold, transferred, or assigned to a licensee by another licensee, furnish to the debtor a written notice of the sale, transfer, or assignment. The notice shall contain the name, address, and contact telephone number of the licensee.

(2) A licensee that has proper controls in place to ensure that the actions described in subsection (1)(g)(i) to (iv) are done meets the requirements of subsection (1)(g).

(3) Annually, on or before a date established by the director, each licensee shall file with the director a report, on a form provided by the director, stating the licensee's volume and type of business activities for the immediately preceding calendar year.

Sec. 17. The department may examine, without notice, the condition and affairs of a licensee. In connection with an examination, the department may examine under oath a licensee and any director, officer, employee, customer, creditor, manager, member, partner, or stockholder of a licensee concerning the affairs and business of the licensee. The department shall ascertain whether the licensee transacts its business in the manner required under this act and the rules promulgated under this act. The licensee shall pay an examination fee, in an amount equal to the actual cost of the examination as determined by the department, and the department shall deposit that fee in the state treasury to the credit of the department. Failure to pay the examination fee within 30 days after receiving a demand for payment from the department shall automatically suspend the license of the licensee until the fee is paid.

Sec. 18. (1) In addition to the fee described in section 13(1), a licensee may charge a reasonable fee for providing debt management services under a debt management plan. The fee under this subsection shall not exceed 15% of the amount of the debt to be liquidated during the express term of the plan.

(2) A licensee may offer a debtor the option to purchase credit reports or educational materials and products, and charge a fee to the debtor if the debtor elects to purchase any of those items from the licensee. Fees charged under this subsection are not subject to the 15% limitation on fees described in subsection (1).

(3) Except for a cancellation described in subsection (4), in the event of cancellation of or default in the performance of the contract by the debtor before its successful completion, a licensee may collect \$25.00 in addition to any fees and charges of the licensee previously received by the licensee. This \$25.00 fee is not subject to the 15% limitation on fees and charges under subsection (1).

(4) A contract is in effect when it is signed by the licensee and the debtor and the debtor has made a payment of any amount to the licensee. The debtor has the right to cancel the contract until 12 midnight of the third business day after the first day the contract is in effect by delivering written notice of cancellation to the licensee. A cancellation described in this section is not subject to, and a licensee shall not collect, the fee described in subsection (3).

(5) If a debtor fails to make a payment of any amount to a licensee within 60 days after the date a payment is due under a contract, the licensee may, in its discretion, cancel the debt management contract if it determines that the plan is no longer suitable for the debtor, the debtor fails to affirmatively communicate to the licensee the debtor's desire to continue the plan, or the creditors of the debtor refuse to continue accepting payments under the plan.

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

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

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

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

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

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

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

(f) Concurrently with the signing of the contract or as a part of the contract or as part of the application for the contract, take a release of an obligation the licensee is or was to perform.

(g) Offer, pay, or give any cash, fee, gift, bonus, premiums, reward, or other compensation to a person for referring a prospective customer to the licensee. However, any of the following payments are not subject to this subdivision:

(i) A payment by the licensee for the lawful sale, transfer, or assignment of a contract to the licensee from another licensee.

(ii) A payment by the licensee to credit counseling associations such as the national foundation for credit counseling or the association of independent consumer credit counseling agencies to participate in a locator service.

(h) Receive any cash, fee, gift, bonus, premium, reward, or other compensation from a person other than the debtor or a person in the debtor's behalf in connection with the licensee's business of debt management, except under a plan approved by order of the department. However, a payment received by a licensee from a creditor, financial institution, or other third party as part of a fair share program, grant program, or another similar program is not subject to this subdivision.

(i) Disclose the identity of debtors who have contracted with the licensee, except to the director or his or her authorized representative, or disclose the identity of creditors of a debtor to anyone other than the debtor, or the director or his or her authorized representative, or another creditor of the debtor and then only to the extent necessary to secure the cooperation of the creditor in a debt management plan. However, this subdivision does not prohibit a licensee from sharing information about a debtor's debt management plan or the creditors of the debtor with any person with which the debtor has specifically authorized the licensee in writing to share that information.

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

(k) In any manner, advertise, print, display, publish, distribute, or broadcast any statement or representation with regard to providing services under this act that is false, misleading, or deceptive or permit another person to violate this subdivision.

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

(m) Use an advertisement that contains any of the following representations:

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

- (ii) That a certain payment schedule will handle a certain amount or range of indebtedness.
- (iii) That garnishment, attachment, repossession, or loss of job will be prevented.
- (n) Fail to provide to the debtor the full benefit of a compromise of a debt arranged by the licensee with a creditor.
- (o) Do any of the following in connection with the making of a debt management contract or with operation of the debtor's account:
 - (i) Employ any device, scheme, or artifice to defraud.
 - (ii) Make any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.
 - (iii) Engage in any act, practice, or course of business that operates or would operate as a fraud or deceit on any person.
- (p) Conduct the business of debt management without a surety bond, or a deposit or assignment satisfactory to the department in lieu of a surety bond, under section 5(2) in place.

Sec. 20. (1) This act does not impose any liability, civil or criminal, on a person or publisher that is regularly engaged in the business of publishing a bona fide newspaper or operating a radio or television station and that, acting solely in the course of that business, publishes an advertisement in good faith and without knowledge that the advertisement or publication constitutes a violation of section 19(k), (l), or (m).

(2) A person shall not publish an advertisement concerning the offer of debt management services in this state after the department by order finds that the advertisement contains a statement that is false or misleading or omits to make any necessary statement in order to make the statements made, in light of the circumstances under which they were made, not misleading and notifies the person of that finding in writing. The department may give this notification summarily, without notice of hearing. At any time after the issuance of a notification under this section, the person that desires to use the advertisement may request in writing that the department rescind the order. If it receives a written request under this subsection, the department shall schedule a hearing on the matter to commence within 45 days unless the person that made the request consents to a later date. After the hearing the department shall determine whether to affirm and continue or to rescind the order.

Sec. 26. The fees collected under this act shall be paid promptly into the state treasury to the credit of the department.

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

This act is ordered to take immediate effect.

Carol Morey Viventi

Secretary of the Senate

Jay E. Randall

Clerk of the House of Representatives

Approved

.....
Governor