

May 7, 1998

**SUBSTITUTE FOR  
SENATE BILL NO. 1056**

A bill to amend 1975 PA 148, entitled  
"Debt management act,"  
by amending sections 2, 5, 6, 8, 13, 14, 15, 16, and 18 (MCL  
451.412, 451.415, 451.416, 451.418, 451.423, 451.424, 451.425,  
451.426, and 451.428); and to repeal acts and parts of acts.

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

1       Sec. 2. As used in this act:

2       (a) "Bureau" means the corporation, ~~and~~ securities, AND  
3 LAND DEVELOPMENT bureau of the department. ~~of commerce.~~

4       (b) "Counselor" means an employee or agent of a licensee who  
5 engages in ~~scheduling,~~ counseling ~~,~~ and budget analysis  
6 functions.

7       (c) "Creditor" means a person for whose benefit ~~moneys are~~  
8 MONEY IS being collected and disbursed by a licensee. ~~The~~ A  
9 licensee is not a creditor for purposes of this act.

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1 (d) "Debt management" means the planning and management of  
2 the financial affairs of a debtor and the receipt of ~~funds~~  
3 MONEY from the debtor for distribution to ~~creditors~~ A CREDITOR  
4 in payment or partial payment of the debtor's obligations.

5 (e) "Debtor" means a person from whom ~~moneys are~~ MONEY IS  
6 being collected for the benefit of ~~creditors~~ A CREDITOR of the  
7 debtor.

8 (f) "Department" means the department of ~~commerce~~ CONSUMER  
9 AND INDUSTRY SERVICES.

10 (g) "Director" means the director of the department ~~of~~  
11 ~~commerce~~ or his OR HER authorized representative.

12 (h) "Fees and charges of the licensee" means the total  
13 amount of money to be charged a debtor by the licensee including  
14 the \$25.00 initial payment.

15 (i) "License" means a written certificate or exemption order  
16 issued by the director.

17 (j) "Licensee" means ~~an individual, partnership, unincor-~~  
18 ~~porated association, or corporation~~ A PERSON licensed under this  
19 act. Except as to ~~sections 5(1), 5(3),~~ SECTION 5(1) OR (7) or  
20 8, a licensee includes a person exempted pursuant to section 4(2)  
21 or (4).

22 (k) "Office" means each location by street name, building  
23 number, city, and ~~state~~ ZIP CODE where a person engages in the  
24 debt management business IN THIS STATE.

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

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1 (m) "Person" means an individual, ~~a~~ corporation, ~~a~~  
2 partnership, ~~an~~ association, ~~a~~ joint stock company, ~~a~~ trust  
3 where the interests of the beneficiaries are evidenced by a  
4 security, LIMITED LIABILITY COMPANY, or ~~an unincorporated~~  
5 ~~organization~~ OTHER LEGAL ENTITY.

6 Sec. 5. (1) ~~A person desiring to obtain a license to~~  
7 ~~engage in the debt management business in this state shall file~~  
8 ~~with the department an application in writing, under oath, set-~~  
9 ~~ting forth the person's business name, the exact location of the~~  
10 ~~person's office, the names and addresses of the officers and~~  
11 ~~directors if an association or a corporation, and if a partner-~~  
12 ~~ship, the partnership name and the names and addresses of the~~  
13 ~~partners, a copy of the certificate of assumed name or certifi-~~  
14 ~~cate of partnership or articles of incorporation, and such addi-~~  
15 ~~tional data as the director prescribes by rule or order. At the~~  
16 ~~time of filing the application the applicant shall pay to the~~  
17 ~~department a license fee of \$50.00 for each office and an inves-~~  
18 ~~tigation fee of \$50.00. At the time of filing the application~~  
19 ~~the applicant shall furnish a surety bond to the people of the~~  
20 ~~state of Michigan in a sum equivalent of \$5,000.00 for each busi-~~  
21 ~~ness office maintained by the licensee, conditioned upon the~~  
22 ~~faithful accounting of all moneys collected upon accounts~~  
23 ~~entrusted to a licensee engaged in debt management, and the~~  
24 ~~licensee's employees and agents. The bond shall be approved by~~  
25 ~~the director and filed in the office of the bureau. A person,~~  
26 ~~firm, or corporation shall not engage in the business of debt~~  
27 ~~management until a good and sufficient bond is filed in~~

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1 ~~accordance with this act. The bureau may by rule provide for an~~  
2 ~~appropriate deposit of cash, securities, or the assignment of the~~  
3 ~~coverage of other surety bonds in lieu of the debt management~~  
4 ~~bond if the director is satisfied that comparable or more exten-~~  
5 ~~sive coverage results.~~ AN APPLICANT FOR A LICENSE TO ENGAGE IN  
6 THE DEBT MANAGEMENT BUSINESS IN THIS STATE SHALL FILE AN APPLICA-  
7 TION WITH THE DIRECTOR IN WRITING AND UNDER OATH THAT INCLUDES  
8 ALL OF THE FOLLOWING:

9 (A) THE NAME AND EXACT ADDRESS OF THE APPLICANT AND THE NAME  
10 AND ADDRESS OF EACH OF THE FOLLOWING, AS APPLICABLE:

11 (i) IF THE APPLICANT IS A CORPORATION, ITS OFFICERS AND  
12 DIRECTORS.

13 (ii) IF THE APPLICANT IS AN ASSOCIATION, ITS OFFICERS AND  
14 DIRECTORS.

15 (iii) IF THE APPLICANT IS A PARTNERSHIP, EACH PARTNER.

16 (iv) IF THE APPLICANT IS A LIMITED LIABILITY COMPANY, ITS  
17 MANAGER OR MANAGERS AS THOSE TERMS ARE DEFINED IN SECTION 102 OF  
18 THE MICHIGAN LIMITED LIABILITY COMPANY ACT, 1993 PA 23, MCL  
19 450.4101 TO 450.5200.

20 (v) IF THE APPLICANT IS ANY OTHER LEGAL ENTITY, THE MANAGER  
21 OR OTHER PERSON DESIGNATED TO CONTROL THE OPERATION OF THAT LEGAL  
22 ENTITY.

23 (B) A COPY OF A CERTIFICATE OF AN ASSUMED NAME, IF  
24 APPLICABLE.

25 (C) ONE OR MORE OF THE FOLLOWING, AS APPLICABLE:

26 (i) IF THE APPLICANT IS A CORPORATION, A COPY OF THE  
27 ARTICLES OF INCORPORATION.

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1       (ii) IF THE APPLICANT IS AN ASSOCIATION, A COPY OF THE  
2 ORGANIZATIONAL DOCUMENTS OF THE ASSOCIATION.

3       (iii) IF THE APPLICANT IS A PARTNERSHIP, A COPY OF THE PART-  
4 NERSHIP AGREEMENT.

5       (iv) IF THE APPLICANT IS A LIMITED LIABILITY COMPANY, A COPY  
6 OF THE ARTICLES OF ORGANIZATION.

7       (2) UPON FILING THE APPLICATION, THE APPLICANT SHALL DO ALL  
8 OF THE FOLLOWING:

9       (A) PAY TO THE DEPARTMENT A LICENSE FEE OF \$50.00.

10       (B) PAY TO THE DEPARTMENT AN INVESTIGATION FEE OF \$50.00.

11       (C) FURNISH A \$5,000.00 SURETY BOND TO THE PEOPLE OF THE  
12 STATE OF MICHIGAN FOR EACH OFFICE ESTABLISHED BY THE APPLICANT.  
13 HOWEVER, IF AN APPLICANT ESTABLISHES MORE THAN 10 OFFICES ENGAGED  
14 IN THE BUSINESS OF DEBT MANAGEMENT IN THIS STATE AND FOR WHICH A  
15 SURETY BOND HAS BEEN FURNISHED, THE SURETY BOND PRESCRIBED BY  
16 THIS SUBDIVISION SHALL BE WAIVED FOR ANY ADDITIONAL OFFICE SUBSE-  
17 QUENTLY ESTABLISHED.

18       (D) FILE AN APPOINTMENT OF THE DIRECTOR AS THE AGENT OF THE  
19 APPLICANT FOR SERVICE OF PROCESS IN THIS STATE.

20       (3) IN LIEU OF THE SURETY BOND, THE BUREAU MAY BY RULE PROVIDE  
FOR AN APPROPRIATE DEPOSIT OF CASH OR SECURITIES OR THE ASSIGNMENT  
OF THE COVERAGE OF OTHER SURETY BONDS IF THE DIRECTOR IS SATISFIED  
THAT COMPARABLE OR MORE EXTENSIVE COVERAGE RESULTS.

21       (4) THE DIRECTOR SHALL NOT ACCEPT AN APPLICATION OR ISSUE A  
22 LICENSE THAT INCLUDES A BUSINESS NAME THAT IS THE SAME OR SIMILAR  
23 TO AN EXISTING BUSINESS NAME ON FILE WITH THE DEPARTMENT.

24       (5) AN APPLICANT SHALL INCLUDE WITH THE APPLICATION BOTH OF  
25 THE FOLLOWING:

26       (A) A BLANK COPY OF A FORM CONTRACT TO BE USED BY A DEBTOR  
AND THE APPLICANT.

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1 (B) A COPY OF THE CREDITOR'S AGREEMENT FORM TO BE USED BY  
2 THE APPLICANT AND A CREDITOR.

3 (6) SERVICE OF PROCESS UPON THE DIRECTOR SHALL BE CONSIDERED  
4 SERVICE UPON AN APPLICANT OR LICENSEE.

5 (7) ~~(2) A licensee shall submit for approval concurrently~~  
6 ~~with this application a blank copy of the form of contract to be~~  
7 ~~used between the debtor and the licensee, the budget analysis~~  
8 ~~form, and the creditor's agreement form that shall be used and~~  
9 ~~shall submit to the bureau for approval all changes and amend-~~  
10 ~~ments thereto.~~ A contract FORM or OTHER form may not be used  
11 without the BUREAU'S approval. ~~of the bureau.~~ ANY CHANGE IN A  
12 FORM SHALL BE SUBMITTED TO THE BUREAU.

13 (8) ~~(3) The~~ UNLESS SURRENDERED, REVOKED, OR SUSPENDED, A  
14 license issued under this act ~~shall expire~~ EXPIRES on December  
15 31 ~~, following its issuance unless sooner surrendered, revoked,~~  
16 ~~or suspended, but may be renewed as provided in this act~~ OF THE  
17 YEAR FOR WHICH IT IS ISSUED. A LICENSE MAY BE RENEWED BEFORE THE  
18 EXPIRATION DATE AS PROVIDED UNDER THIS ACT.

19 ~~(4) The application shall be accompanied by an appointment~~  
20 ~~of the director as agent of the applicant for service of process~~  
21 ~~in this state. Service upon the director shall be sufficient~~  
22 ~~service upon any licensee under the act, if the person seeking~~  
23 ~~service upon the licensee shall certify to the director that a~~  
24 ~~diligent attempt was made to affect personal service upon the~~  
25 ~~licensee and that this effort was unavailing.~~

26 (9) ~~(5)~~ A licensee shall ~~make~~ CREATE, maintain, and  
27 preserve accurate and complete books and records relating to

1 ~~his~~ THE LICENSEE'S business. ~~These~~ THE books and records  
2 shall be ~~kept current~~ MAINTAINED according to generally  
3 accepted accounting standards and procedures. A licensee or an  
4 applicant ~~for a license~~ shall ~~furnish written notice to~~  
5 NOTIFY the bureau ~~specifying~~ OF the address ~~of the place~~  
6 where ~~those~~ THE books and records are ~~to be~~ kept. ~~A change~~  
7 ~~of~~ IF A LICENSEE CHANGES THE location of ~~these~~ THE BOOKS AND  
8 records, ~~shall be reported promptly to~~ THE LICENSEE SHALL  
9 NOTIFY the bureau WITHIN 10 BUSINESS DAYS AFTER THE CHANGE. The  
10 director may prescribe by rule or order the form and contents of  
11 books and records relating to a licensee's ~~debt management~~  
12 business.

13 (10) ~~(6) Financial statements~~ A FINANCIAL STATEMENT shall  
14 be filed with an application for A debt management license. The  
15 director may require THAT A financial ~~statements~~ STATEMENT PRE-  
16 SCRIBED UNDER THIS ACT BE certified by an independent certified  
17 public accountant.

18 (11) IF A LICENSEE IS A CORPORATION, THE DIRECTOR SHALL NOT  
19 REQUIRE OF THAT CORPORATION INFORMATION CONCERNING A MEMBER OF  
20 THE BOARD OF DIRECTORS OF THAT CORPORATION, IF THAT MEMBER DOES  
21 NOT RECEIVE A SALARY, STOCK DIVIDEND, OR OTHER FINANCIAL BENEFIT  
22 FROM THAT CORPORATION OTHER THAN REIMBURSEMENT OF THE ACTUAL  
23 EXPENSES INCURRED IN CARRYING OUT THE DUTIES OF A DIRECTOR OF  
24 THAT CORPORATION.

25 Sec. 6. (1) ~~Upon the filing of the application and payment~~  
26 ~~of the fees and approval of the bond, the department shall~~  
27 ~~investigate the facts and shall issue a license to an applicant~~

1 ~~if it finds that the financial responsibility, experience,~~  
2 ~~character, and general fitness of the applicant and of the mem-~~  
3 ~~bers thereof, if the applicant is a partnership or an associa-~~  
4 ~~tion, and of the officers and directors if the applicant is a~~  
5 ~~corporation, are such as to command the confidence of the commu-~~  
6 ~~nity to warrant belief that the business will be operated fairly~~  
7 ~~and honestly within the provisions of this act.~~ UPON FILING THE  
8 APPLICATION, RECEIPT OF THE FEES, AND APPROVAL OF THE BOND, THE  
9 DEPARTMENT SHALL INVESTIGATE THE APPLICANT'S RESPONSIBILITY,  
10 EXPERIENCE, CHARACTER, AND GENERAL FITNESS. IF THE RESULT OF THE  
11 INVESTIGATION WARRANTS A BELIEF THAT THE BUSINESS WILL BE OPER-  
12 ATED FAIRLY AND HONESTLY WITHIN THE PROVISIONS OF THIS ACT, THE  
13 DEPARTMENT SHALL ISSUE A LICENSE. THE INVESTIGATION OF THE  
14 APPLICANT SHALL AT LEAST INCLUDE THE FOLLOWING AS APPLICABLE:  
15       (A) IF THE APPLICANT IS A CORPORATION, THE OFFICERS AND  
16 DIRECTORS OF THE CORPORATION.  
17       (B) IF THE APPLICANT IS A PARTNERSHIP, ALL THE PARTNERS OF  
18 THE PARTNERSHIP.  
19       (C) IF THE APPLICANT IS AN ASSOCIATION, ALL THE OFFICERS OF  
20 THE ASSOCIATION.  
21       (D) IF THE APPLICANT IS AN INDIVIDUAL, THE INDIVIDUAL.  
22       (2) A license shall not be issued if THE INVESTIGATION  
23 REVEALS 1 OR MORE OF THE FOLLOWING:  
24       (a) ~~An~~ THAT AN individual ~~applicant, or any of the~~  
25 ~~applicant's members if the applicant is a partnership or associa-~~  
26 ~~tion, or any of the applicant's officers or directors if the~~  
27 ~~applicant is a corporation~~ LISTED UNDER SUBSECTION (1)(A):



1       (i) Was ever convicted of a crime involving moral turpitude  
2 ~~which shall include~~ INCLUDING forgery, embezzlement, obtaining  
3 money under false pretenses, larceny, extortion, conspiracy to  
4 defraud, or any other ~~like~~ SIMILAR offense.

5       (ii) Violated or failed to comply with ~~a provision of~~ this  
6 act or a rule ~~or order~~ promulgated ~~or issued~~ under this act.

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

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

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

18       (c) An applicant which is a partnership, corporation, or  
19 association has not been granted authority to do business in this  
20 state.

21       (d) The applicant is an employee or owner of a collection  
22 agency as defined in ~~Act No. 361 of the Public Acts of 1974,~~  
23 ~~being sections 445.211 to 445.245 of the Michigan Compiled Laws~~  
24 FORMER 1974 PA 361, MCL 445.211 TO 445.245, or process serving  
25 business or in any manner is affiliated with a collection agency  
26 or process serving business. The director may, in his OR HER

1 discretion, waive this restriction on a showing of sufficient  
2 safeguards in the operation of the collection agency.

3       (3) An individual applicant ~~—, OR AN~~ office manager ~~—, or~~  
4 counselor OF A DEBT MANAGEMENT COMPANY shall pass an examination  
5 within the first ~~180~~ 120 days ~~of~~ AFTER employment. THE EXAMI-  
6 NATION SHALL BE administered by the director or his OR HER  
7 designee. ~~—, which~~ THE examination may be oral or written, or  
8 ~~partly oral and partly written~~ BOTH, and shall be practical in  
9 nature and sufficiently thorough to ascertain the applicant's  
10 fitness. ~~Questions~~ THE EXAMINATION MAY INCLUDE QUESTIONS on  
11 bookkeeping, credit adjusting, business ethics, agency, con-  
12 tracts, debtor and creditor relationships, trust funds, and the  
13 provisions of this act and rules promulgated ~~thereunder may be~~  
14 ~~included in the examination~~ UNDER THIS ACT. The director may  
15 charge an examination fee of \$25.00. ~~for administering this~~  
16 ~~examination.~~ A PERSON SHALL NOT TAKE THE EXAMINATION MORE THAN  
17 TWICE WITHIN A 12-MONTH PERIOD.

18       Sec. 8. ~~A licensee shall before~~ BEFORE December 1 of each  
19 year, A LICENSEE SHALL make application to the department for  
20 renewal of its license. The application shall be on the form  
21 prescribed by the department and shall be accompanied by a fee of  
22 \$50.00 for each office together with a bond IN THE SAME MANNER as  
23 ~~in the case of~~ an original application. The application shall  
24 cover each ~~branch~~ office ~~which~~ WITHIN THIS STATE THAT is  
25 under the ownership and control of the applying entity.  
26 Financial statements shall be filed with THE application for  
27 renewal of ~~debt management licenses~~ A LICENSE. The director

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1 may require THAT THE financial statements BE certified by an  
2 independent certified public accountant.

3       Sec. 13. (1) ~~A licensee shall not charge or receive a fee~~  
4 ~~until the licensee has the consent of at least 51% in number and~~  
5 ~~dollar amount of all the creditors of the debtor, or until 51% in~~  
6 ~~number and dollar amount of creditors have accepted a payment.~~  
7 UPON ESTABLISHING A DEBT MANAGEMENT PLAN FOR A CLIENT, A LICENSEE  
8 MAY CHARGE AND RECEIVE A FEE. HOWEVER, IF 51% IN NUMBER AND  
9 DOLLAR AMOUNT OF ALL THE DEBTOR'S CREDITORS DO NOT CONSENT TO THE  
10 DEBT MANAGEMENT PROGRAM, THE FEE SHALL BE RETURNED TO THE CLIENT  
11 BEFORE CLOSING THE ACCOUNT.

12       (2) ~~Consents~~ CONSENT FROM A CREDITOR shall be recorded on  
13 a separate ~~format~~ FORM, approved by the director. ~~and~~ THE  
14 FORM shall contain a list of ALL the creditors, the manner in  
15 which consent was sought, the date of each contact, the NAME OF  
16 THE person contacted, the response obtained, any revised or spe-  
17 cial conditions or arrangements ~~which~~ THAT condition their con-  
18 sent, and the date ~~at~~ ON which the required ~~consents were~~  
19 CONSENT WAS secured. The ~~format~~ FORM shall contain other  
20 information THAT the director may PRESCRIBE by rule or order.  
21 ~~prescribe.~~

22       (3) ~~Consent may be sought by mail and, in the case of writ-~~  
23 ~~ten notice to a creditor without response, implied consent to the~~  
24 ~~proposed payments may be presumed 14 calendar days after mailing~~  
25 ~~the notice. In the case of payment to a creditor acceptance may~~  
26 ~~be presumed 7 calendar days after mailing the check.~~ THE CONSENT  
27 OF A CREDITOR MAY BE SOUGHT BY SENDING A NOTICE OF A DEBT

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1 MANAGEMENT PLAN TO A CREDITOR BY AN APPROPRIATE MEANS INCLUDING  
2 BY TELEPHONE, FACSIMILE, ELECTRONIC MAIL, OR FIRST-CLASS MAIL.  
3 IF THE CREDITOR DOES NOT RESPOND WITHIN 14 DAYS AFTER THE MAILING  
4 OF THE NOTICE, IT MAY BE PRESUMED THAT THE CREDITOR HAS GIVEN  
5 CONSENT.

6 (4) IF A PAYMENT UNDER THE DEBT MANAGEMENT PLAN IS MAILED TO  
7 A CREDITOR, ACCEPTANCE OF THE PAYMENT OR PLAN MAY BE PRESUMED 7  
8 DAYS AFTER MAILING THE PAYMENT.

9 Sec. 14. (1) A contract between a licensee and debtor shall  
10 INCLUDE ALL OF THE FOLLOWING:

11 (a) ~~List every~~ EACH creditor to whom payments will be made  
12 and the amount ~~owing to that~~ OWED EACH creditor.

13 (b) ~~Disclose the rate and total~~ THE maximum ANNUAL amount  
14 of the licensee's charges.

15 (c) ~~Disclose the actual~~ THE beginning and ending dates of  
16 the contract, THE TERM OF which shall not be longer than ~~24~~ 60  
17 months.

18 (d) ~~Disclose the~~ THE number of months and the total prin-  
19 cipal amount plus approximate interest charges required to liqui-  
20 date in full the debts, except mortgage or land contract interest  
21 payments, described in the contract. The licensee shall provide  
22 ~~to~~ the debtor WITH an estimate of the ~~affect of~~ EFFECT inter-  
23 est and carrying charges HAVE on the debtor's account.

24 (e) ~~Disclose the~~ THE name and address of the licensee and  
25 of the debtor.

26 (f) ~~Contain such other and further~~ OTHER provisions or  
27 disclosures ~~as~~ THAT the director ~~shall determine~~ DETERMINES

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1 are necessary for the protection of the debtor and the proper  
2 conduct of business by ~~the~~ A licensee.

3       (2) ~~Distribute to the creditors of the debtor monthly all~~  
4 ~~funds received from a debtor or on behalf of the debtor, except~~  
5 ~~that no more than an amount equal to one month's fee plus the~~  
6 ~~close out fee may be retained in the debtor's trust account at~~  
7 ~~any time, unless approved by the department by rule or order.~~  
8 UNLESS OTHERWISE APPROVED BY THE DEPARTMENT AND EXCEPT FOR AN  
9 AMOUNT DUE FOR 1 OR MORE MONTHLY FEE OR A CLOSEOUT FEE, A  
10 LICENSEE SHALL DISTRIBUTE TO THE CREDITORS OF THE DEBTOR, AT  
11 LEAST MONTHLY, ALL MONEY RECEIVED FROM A DEBTOR OR ON BEHALF OF A  
12 DEBTOR.

13       Sec. 15. (1) Payments received by a licensee from or on  
14 behalf of a debtor for the benefit of ~~creditors~~ A CREDITOR  
15 shall be held in trust in a separate bank account maintained for  
16 the benefit of ~~debtors~~ THE DEBTOR. ~~The licensee shall not~~  
17 ~~commingle a payment with his own property or funds, but shall~~  
18 ~~maintain a separate trust account and deposit in that account~~  
19 ~~payments received from a debtor. However, the~~ A licensee may  
20 deposit ~~a specified amount of~~ its own ~~funds~~ MONEY in the sep-  
21 arate trust account ~~upon approval of the director~~ IF AT ALL  
22 TIMES THE BALANCE IN THE TRUST ACCOUNT IS GREATER THAN THE SUM OF  
23 THE ESCROW BALANCES OF EACH DEBTOR'S ACCOUNT. Disbursements  
24 whether to the debtor or to the creditors of the debtor ~~,~~ shall  
25 be made from the trust account. ~~Payments~~ A PAYMENT from a  
26 debtor or on behalf of a debtor shall be deposited in the account  
27 not later than 2 business days after receipt ~~thereof~~ OF THE

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1 PAYMENT. A SWEEP ARRANGEMENT MAY BE UTILIZED IF THE ACCOUNT IS  
2 INSURED FOR 100% OR MORE OF THE BALANCE IN THE ACCOUNT.

3 (2) The trust account shall be reconciled not less than once  
4 a month. The reconciliation shall ~~consist of ascertaining~~  
5 ASCERTAIN the actual cash balance in the account and ~~comparing~~  
6 COMPARE it with the sum of the escrow balances in each debtor's  
7 account. ~~This shall be done not more than 45 days after receipt~~  
8 ~~of the monthly bank statement and shall be prepared on a form~~  
9 ~~approved by the director and shall be kept as a permanent record~~  
10 ~~of the licensee.~~ THE RECONCILIATION MAY BE DONE ELECTRONICALLY  
11 OR BY ANY OTHER APPROPRIATE METHOD AND SHALL BE DONE NOT MORE  
12 THAN 45 BUSINESS DAYS AFTER RECEIPT OF THE BANK STATEMENT. AN  
13 ELECTRONIC OR OTHER APPROPRIATE NOTATION OF THE RECONCILIATION  
14 SHALL BE KEPT AS A PERMANENT RECORD OF THE LICENSEE AND SHALL BE  
15 CONSIDERED AS IN COMPLIANCE WITH THIS SECTION.

16 (3) The trust account shall ~~at all times~~ have an actual  
17 ~~minimum~~ cash balance equal to OR GREATER THAN the sum of the  
18 escrow balances of each debtor's account, and failure to maintain  
19 that amount ~~shall be~~ IS cause for a summary suspension of the  
20 license.

21 (4) ~~When the~~ IF A trust account fails to contain suffi-  
22 cient funds to cover the debtor escrow balances, the licensee  
23 shall immediately upon discovery ~~,~~ notify the director by tele-  
24 phone or by ~~telegraphic notice, followed by an explanatory~~  
25 ~~letter, and the remedial action taken~~ TELEGRAPH. THE LICENSEE  
26 SHALL ALSO PROVIDE WRITTEN NOTICE INCLUDING A DESCRIPTION OF THE  
27 REMEDIAL ACTION TAKEN.

1       Sec. 16. A licensee or exempted person shall DO ALL OF THE  
2 FOLLOWING:

3       (a) ~~Make, keep, and preserve for 6 years the accounts, cor-~~  
4 ~~respondence, memoranda, papers, books, and other records and make~~  
5 ~~the reports that the department by rule prescribes as necessary~~  
6 ~~or appropriate in the public interest or for the protection of~~  
7 ~~debtors and creditors. The accounts, correspondence, memoranda,~~  
8 ~~papers, books, and other records are subject at any time to rea-~~  
9 ~~sonable periodic, special, or other examinations by examiners or~~  
10 ~~other representatives of the department as the director deems~~  
11 ~~necessary or appropriate in the public interest or for the pro-~~  
12 ~~tection of the public.~~ CREATE AND MAINTAIN RECORDS, IN A MANNER  
13 APPROVED BY THE DEPARTMENT, WHICH SHALL ALLOW FOR ELECTRONIC,  
14 PHOTOCOPY, OR COMPUTERIZED METHODS, OF THE ACCOUNTS, CORRESPOND-  
15 ENCE, MEMORANDA, PAPERS, BOOKS, AND OTHER RECORDS OF THE DEBT  
16 MANAGEMENT BUSINESS. THE RECORDS CREATED UNDER THIS SUBDIVISION  
SHALL BE PRESERVED FOR AT LEAST 6 YEARS AFTER THEY ARE CREATED.

17       (b) ~~Deliver to the debtor a completed and signed true copy~~  
18 ~~of the contract between the licensee and the debtor upon execu-~~  
19 ~~tion of the contract.~~ MAKE ALL THE RECORDS CREATED AND MAIN-  
20 TAINED UNDER SUBDIVISION (A) AVAILABLE FOR EXAMINATION BY EXAMIN-  
21 ERS OF THE DEPARTMENT AT REASONABLE INTERVALS OR UPON A SPECIAL  
22 DEMAND OF THE DEPARTMENT.

23       (c) ~~Deliver to the debtor a receipt for a payment within 5~~  
24 ~~days after receipt of that payment. The department may waive~~  
25 ~~this requirement upon a showing of acceptable alternative~~  
26 ~~notice.~~ MAKE REPORTS TO THE DEPARTMENT AS PRESCRIBED BY RULE.

1       (d) ~~Provide a debtor with a written statement covering the~~  
2 ~~last 12 months activity within 5 business days of a request for~~  
3 ~~the statement or with a verbal accounting upon demand. The writ-~~  
4 ~~ten statement or verbal accounting shall indicate the total~~  
5 ~~amount received from or on behalf of the debtor, the total amount~~  
6 ~~paid to each individual creditor, the total amount of the charges~~  
7 ~~deducted from payments, and the amount held in reserve. UPON~~  
8 ~~CONTRACTING WITH A DEBTOR, GIVE A COPY OF THE CONTRACT TO THE~~  
9 ~~DEBTOR.~~

10       (e) ~~Not more than 120 days after the date the contract is~~  
11 ~~entered into, give the debtor a written statement which indicates~~  
12 ~~the total amount received from or on behalf of the debtor, the~~  
13 ~~total amount paid to each individual creditor, the total amount~~  
14 ~~of the charges deducted from payments, and any amount held in~~  
15 ~~reserve, a copy of this statement shall be retained in the~~  
16 ~~debtor's file. The administrator may waive this requirement upon~~  
17 ~~a showing of an acceptable alternative notice. UNLESS THE~~  
18 ~~DEPARTMENT ALLOWS AN ACCEPTABLE ALTERNATIVE METHOD, DELIVER A~~  
19 ~~RECEIPT TO A DEBTOR UPON RECEIVING CASH OR, WITHIN 5 DAYS AFTER~~  
20 ~~RECEIVING A PAYMENT FROM~~  
21 ~~A DEBTOR OR, AT LEAST QUARTERLY BEGINNING WITH THE FIRST QUARTER~~  
22 ~~AFTER CONTRACTING WITH A DEBTOR, DELIVER A STATEMENT THAT~~  
23 ~~INCLUDES THE DATES AND AMOUNTS RECEIVED AND DISBURSED ON BEHALF~~  
24 ~~OF THE DEBTOR.~~

24       (F) 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  
27 ON BEHALF OF THE DEBTOR.



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1       (ii) THE TOTAL AMOUNT PAID TO EACH CREDITOR.  
2       (iii) THE TOTAL AMOUNT OF CHARGES DEDUCTED FROM THE PAYMENTS  
3 RECEIVED.  
4       (iv) THE AMOUNT HELD IN RESERVE.  
5       (G) UNLESS AN ACCEPTABLE ALTERNATIVE METHOD IS APPROVED BY  
6 THE DEPARTMENT, NOT MORE THAN 120 DAYS AFTER CONTRACTING WITH A  
7 DEBTOR, PROVIDE A WRITTEN STATEMENT TO THE DEBTOR THAT INCLUDES  
8 ALL OF THE FOLLOWING:  
9       (i) THE TOTAL AMOUNT RECEIVED FROM AND ON BEHALF OF THE  
10 DEBTOR.  
11       (ii) THE TOTAL AMOUNT PAID TO EACH CREDITOR.  
12       (iii) THE TOTAL AMOUNT DEDUCTED FROM THE PAYMENTS RECEIVED.  
13       (iv) THE AMOUNT HELD IN RESERVE.  
14       (H) AT LEAST ANNUALLY, VERIFY OR CAUSE THE VERIFICATION OF  
15 PAYMENTS TO SELECTED CREDITOR'S ACCOUNTS AND DO OR DESIGNATE 1 OR  
16 MORE PERSONS TO DO ALL OF THE FOLLOWING:  
17       (i) REVIEW EACH DEBTOR'S ACCOUNT FILE.  
18       (ii) REVIEW CHECKS PAID BY THE LICENSEE.  
19       (iii) REVIEW PROCEDURES USED BY THE LICENSEE FOR PROCESSING  
20 CHECKS AND HANDLING CASH.  
21       (iv) REVIEW THE COMPLAINT FILE MAINTAINED BY THE LICENSEE.  
22       (v) VERIFY PAYMENTS TO SELECTED CREDITOR ACCOUNTS.  
23       (vi) REVIEW SELECTED COUNSELOR RECORDS AND WORK PAPERS.  
24       Sec. 18. (1) ~~By contract a~~ A licensee ~~or person exempt~~  
25 ~~pursuant to section 4(2) or (4)~~ may charge a reasonable fee  
26 ~~for~~ UNDER A debt management services CONTRACT. ~~The fees and~~  
27 ~~charges of the licensee with respect to a debtor's account~~ A FEE

1 shall not exceed 15% of the amount of the debt to be liquidated  
2 during the express term of the contract. The licensee ~~or person~~  
3 ~~exempt pursuant to section 4(2) or (4)~~ may require THE DEBTOR TO  
4 MAKE an initial payment ~~by the debtor~~ of an amount not more  
5 than \$25.00, which is part of the total ~~fees and charges~~ FEE  
6 stated in the contract. ~~This amount shall be deducted from~~  
7 ~~total fees and charges in determining the monthly amortizable~~  
8 ~~amount for subsequent fees earned.~~ THE INITIAL PAYMENT SHALL BE  
9 DEDUCTED FROM THE AMOUNT OF A SUBSEQUENT FEE THAT IS AMORTIZED,  
10 IF ANY.

11 (2) In the event of cancellation or default on the per-  
12 formance of the contract by the debtor before its successful com-  
13 pletion, the licensee ~~or person exempt pursuant to section 4(2)~~  
14 ~~or (4)~~ may collect \$25.00 in addition to fees previously  
15 received. ~~an amount equal to \$25.00.~~ This ~~charge~~ \$25.00 FEE  
16 does not apply to THE total payment ~~of~~ UNDER the contract.  
17 ~~before the term of the contract expires.~~

18 (3) A contract ~~shall not be~~ IS NOT effective until a  
19 debtor has made a payment to the licensee for distribution to  
20 ~~his~~ THE DEBTOR'S creditors.

21 (4) ~~It shall be deemed a cancellation on behalf of the~~  
22 ~~debtor if the debtor fails to make payments for 60 days, or 4~~  
23 ~~consecutive payments are missed, whichever is the shorter~~  
24 ~~period. In the event of extraordinary circumstances, the debtor~~  
25 ~~may file with the licensee a letter of continuation of the con-~~  
26 ~~tract for a specific period, which shall maintain the contract in~~  
27 ~~effect, even if more than 4 consecutive payments are missed or 60~~

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1 ~~days elapsed without payment. During this period the licensee~~  
2 ~~may not accrue or assess fees or other charges. A letter of con-~~  
3 ~~tinuation may not be filed with the licensee at the beginning of~~  
4 ~~a contract. The contract between the licensee and the debtor~~  
5 ~~shall clearly state the debtor's right to file a letter of con-~~  
6 ~~tinuation of the contract under this subsection. IF A DEBTOR~~  
7 ~~FAILS TO MAKE A PAYMENT TO A LICENSEE WITHIN 60 DAYS AFTER THE~~  
8 ~~DATE A PAYMENT WAS DUE UNDER A CONTRACT OR FAILS TO MAKE 4 CON-~~  
9 ~~SECUTIVE PAYMENTS THAT WERE DUE UNDER THE CONTRACT, THE CONTRACT~~  
10 ~~IS CONSIDERED CANCELED BY THE DEBTOR. A DEBTOR MAY FILE A LETTER~~  
11 ~~OF CONTINUATION OF THE CONTRACT EVEN IF THE DEBTOR DID NOT MAKE A~~  
12 ~~PAYMENT WITHIN 60 DAYS AFTER A PAYMENT WAS DUE OR FAILED TO MAKE~~  
13 ~~4 CONSECUTIVE PAYMENTS THAT WERE DUE UNDER THE CONTRACT. IF A~~  
14 ~~LETTER OF CONTINUATION IS FILED, THE CONTRACT REMAINS IN EFFECT.~~  
15 ~~A CONTRACT BETWEEN A LICENSEE AND A DEBTOR SHALL CLEARLY PROVIDE~~  
16 ~~FOR A LETTER OF CONTINUATION BY A DEBTOR. A LETTER OF CONTINUA-~~  
17 ~~TION MAY NOT BE FILED WITH A LICENSEE AT THE BEGINNING OF A~~  
18 ~~CONTRACT.~~

19 (5) ~~If a licensee contracts for, receives, or makes a~~  
20 ~~charge in excess of the maximum permitted by this act or rules~~  
21 ~~promulgated under this act, except as the result of an inadver-~~  
22 ~~tent clerical error, the licensee shall return to the debtor the~~  
23 ~~amount of the payments received from the debtor or on his behalf~~  
24 ~~and not distributed to creditors, plus, as a penalty, an amount~~  
25 ~~equal to the amount overcharged. A LICENSEE SHALL NOT CONTRACT~~  
26 ~~FOR, RECEIVE, OR CHARGE A DEBTOR AN AMOUNT GREATER THAN~~  
27 ~~AUTHORIZED BY THIS ACT. A PERSON WHO VIOLATES THIS SUBSECTION~~

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1 EXCEPT AS THE RESULT OF AN INADVERTENT CLERICAL ERROR OR COMPUTER  
2 ERROR, SHALL RETURN TO THE DEBTOR THE AMOUNT OF THE PAYMENTS  
3 RECEIVED FROM OR ON BEHALF OF THE DEBTOR AND NOT DISTRIBUTED TO  
CREDITORS, AND, AS A PENALTY, AN AMOUNT EQUAL TO THE AMOUNT  
OVERCHARGED.  
4 (6) A LICENSEE OR A PERSON AUTHORIZED BY AND ON BEHALF OF A  
5 LICENSEE MAY CHARGE A REASONABLE FEE FOR PROVIDING ADVICE OR  
6 MATERIALS OR MAKING A REFERRAL ABOUT DEBT MANAGEMENT. BEFORE A  
LICENSEE OR A PERSON AUTHORIZED BY AND ON BEHALF OF A LICENSEE  
CHARGES A FEE UNDER THIS SECTION, THE LICENSEE SHALL FILE WITH THE  
BUREAU A PLAN SETTING OUT THE TYPE OF ADVICE AND KIND OF MATERIALS  
OR REFERRALS TO BE PROVIDED, AND THE AMOUNT OF FEES TO BE CHARGED.  
7 Enacting section 1. Section 27 of the debt management act,  
8 1975 PA 148, MCL 451.437, is repealed.