

Businesses; business corporations; debt management act; revise.

BUSINESSES: Business corporations; OCCUPATIONS: Business
licensing and regulation; BUSINESSES: Partnerships; BUSINESSES:
Limited liability; BUSINESSES: Other

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), (2), (3),
20 (4), OR (5) or SECTION 8, a licensee includes a person exempted
21 pursuant to section 4(2) 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.

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~~

~~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, ITS PARTNERS.

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
19 450.4102.

20 (v) IF THE APPLICANT IS ANY OTHER LEGAL ENTITY, ITS 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.

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 PRO-
21 VIDE FOR AN APPROPRIATE DEPOSIT OF CASH OR SECURITIES OR THE
22 ASSIGNMENT OF THE COVERAGE OF OTHER SURETY BONDS IF THE DIRECTOR
23 IS SATISFIED THAT COMPARABLE OR MORE EXTENSIVE COVERAGE RESULTS.

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

1 (5) AN APPLICANT SHALL INCLUDE WITH THE APPLICATION BOTH OF
2 THE FOLLOWING:

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

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

7 (6) SERVICE OF PROCESS UPON THE DIRECTOR SHALL BE CONSIDERED
8 SERVICE UPON AN APPLICANT OR LICENSEE, INCLUDING AN APPLICANT WHO
9 COMPLIES WITH OR FAILS TO COMPLY WITH SUBSECTION (2)(D).

10 (7) ~~(2) A licensee shall submit for approval concurrently~~
11 ~~with this application a blank copy of the form of contract to be~~
12 ~~used between the debtor and the licensee, the budget analysis~~
13 ~~form, and the creditor's agreement form that shall be used and~~
14 ~~shall submit to the bureau for approval all changes and amend-~~
15 ~~ments thereto. A LICENSEE SHALL NOT USE A contract FORM or OTHER~~
16 ~~form may not be used without the BUREAU'S approval. of the~~
17 ~~bureau. A LICENSEE SHALL SUBMIT ANY CHANGE IN A FORM TO THE~~
18 BUREAU.

19 (8) ~~(3) The~~ UNLESS SURRENDERED, REVOKED, OR SUSPENDED, A
20 license issued under this act ~~shall expire~~ EXPIRES on December
21 31 ~~, following its issuance unless sooner surrendered, revoked,~~
22 ~~or suspended, but may be renewed as provided in this act~~ OF THE
23 YEAR FOR WHICH IT IS ISSUED. A LICENSEE MAY RENEW A LICENSE
24 BEFORE THE EXPIRATION DATE AS PROVIDED UNDER THIS ACT.

25 ~~(4) The application shall be accompanied by an appointment~~
26 ~~of the director as agent of the applicant for service of process~~
27 ~~in this state. Service upon the director shall be sufficient~~

1 ~~service upon any licensee under the act, if the person seeking~~
2 ~~service upon the licensee shall certify to the director that a~~
3 ~~diligent attempt was made to affect personal service upon the~~
4 ~~licensee and that this effort was unavailing.~~

5 (9) ~~(5)~~ A licensee shall ~~make~~ CREATE, maintain, and pre-
6 serve accurate and complete books and records relating to ~~his~~
7 THE LICENSEE'S business. ~~These~~ THE books and records shall be
8 ~~kept current~~ MAINTAINED according to generally accepted
9 accounting standards and procedures. A licensee or an applicant
10 ~~for a license~~ shall ~~furnish written notice to~~ NOTIFY the
11 bureau ~~specifying~~ IN WRITING OF the address ~~of the place~~
12 where ~~those~~ THE books and records are ~~to be~~ kept. ~~A change~~
13 ~~of~~ IF A LICENSEE CHANGES THE location of ~~these~~ THE BOOKS AND
14 records, ~~shall be reported promptly to~~ THE LICENSEE SHALL
15 NOTIFY the bureau IN WRITING WITHIN 10 BUSINESS DAYS AFTER THE
16 CHANGE. The director may prescribe by rule or order the form and
17 contents of books and records relating to a licensee's ~~debt~~
18 ~~management~~ business.

19 (10) ~~(6)~~ ~~Financial statements shall be filed~~ AN APPLICANT
20 SHALL FILE A FINANCIAL STATEMENT with an application for A debt
21 management license. The director may require THAT THE financial
22 ~~statements~~ STATEMENT BE certified by an independent certified
23 public accountant.

24 (11) IF A LICENSEE IS A CORPORATION, THE DIRECTOR SHALL NOT
25 REQUIRE THAT THE CORPORATION PROVIDE INFORMATION CONCERNING A
26 MEMBER OF THE BOARD OF DIRECTORS OF THAT CORPORATION IF THAT
27 MEMBER DOES NOT RECEIVE A SALARY, STOCK DIVIDEND, OR OTHER

1 FINANCIAL BENEFIT FROM THAT CORPORATION OTHER THAN REIMBURSEMENT
2 OF THE ACTUAL EXPENSES INCURRED IN CARRYING OUT THE DUTIES OF A
3 DIRECTOR OF THAT CORPORATION.

4 Sec. 6. (1) ~~Upon the filing of the application and payment~~
5 ~~of the fees and approval of the bond, the department shall inves-~~
6 ~~tigate the facts and shall issue a license to an applicant if it~~
7 ~~finds that the financial responsibility, experience, character,~~
8 ~~and general fitness of the applicant and of the members thereof,~~
9 ~~if the applicant is a partnership or an association, and of the~~
10 ~~officers and directors if the applicant is a corporation, are~~
11 ~~such as to command the confidence of the community to warrant~~
12 ~~belief that the business will be operated fairly and honestly~~
13 ~~within the provisions of this act.~~ UPON RECEIVING THE APPLICA-
14 TION AND FEES AND APPROVING THE BOND, THE DEPARTMENT SHALL INVES-
15 TIGATE THE APPLICANT'S RESPONSIBILITY, EXPERIENCE, CHARACTER, AND
16 GENERAL FITNESS. IF THE RESULT OF THE INVESTIGATION WARRANTS A
17 BELIEF THAT THE BUSINESS WILL BE OPERATED FAIRLY AND HONESTLY
18 WITHIN THE PROVISIONS OF THIS ACT, THE DEPARTMENT SHALL ISSUE A
19 LICENSE. THE INVESTIGATION OF THE APPLICANT SHALL AT LEAST
20 INCLUDE THE FOLLOWING AS APPLICABLE:

21 (A) IF THE APPLICANT IS A CORPORATION, ITS OFFICERS AND
22 DIRECTORS.

23 (B) IF THE APPLICANT IS A PARTNERSHIP, ITS PARTNERS.

24 (C) IF THE APPLICANT IS AN ASSOCIATION, ITS OFFICERS.

25 (D) IF THE APPLICANT IS A LIMITED LIABILITY COMPANY, ITS
26 MANAGER OR MANAGERS AS THOSE TERMS ARE DEFINED IN SECTION 102 OF

1 THE MICHIGAN LIMITED LIABILITY COMPANY ACT, 1993 PA 23, MCL
2 450.4102.

3 (E) IF THE APPLICANT IS ANY OTHER LEGAL ENTITY, ITS MANAGER
4 OR OTHER PERSON DESIGNATED TO CONTROL THE OPERATION OF THAT LEGAL
5 ENTITY.

6 (2) A license shall not be issued if THE INVESTIGATION
7 REVEALS 1 OR MORE OF THE FOLLOWING:

8 (a) ~~An~~ THAT AN individual ~~applicant, or any of the~~
9 ~~applicant's members if the applicant is a partnership or associa-~~
10 ~~tion, or any of the applicant's officers or directors if the~~
11 ~~applicant is a corporation~~ INVESTIGATED UNDER SUBSECTION (1)
12 COMMITTED ANY OF THE FOLLOWING:

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

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

19 (iii) Had a license to engage in the business of debt man-
20 agement revoked or suspended for any reason other than failure to
21 pay 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 his OR HER discretion, waive this restric-
25 tion if provided with evidence of justifiable cause for the bank-
26 ruptcy, 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 ~~which~~ THAT is a partnership, corporation,
4 ~~or~~ LIMITED LIABILITY COMPANY, association, OR OTHER LEGAL
5 ENTITY REQUIRED BY STATUTE TO OBTAIN AUTHORITY TO DO BUSINESS IN
6 THIS STATE has not been granted authority to do business in this
7 state.

8 (d) The applicant is an employee or owner of a collection
9 agency as defined in ~~Act No. 361 of the Public Acts of 1974,~~
10 ~~being sections 445.211 to 445.245 of the Michigan Compiled Laws~~
11 SECTION 901 OF THE OCCUPATIONAL CODE, 1980 PA 299, MCL 339.901,
12 or process serving business or in any manner is affiliated with a
13 collection agency or process serving business. The director may,
14 in his OR HER discretion, waive this restriction on a showing of
15 sufficient safeguards in the operation of the collection agency.

16 (3) An individual applicant ~~,~~ OR AN office manager ~~,~~ or
17 counselor OF A DEBT MANAGEMENT COMPANY shall pass an examination
18 within the first ~~180~~ 120 days ~~of~~ AFTER employment. THE EXAMI-
19 NATION SHALL BE administered by the director or his OR HER
20 designee. ~~,~~ ~~which~~ THE examination may be oral or written, or
21 ~~partly oral and partly written~~ BOTH, and shall be practical in
22 nature and sufficiently thorough to ascertain the applicant's
23 fitness. ~~Questions~~ THE EXAMINATION MAY INCLUDE QUESTIONS on
24 bookkeeping, credit adjusting, business ethics, agency, con-
25 tracts, debtor and creditor relationships, trust funds, and the
26 provisions of this act and rules promulgated ~~thereunder may be~~
27 ~~included in the examination~~ UNDER THIS ACT. The director may

1 charge an examination fee of \$25.00. ~~for administering this~~
2 ~~examination.~~ A PERSON SHALL NOT TAKE THE EXAMINATION MORE THAN
3 TWICE WITHIN A 12-MONTH PERIOD.

4 Sec. 8. ~~A licensee shall before~~ BEFORE December 1 of each
5 year, A LICENSEE SHALL make application to the department for
6 renewal of its license. The application shall be on the form
7 prescribed by the department and shall be accompanied by a fee of
8 \$50.00 for each office together with a bond IN THE SAME MANNER as
9 ~~in the case of~~ an original application. The application shall
10 cover each ~~branch~~ office ~~which~~ WITHIN THIS STATE THAT is
11 under the ownership and control of the applying entity.
12 Financial statements shall be filed with THE application for
13 renewal of ~~debt management licenses~~ A LICENSE. The director
14 may require THAT THE financial statements BE certified by an
15 independent certified public accountant.

16 Sec. 13. (1) ~~A licensee shall not charge or receive a fee~~
17 ~~until the licensee has the consent of at least 51% in number and~~
18 ~~dollar amount of all the creditors of the debtor, or until 51% in~~
19 ~~number and dollar amount of creditors have accepted a payment.~~
20 UPON ESTABLISHING A DEBT MANAGEMENT PLAN FOR A CLIENT, A LICENSEE
21 MAY CHARGE AND RECEIVE A FEE. HOWEVER, UNLESS 51% OR MORE IN
22 NUMBER AND DOLLAR AMOUNT OF ALL THE DEBTOR'S CREDITORS CONSENT TO
23 THE DEBT MANAGEMENT PROGRAM, THE FEE SHALL BE RETURNED TO THE
24 CLIENT BEFORE CLOSING THE ACCOUNT.

25 (2) ~~Consents~~ CONSENT FROM A CREDITOR shall be recorded on
26 a separate ~~format~~ FORM, approved by the director. ~~and~~ THE
27 FORM shall contain a list of ALL the creditors, the manner in

1 which consent was sought, the date of each contact, the NAME OF
2 THE person contacted, the response obtained, any revised or spe-
3 cial conditions or arrangements ~~which~~ THAT condition their con-
4 sent, and the date ~~at~~ ON which the required ~~consents were~~
5 CONSENT WAS secured. The ~~format~~ FORM shall contain other
6 information THAT the director may PRESCRIBE by rule or order.
7 ~~prescribe.~~

8 (3) ~~Consent may be sought by mail and, in the case of writ-~~
9 ~~ten notice to a creditor without response, implied consent to the~~
10 ~~proposed payments may be presumed 14 calendar days after mailing~~
11 ~~the notice. In the case of payment to a creditor acceptance may~~
12 ~~be presumed 7 calendar days after mailing the check.~~ THE CONSENT
13 OF A CREDITOR MAY BE SOUGHT BY SENDING A NOTICE OF A DEBT MANAGE-
14 MENT PLAN TO A CREDITOR BY AN APPROPRIATE MEANS INCLUDING BY
15 TELEPHONE, FACSIMILE, ELECTRONIC MAIL, OR FIRST-CLASS MAIL. IF
16 THE CREDITOR DOES NOT RESPOND WITHIN 14 DAYS AFTER THE MAILING OF
17 THE NOTICE, IT MAY BE PRESUMED THAT THE CREDITOR HAS GIVEN
18 CONSENT.

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

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

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

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

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

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

10 (e) ~~Disclose the~~ THE name and address of the licensee and
11 of the debtor.

12 (f) ~~Contain such other and further~~ OTHER provisions or
13 disclosures ~~as~~ THAT the director ~~shall determine~~ DETERMINES
14 are necessary for the protection of the debtor and the proper
15 conduct of business by ~~the~~ A licensee.

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

26 Sec. 15. (1) Payments received by a licensee from or on
27 behalf of a debtor for the benefit of ~~creditors~~ A CREDITOR

1 shall be held in trust in a separate bank account maintained for
2 the benefit of ~~debtors~~ THE DEBTOR. ~~The licensee shall not~~
3 ~~commingle a payment with his own property or funds, but shall~~
4 ~~maintain a separate trust account and deposit in that account~~
5 ~~payments received from a debtor. However, the~~ A licensee may
6 deposit ~~a specified amount of~~ its own ~~funds~~ MONEY in the sep-
7 arate trust account ~~upon approval of the director~~ IF AT ALL
8 TIMES THE BALANCE IN THE TRUST ACCOUNT IS GREATER THAN THE SUM OF
9 THE ESCROW BALANCES OF EACH DEBTOR'S ACCOUNT. Disbursements
10 whether to the debtor or to the creditors of the debtor ~~,~~ shall
11 be made from the trust account. ~~Payments~~ A PAYMENT from a
12 debtor or on behalf of a debtor shall be deposited in the account
13 not later than 2 business days after receipt ~~thereof~~ OF THE
14 PAYMENT. A SWEEP ARRANGEMENT MAY BE UTILIZED IF THE ACCOUNT IS
15 INSURED FOR 100% OR MORE OF THE BALANCE IN THE ACCOUNT.

16 (2) The trust account shall be reconciled not less than once
17 a month. The reconciliation shall ~~consist of ascertaining~~
18 ASCERTAIN the actual cash balance in the account and ~~comparing~~
19 COMPARE it with the sum of the escrow balances in each debtor's
20 account. ~~This shall be done not more than 45 days after receipt~~
21 ~~of the monthly bank statement and shall be prepared on a form~~
22 ~~approved by the director and shall be kept as a permanent record~~
23 ~~of the licensee.~~ THE RECONCILIATION MAY BE DONE ELECTRONICALLY
24 OR BY ANY OTHER APPROPRIATE METHOD AND SHALL BE DONE NOT MORE
25 THAN 45 BUSINESS DAYS AFTER RECEIPT OF THE BANK STATEMENT. AN
26 ELECTRONIC OR OTHER APPROPRIATE NOTATION OF THE RECONCILIATION

1 SHALL BE KEPT AS A PERMANENT RECORD OF THE LICENSEE AND SHALL BE
2 CONSIDERED AS IN COMPLIANCE WITH THIS SECTION.

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

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

15 Sec. 16. A licensee ~~or exempted person~~ shall DO ALL OF
16 THE FOLLOWING:

17 (a) ~~Make, keep, and preserve for 6 years the accounts, cor-~~
18 ~~respondence, memoranda, papers, books, and other records and make~~
19 ~~the reports that the department by rule prescribes as necessary~~
20 ~~or appropriate in the public interest or for the protection of~~
21 ~~debtors and creditors. The accounts, correspondence, memoranda,~~
22 ~~papers, books, and other records are subject at any time to rea-~~
23 ~~sonable periodic, special, or other examinations by examiners or~~
24 ~~other representatives of the department as the director deems~~
25 ~~necessary or appropriate in the public interest or for the pro-~~
26 ~~tection of the public.~~ CREATE AND MAINTAIN RECORDS, IN A MANNER
27 APPROVED BY THE DEPARTMENT, WHICH SHALL ALLOW FOR ELECTRONIC,

1 PHOTOCOPY, OR COMPUTERIZED METHODS, OF THE ACCOUNTS,
2 CORRESPONDENCE, MEMORANDA, PAPERS, BOOKS, AND OTHER RECORDS OF
3 THE DEBT MANAGEMENT BUSINESS. THE RECORDS CREATED UNDER THIS
4 SUBDIVISION SHALL BE PRESERVED FOR AT LEAST 6 YEARS AFTER THEY
5 ARE CREATED.

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

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

16 (d) ~~Provide a debtor with a written statement covering the~~
17 ~~last 12 months activity within 5 business days of a request for~~
18 ~~the statement or with a verbal accounting upon demand. The writ-~~
19 ~~ten statement or verbal accounting shall indicate the total~~
20 ~~amount received from or on behalf of the debtor, the total amount~~
21 ~~paid to each individual creditor, the total amount of the charges~~
22 ~~deducted from payments, and the amount held in reserve.~~ UPON
23 CONTRACTING WITH A DEBTOR, GIVE A COPY OF THE CONTRACT TO THE
24 DEBTOR.

25 (e) ~~Not more than 120 days after the date the contract is~~
26 ~~entered into, give the debtor a written statement which indicates~~
27 ~~the total amount received from or on behalf of the debtor, the~~

~~1 total amount paid to each individual creditor, the total amount~~
~~2 of the charges deducted from payments, and any amount held in~~
~~3 reserve, a copy of this statement shall be retained in the~~
~~4 debtor's file. The administrator may waive this requirement upon~~
~~5 a showing of an acceptable alternative notice.~~ UNLESS THE
6 DEPARTMENT ALLOWS AN ACCEPTABLE ALTERNATIVE METHOD, DELIVER A
7 RECEIPT TO A DEBTOR UPON RECEIVING CASH OR, WITHIN 5 DAYS AFTER
8 RECEIVING A PAYMENT FROM A DEBTOR OR, AT LEAST QUARTERLY BEGIN-
9 NING WITH THE FIRST QUARTER AFTER CONTRACTING WITH A DEBTOR,
10 DELIVER A STATEMENT THAT INCLUDES THE DATES AND AMOUNTS RECEIVED
11 AND DISBURSED ON BEHALF OF THE DEBTOR.

12 (F) WITHIN 5 BUSINESS DAYS AFTER A REQUEST FROM A DEBTOR,
13 PROVIDE A WRITTEN STATEMENT THAT INCLUDES ALL OF THE FOLLOWING:

14 (i) ALL TRANSACTIONS CONCERNING THE MONEY RECEIVED FROM OR
15 ON BEHALF OF THE DEBTOR.

16 (ii) THE TOTAL AMOUNT PAID TO EACH CREDITOR.

17 (iii) THE TOTAL AMOUNT OF CHARGES DEDUCTED FROM THE PAYMENTS
18 RECEIVED.

19 (iv) THE AMOUNT HELD IN RESERVE.

20 (G) UNLESS AN ACCEPTABLE ALTERNATIVE METHOD IS APPROVED BY
21 THE DEPARTMENT, NOT MORE THAN 120 DAYS AFTER CONTRACTING WITH A
22 DEBTOR, PROVIDE A WRITTEN STATEMENT TO THE DEBTOR THAT INCLUDES
23 ALL OF THE FOLLOWING:

24 (i) THE TOTAL AMOUNT RECEIVED FROM AND ON BEHALF OF THE
25 DEBTOR.

26 (ii) THE TOTAL AMOUNT PAID TO EACH CREDITOR.

1 (iii) THE TOTAL AMOUNT DEDUCTED FROM THE PAYMENTS RECEIVED.
2 (iv) THE AMOUNT HELD IN RESERVE.
3 (H) AT LEAST ANNUALLY, VERIFY OR CAUSE THE VERIFICATION OF
4 PAYMENTS TO SELECTED CREDITOR ACCOUNTS AND DO OR DESIGNATE 1 OR
5 MORE PERSONS TO DO ALL OF THE FOLLOWING:
6 (i) REVIEW EACH DEBTOR'S ACCOUNT FILE.
7 (ii) REVIEW CHECKS PAID BY THE LICENSEE.
8 (iii) REVIEW PROCEDURES USED BY THE LICENSEE FOR PROCESSING
9 CHECKS AND HANDLING CASH.
10 (iv) REVIEW THE COMPLAINT FILE MAINTAINED BY THE LICENSEE.
11 (v) VERIFY PAYMENTS TO SELECTED CREDITOR ACCOUNTS.
12 (vi) REVIEW SELECTED COUNSELOR RECORDS AND WORK PAPERS.
13 Sec. 18. (1) ~~By contract a~~ A licensee ~~or person exempt~~
14 ~~pursuant to section 4(2) or (4)~~ may charge a reasonable fee
15 ~~for~~ UNDER A debt management services CONTRACT. ~~The fees and~~
16 ~~charges of the licensee with respect to a debtor's account~~ A FEE
17 shall not exceed 15% of the amount of the debt to be liquidated
18 during the express term of the contract. The licensee ~~or person~~
19 ~~exempt pursuant to section 4(2) or (4)~~ may require THE DEBTOR TO
20 MAKE an initial payment ~~by the debtor~~ of ~~an amount~~ not more
21 than \$25.00, which is part of the total ~~fees and charges~~ FEE
22 stated in the contract. ~~This amount shall be deducted from~~
23 ~~total fees and charges in determining the monthly amortizable~~
24 ~~amount for subsequent fees earned.~~ THE INITIAL PAYMENT SHALL BE
25 DEDUCTED FROM THE AMOUNT OF A SUBSEQUENT FEE THAT IS AMORTIZED,
26 IF ANY.

1 (2) In the event of cancellation or default on the
2 performance of the contract by the debtor before its successful
3 completion, the licensee ~~or person exempt pursuant to section~~
4 ~~4(2) or (4)~~ may collect \$25.00 in addition to fees previously
5 received. ~~an amount equal to \$25.00.~~ This ~~charge~~ \$25.00 FEE
6 does not apply to THE total payment ~~of~~ UNDER the contract.
7 ~~before the term of the contract expires.~~

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

11 (4) ~~It shall be deemed a cancellation on behalf of the~~
12 ~~debtor if the debtor fails to make payments for 60 days, or 4~~
13 ~~consecutive payments are missed, whichever is the shorter~~
14 ~~period. In the event of extraordinary circumstances, the debtor~~
15 ~~may file with the licensee a letter of continuation of the con-~~
16 ~~tract for a specific period, which shall maintain the contract in~~
17 ~~effect, even if more than 4 consecutive payments are missed or 60~~
18 ~~days elapsed without payment. During this period the licensee~~
19 ~~may not accrue or assess fees or other charges. A letter of con-~~
20 ~~tinuation may not be filed with the licensee at the beginning of~~
21 ~~a contract. The contract between the licensee and the debtor~~
22 ~~shall clearly state the debtor's right to file a letter of con-~~
23 ~~tinuation of the contract under this subsection.~~ IF A DEBTOR
24 FAILS TO MAKE A PAYMENT TO A LICENSEE WITHIN 60 DAYS AFTER THE
25 DATE A PAYMENT WAS DUE UNDER A CONTRACT OR FAILS TO MAKE 4 CON-
26 SECUTIVE PAYMENTS THAT WERE DUE UNDER THE CONTRACT, THE CONTRACT
27 IS CONSIDERED CANCELED BY THE DEBTOR. A DEBTOR MAY FILE A LETTER

1 OF CONTINUATION OF THE CONTRACT EVEN IF THE DEBTOR DID NOT MAKE A
2 PAYMENT WITHIN 60 DAYS AFTER A PAYMENT WAS DUE OR FAILED TO MAKE
3 4 CONSECUTIVE PAYMENTS THAT WERE DUE UNDER THE CONTRACT. IF A
4 LETTER OF CONTINUATION IS FILED, THE CONTRACT REMAINS IN EFFECT.
5 A CONTRACT BETWEEN A LICENSEE AND A DEBTOR SHALL CLEARLY ALLOW
6 FOR A LETTER OF CONTINUATION BY A DEBTOR. A LETTER OF CONTINUA-
7 TION MAY NOT BE FILED WITH A LICENSEE AT THE BEGINNING OF A
8 CONTRACT.

9 (5) ~~If a licensee contracts for, receives, or makes a~~
10 ~~charge in excess of the maximum permitted by this act or rules~~
11 ~~promulgated under this act, except as the result of an inadver-~~
12 ~~tent clerical error, the licensee shall return to the debtor the~~
13 ~~amount of the payments received from the debtor or on his behalf~~
14 ~~and not distributed to creditors, plus, as a penalty, an amount~~
15 ~~equal to the amount overcharged.~~ A LICENSEE SHALL NOT CONTRACT
16 FOR, RECEIVE, OR CHARGE A DEBTOR AN AMOUNT GREATER THAN AUTHO-
17 RIZED BY THIS ACT. A PERSON WHO VIOLATES THIS SUBSECTION, EXCEPT
18 AS THE RESULT OF AN INADVERTENT CLERICAL ERROR OR COMPUTER ERROR,
19 SHALL RETURN TO THE DEBTOR THE AMOUNT OF THE PAYMENTS RECEIVED
20 FROM OR ON BEHALF OF THE DEBTOR AND NOT DISTRIBUTED TO CREDITORS,
21 AND, AS A PENALTY, AN AMOUNT EQUAL TO THE AMOUNT OVERCHARGED.

22 (6) A LICENSEE OR A PERSON AUTHORIZED BY AND ON BEHALF OF A
23 LICENSEE MAY CHARGE A REASONABLE FEE FOR PROVIDING ADVICE OR
24 MATERIALS OR MAKING A REFERRAL ABOUT DEBT MANAGEMENT. BEFORE A
25 LICENSEE OR A PERSON AUTHORIZED BY AND ON BEHALF OF A LICENSEE
26 CHARGES A FEE UNDER THIS SECTION, THE LICENSEE SHALL FILE WITH
27 THE BUREAU A PLAN SETTING OUT THE TYPE OF ADVICE AND KIND OF

1 MATERIALS OR REFERRALS TO BE PROVIDED, AND THE AMOUNT OF FEES TO
2 BE CHARGED.