

SENATE BILL No. 1295

June 7, 2006, Introduced by Senator THOMAS and referred to the Committee on Banking and Financial Institutions.

A bill to amend 1975 PA 148, entitled
"Debt management act,"
by amending sections 2, 4, 5, 6, 8, 12, 13, 14, 16, 18, and 19 (MCL
451.412, 451.414, 451.415, 451.416, 451.418, 451.422, 451.423,
451.424, 451.426, 451.428, and 451.429), as amended by 2000 PA 255.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 2. As used in this act:

2 (A) "BUDGET ANALYSIS" MEANS A WRITTEN, COMPREHENSIVE
3 ASSESSMENT OF A DEBTOR'S FINANCIAL CONDITION THAT INCLUDES THE
4 DEBTOR'S INCOME, EXPENSES, DEBT, HOUSING COSTS, CREDITORS, AND
5 OTHER FINANCIAL INFORMATION.

6 (B) ~~—(a)—~~ "Business of debt management" OR "DEBT MANAGEMENT
7 SERVICES BUSINESS" means providing or offering to provide debt

1 management **SERVICES** to 1 or more residents of this state.

2 (C) ~~—(b)—~~ "Counselor" means an employee or agent of a licensee
3 who engages in counseling and budget analysis functions and
4 scheduling of debtor's funds.

5 (D) ~~—(e)—~~ "Creditor" means a person for whose benefit money is
6 being collected and disbursed by a licensee. A licensee is not a
7 creditor for purposes of this act.

8 (E) ~~—(d)—~~ "Debt management" means ~~the planning and management~~
9 ~~of the financial affairs of a debtor and the receipt of money from~~
10 ~~the debtor for distribution to a creditor in payment or partial~~
11 ~~payment of the debtor's obligations.~~ PROVIDING 1 OR MORE DEBT
12 MANAGEMENT SERVICES.

13 (F) "DEBT MANAGEMENT SERVICES" MEANS ANY OF THE FOLLOWING:

14 (i) RECEIVING MONEY FROM A DEBTOR FOR THE PURPOSE OF
15 DISTRIBUTING 1 OR MORE PAYMENTS TO OR AMONG 1 OR MORE CREDITORS OF
16 THE DEBTOR IN FULL OR PARTIAL PAYMENT OF THE DEBTOR'S OBLIGATIONS.

17 (ii) ARRANGING OR ASSISTING A DEBTOR TO ARRANGE FOR THE
18 DISTRIBUTION OF 1 OR MORE PAYMENTS TO OR AMONG 1 OR MORE CREDITORS
19 OF THE DEBTOR IN FULL OR PARTIAL PAYMENT OF THE DEBTOR'S
20 OBLIGATIONS.

21 (iii) EXERCISING CONTROL, DIRECTLY OR INDIRECTLY, OR ARRANGING
22 FOR THE EXERCISE OF CONTROL OVER FUNDS OF A DEBTOR FOR THE PURPOSE
23 OF DISTRIBUTING PAYMENTS TO OR AMONG 1 OR MORE CREDITORS OF THE
24 DEBTOR IN FULL OR PARTIAL PAYMENT OF THE DEBTOR'S OBLIGATIONS.

25 (iv) ACTING OR OFFERING TO ACT AS AN INTERMEDIARY BETWEEN A
26 DEBTOR AND 1 OR MORE CREDITORS OF THE DEBTOR FOR THE PURPOSE OF
27 ADJUSTING, SETTLING, DISCHARGING, REACHING A COMPROMISE ON, OR

1 OTHERWISE ALTERING THE TERMS OF PAYMENT OF THE DEBTOR'S
2 OBLIGATIONS.

3 (G) "DEBT MANAGEMENT SERVICES AGREEMENT" MEANS A WRITTEN
4 CONTRACT, PLAN, OR AGREEMENT BETWEEN A COUNSELOR AND A DEBTOR FOR
5 THE PERFORMANCE OF DEBT MANAGEMENT SERVICES.

6 (H) ~~—(e)—~~ "Debtor" means a person ~~from whom money is being~~
7 ~~collected for the benefit of a creditor of the debtor~~ WHO SEEKS
8 DEBT MANAGEMENT SERVICES OR ENTERS INTO A DEBT MANAGEMENT SERVICES
9 AGREEMENT.

10 (I) ~~—(f)—~~ "Department" means the office of financial and
11 insurance services.

12 (J) ~~—(g)—~~ "Director" means the commissioner of the department
13 or his or her authorized representative.

14 (K) ~~—(h)—~~ "Fees and charges of the licensee" means the total
15 amount of money to be charged a debtor by the licensee, including
16 the ~~—\$25.00—~~ \$50.00 initial payment and any charges for advice,
17 materials, or referrals.

18 (L) ~~—(i)—~~ "License" means a written certificate or exemption
19 order issued by the director.

20 (M) ~~—(j)—~~ "Licensee" means a person licensed under this act to
21 perform debt management services and located inside or outside the
22 boundaries of this state.

23 (N) ~~—(k)—~~ "Office" means each location, INCLUDING, BUT NOT
24 LIMITED TO, ANY BRANCH OFFICE OR AFFILIATE LOCATION WHERE A PERSON
25 ENGAGES IN THE BUSINESS OF DEBT MANAGEMENT, IDENTIFIED by street
26 name, building number, city, and state. ~~where a person engages in~~
27 ~~the business of debt management.~~

1 (O) ~~—(I)—~~ "Office manager" means an employee or owner charged
2 with the supervision, oversight, or approval of the functions of
3 budget analysis, counseling, or scheduling.

4 (P) ~~—(m)—~~ "Person" means an individual, corporation,
5 partnership, association, joint stock company, trust where the
6 interests of the beneficiaries are evidenced by a security, limited
7 liability company, or other legal entity.

8 (Q) ~~—(n)—~~ "Sweep arrangement" means an arrangement that
9 provides for a temporary or permanent transfer of funds from 1
10 trust account to another trust account when a predetermined time,
11 account balance, or other condition occurs or is fulfilled.

12 Sec. 4. (1) ~~After January 1, 1976, a~~ A person located
13 ~~within~~ **INSIDE** or outside of the boundaries of this state shall not
14 engage in the business of debt management without first obtaining a
15 license as required in this act. A ~~contract of~~ debt management
16 ~~as defined by this act~~ **SERVICES AGREEMENT** made **WITH A DEBTOR** by a
17 person without a license is null and void.

18 (2) A person who is performing a debt management service and
19 receiving compensation primarily from governmental organizations,
20 governmentally sponsored organizations, charitable trusts, or
21 foundations tax exempt ~~pursuant to~~ **UNDER** section 501(c) of the
22 internal revenue code, ~~of 1986~~ **26 USC 501**, upon a showing of
23 safeguards in the handling of debtor funds, may be granted an
24 exemption from any provision of this act if the **DIRECTOR FINDS THAT**
25 **THE** exemption is ~~found to be~~ in the public interest.

26 Sec. 5. (1) An applicant for a license to engage in the
27 business of debt management shall file an application with the

1 director in writing and under oath that includes all of the
2 following:

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

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

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

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

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

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

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

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

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

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

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

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

25 **(D) TELEPHONE NUMBER, E-MAIL ADDRESS, AND WEBSITE URL OF THE**
26 **APPLICANT.**

27 **(E) THE ADDRESS OF EACH OFFICE IN THIS STATE WHERE THE**

1 APPLICANT WILL PROVIDE DEBT MANAGEMENT SERVICES.

2 (F) IF THE APPLICANT IS A TAX EXEMPT ENTITY UNDER SECTION
3 501(C) OF THE INTERNAL REVENUE CODE, 26 USC 501, EVIDENCE OF THAT
4 STATUS.

5 (G) A DESCRIPTION OF ANY CONSUMER EDUCATION PROGRAM THAT IT
6 PROVIDES TO ITS DEBTORS.

7 (H) A DESCRIPTION OR SAMPLE FORMS OF THE APPLICANT'S BUDGET
8 ANALYSIS AND INITIAL BUDGET PLAN, INCLUDING ANY FORM OR ELECTRONIC
9 MODEL, THAT ARE USED TO EVALUATE THE FINANCIAL CONDITION OF
10 DEBTORS.

11 (I) A COPY OF THE DEBT MANAGEMENT SERVICES AGREEMENT THAT THE
12 APPLICANT WILL USE IN ITS DEBT MANAGEMENT SERVICES BUSINESS.

13 (J) A COPY OF THE CREDIT AGREEMENT FORM THAT THE APPLICANT
14 WILL USE IN ITS DEBT MANAGEMENT SERVICES BUSINESS.

15 (2) ~~Upon~~ WHEN filing the application, the applicant shall do
16 all of the following:

17 (a) Pay to the department ~~a~~ AN INITIAL license fee of
18 ~~\$50.00 for each office~~ \$500.00.

19 (b) Pay to the department an ~~investigation fee of \$50.00~~
20 ADDITIONAL LICENSE FEE OF \$100.00 FOR EACH OFFICE IN THIS STATE.

21 (c) Furnish a surety bond to the people of the state of
22 Michigan. The amount of the surety bond must equal or exceed the
23 total amount of Michigan clients' funds in the applicant's or
24 licensee's trust account at the time of application for license or
25 renewal, as determined by the department, but in no event shall a
26 surety bond be less than \$25,000.00 or be greater than \$100,000.00.
27 The surety bond shall be conditioned upon the faithful accounting

1 of all money collected upon accounts entrusted to a licensee
2 engaged in the business of debt management or the licensee's
3 employees and agents. The surety bond shall be approved by the
4 department. In lieu of a surety bond, the department may by rule
5 provide for an appropriate deposit of cash or securities, a letter
6 of credit, or the assignment of coverage of other bonds if the
7 department is satisfied that comparable or more extensive coverage
8 results.

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

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

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

19 (5) A licensee shall create, maintain, and preserve accurate
20 and complete books and records relating to the licensee's business.
21 ~~The~~ **A LICENSEE SHALL MAINTAIN THE** books and records ~~shall be~~
22 ~~maintained~~ according to generally accepted accounting principles.
23 A licensee or an applicant shall notify the department in writing
24 of the address where the books and records are kept. If a licensee
25 changes the location of the books and records, the licensee shall
26 notify the department in writing within 10 business days after the
27 change. The director may prescribe by rule or order the form and

1 contents of books and records relating to a licensee's business.

2 (6) An applicant shall file a financial statement with an
3 application for a debt management license. The director may require
4 ~~that~~ **AN AUDIT OR REVIEW OF** the financial statement ~~be audited or~~
5 ~~reviewed~~ by an independent certified public accountant.

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

14 Sec. 6. (1) Upon receiving the application and approving the
15 fees and surety bond, the department shall investigate the
16 applicant's responsibility, experience, character, and general
17 fitness. If the result of the investigation warrants a belief that
18 the business will be operated fairly and honestly within the
19 provisions of this act, the department shall issue a license. The
20 investigation of the applicant shall at least include investigation
21 of the following as applicable:

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

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

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

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

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

4 (2) A license shall not be issued if the investigation reveals
5 1 or more of the following:

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

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

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

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

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

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

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

1 been granted authority to do business in this state.

2 (d) The applicant is an employee or owner of a collection
3 agency as defined in section 901 of the occupational code, 1980 PA
4 299, MCL 339.901, or process serving business or in any manner is
5 affiliated with a collection agency or process serving business.
6 The director may, in his or her discretion, waive this restriction
7 on a showing of sufficient safeguards in the operation of the
8 collection agency.

9 (3) An applicant shall pass an examination administered by the
10 director or his or her designee before the director grants a
11 license to the applicant under this act. A counselor shall pass an
12 examination within the first 180 days of employment administered by
13 the director or his or her designee. The examination may be oral or
14 written, or partly oral and partly written, and shall be practical
15 in nature and sufficiently thorough to ascertain the applicant's
16 fitness. Questions on bookkeeping, credit adjusting, business
17 ethics, agency, contracts, debtor and creditor relationships, trust
18 funds, and the provisions of this act and rules promulgated under
19 this act may be included in the examination. The director may
20 charge an examination fee ~~of \$25.00~~ for administering this
21 examination **THAT DOES NOT EXCEED THE ACTUAL COST OF ADMINISTERING**
22 **THIS EXAMINATION.**

23 Sec. 8. (1) Before December 1 of each year, a licensee shall
24 file an application with the department for renewal of its license
25 ~~. The application shall be~~ on the form prescribed by the
26 department. ~~and shall be accompanied by a fee of \$50.00 for each~~
27 ~~office together with~~ **THE APPLICANT SHALL INCLUDE WITH THE**

1 APPLICATION A RENEWAL FEE OF \$250.00, AN ADDITIONAL RENEWAL FEE OF
2 \$100.00 FOR EACH OFFICE IN THIS STATE, AND a surety bond in the
3 same manner as an original application. The application shall
4 ~~cover~~ **INCLUDE** each ~~branch~~ office ~~that is under the ownership~~
5 ~~and control of the applying entity~~ **OF THE LICENSEE IN THIS STATE.**
6 ~~Financial statements shall be filed~~

7 (2) IN ADDITION TO THE REQUIREMENTS OF SUBSECTION (1), A
8 **LICENSEE SHALL FILE FINANCIAL STATEMENTS** with the application for
9 renewal of a license. The director may require ~~that~~ **AN AUDIT OR**
10 **REVIEW OF** the financial statements ~~be audited or reviewed~~ by an
11 independent certified public accountant.

12 Sec. 12. (1) Before a contract is formed between a licensee
13 and a debtor, ~~a thorough and written~~ **THE LICENSEE SHALL COMPILE A**
14 budget analysis ~~shall be compiled and a copy delivered~~ **OF THE**
15 **DEBTOR AND DELIVER A COPY** to the debtor. ~~A licensee shall not~~
16 ~~accept an account unless a written and thorough budget analysis~~
17 ~~indicates that the debtor can reasonably meet the requirements~~
18 ~~required by the budget analysis.~~ The budget analysis shall contain
19 all of the following information about the debtor:

20 (a) Name and address.

21 (b) Marital status and number of dependents.

22 (c) Amount and source of all employment compensation, payments
23 from government programs, child support and alimony payments, and
24 other income.

25 (d) Number of exemptions claimed on the debtor's most recent
26 federal income tax return.

27 (e) Gross income per pay period, type and amount of all

1 payroll deductions, and net income per pay period.

2 (f) Monthly home mortgage or rental payment. If the home
3 mortgage payment does not include an escrow for real estate taxes,
4 the budget analysis shall contain the amount and due dates of the
5 real estate taxes on the property.

6 (g) Type and amount of all other fixed periodic payments.

7 (h) Type and amount of food, clothing, utility, vehicle,
8 insurance, and all other living expenses.

9 (i) List of creditors included in the plan.

10 (j) A description of and amount owed for any outstanding
11 garnishments and judgments.

12 (k) Periodic amount available for payment toward a debt
13 management plan.

14 **(2) A LICENSEE SHALL NOT ACCEPT AN ACCOUNT UNLESS THE BUDGET**
15 **ANALYSIS DESCRIBED IN SUBSECTION (1) INDICATES THAT THE DEBTOR CAN**
16 **REASONABLY MEET THE DEBTOR'S PAYMENT OBLIGATIONS DESCRIBED IN THE**
17 **BUDGET ANALYSIS.**

18 **(3) A LICENSEE THAT IS OR CLAIMS IT IS A TAX EXEMPT ENTITY**
19 **UNDER SECTION 501(C) OF THE INTERNAL REVENUE CODE, 26 USC 501,**
20 **SHALL NOT CHARGE AN APPLICANT A FEE FOR PREPARING A BUDGET ANALYSIS**
21 **DESCRIBED IN SUBSECTION (1).**

22 Sec. 13. (1) Upon establishing a debt management plan for a
23 debtor, a licensee may charge and receive an initial fee of ~~-\$25.00~~
24 **\$50.00**. However, unless 51% or more in number and dollar amount of
25 all the debtor's creditors consent to the debt management program
26 within 45 days of establishing the debt management plan, the
27 **LICENSEE SHALL RETURN THE** fee ~~shall be returned~~ to the debtor and

1 **CLOSE** the debtor's account. ~~closed.~~

2 (2) ~~Consent from a creditor shall be recorded~~ **A LICENSEE**
 3 **SHALL RECORD THE CONSENT OF A CREDITOR TO A DEBT MANAGEMENT PROGRAM**
 4 **DESCRIBED IN SUBSECTION (1)** on a separate form ~~— The form shall~~
 5 ~~contain~~ **THAT CONTAINS** all of the following:

6 (a) A list of all the creditors.

7 (b) The manner in which consent was sought.

8 (c) The date of each contact.

9 (d) The name of the person contacted, if applicable.

10 (e) The response obtained from the person contacted.

11 (f) Any revised or special conditions or arrangements that
 12 condition the consent.

13 (g) The date on which the required consent was secured.

14 (3) ~~The~~ **A LICENSEE MAY SEEK THE** consent of a creditor ~~may~~
 15 ~~be sought~~ **UNDER THIS SECTION** by sending a notice of a debt
 16 management plan to a creditor by an appropriate means including by
 17 telephone, facsimile, electronic mail, or first-class mail. If ~~the~~
 18 **A** creditor does not respond within 14 days after the sending of the
 19 notice, it ~~may be~~ **IS** presumed that the creditor has given
 20 consent.

21 (4) If a payment under the debt management plan is sent to a
 22 creditor, acceptance of the payment or plan ~~may be~~ **IS** presumed 7
 23 days after sending the payment.

24 Sec. 14. (1) A ~~contract~~ **DEBT MANAGEMENT SERVICES AGREEMENT**
 25 between a licensee and debtor shall ~~include~~ **MEET** all of the
 26 following:

27 ~~— (a) Each creditor to whom payments will be made and the amount~~

1 ~~owed each creditor.~~

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

3 ~~—— (c) The beginning and ending dates of the contract.~~

4 ~~—— (d) The number of months and the total principal amount plus~~
5 ~~approximate interest charges required to liquidate in full the~~
6 ~~debts, except mortgage or land contract interest payments,~~
7 ~~described in the contract.~~

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

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

12 (A) BE SIGNED AND DATED BY THE LICENSEE AND DEBTOR.

13 (B) INCLUDE ALL OF THE FOLLOWING IN AT LEAST 12-POINT TYPE:

14 (i) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE DEBTOR.

15 (ii) THE NAME, ADDRESS, TELEPHONE NUMBER, AND LICENSE NUMBER OF
16 THE LICENSEE.

17 (iii) A DESCRIPTION OF THE DEBT MANAGEMENT SERVICES THE LICENSEE
18 WILL PROVIDE TO THE DEBTOR AND ANY FEES THE LICENSEE WILL CHARGE TO
19 THE DEBTOR FOR THE DEBT MANAGEMENT SERVICES.

20 (iv) A DISCLOSURE OF THE EXISTENCE OF THE SURETY BOND REQUIRED
21 UNDER SECTION 5.

22 (v) THE NAME AND ADDRESS OF THE FINANCIAL INSTITUTIONS IN
23 WHICH THE LICENSEE WILL HOLD FUNDS PAID BY THE DEBTOR TO THE
24 LICENSEE FOR DISBURSEMENT TO THE DEBTOR'S CREDITORS.

25 (vi) A NOTICE OF THE RIGHT OF ANY PARTY TO THE DEBT MANAGEMENT
26 SERVICES AGREEMENT TO RESCIND THE DEBT MANAGEMENT SERVICES
27 AGREEMENT BY GIVING WRITTEN NOTICE OF RESCISSION TO THE OTHER

1 PARTY.

2 (vii) A SCHEDULE OF PAYMENTS THAT THE DEBTOR MUST MAKE UNDER
3 THE DEBT MANAGEMENT SERVICES AGREEMENT. THE SCHEDULE SHALL INCLUDE
4 THE AMOUNT OF EACH PAYMENT AND THE DATE ON WHICH EACH PAYMENT IS
5 DUE, AN ITEMIZATION OF THE MAINTENANCE FEES THAT THE LICENSEE WILL
6 RETAIN FROM EACH PAYMENT, AND THE AMOUNT OF MONEY THAT THE LICENSEE
7 WILL PAY TO THE DEBTOR'S CREDITORS FROM EACH PAYMENT.

8 (viii) A LIST OF EACH PARTICIPATING CREDITOR OF THE DEBTOR TO
9 WHICH THE LICENSEE WILL MAKE PAYMENTS UNDER THE DEBT MANAGEMENT
10 SERVICES AGREEMENT. THE LIST SHALL INCLUDE THE AMOUNT OWED TO EACH
11 CREDITOR AND A SCHEDULE OF PAYMENTS THAT THE LICENSEE WILL MAKE TO
12 EACH PARTICIPATING CREDITOR FROM THE DEBTOR'S PAYMENTS THAT
13 INCLUDES THE AMOUNT OF EACH PAYMENT AND THE DATE ON WHICH EACH
14 PAYMENT WILL BE MADE.

15 (ix) A LIST OF CREDITORS THE LICENSEE REASONABLY EXPECTS NOT TO
16 PARTICIPATE IN THE DEBT MANAGEMENT OF THE DEBTOR'S DEBT UNDER THE
17 DEBT MANAGEMENT SERVICES AGREEMENT.

18 (x) A DISCLOSURE THAT THE LICENSEE ALSO MAY RECEIVE
19 COMPENSATION FROM THE DEBTOR'S CREDITORS FOR PROVIDING DEBT
20 MANAGEMENT SERVICES TO THE DEBTOR.

21 (xi) A DISCLOSURE THAT THE LICENSEE MAY NOT REQUIRE A DEBTOR TO
22 PURCHASE FOR A FEE A COUNSELING SESSION, AN EDUCATIONAL PROGRAM, OR
23 MATERIALS AND SUPPLIES AS A CONDITION OF ENTERING INTO A DEBT
24 MANAGEMENT SERVICES AGREEMENT.

25 (xii) A DISCLOSURE THAT THE LICENSEE MAY NOT REQUIRE OR COMPEL
26 A VOLUNTARY CONTRIBUTION FROM A DEBTOR FOR ANY SERVICE PROVIDED BY
27 THE LICENSEE TO THE DEBTOR.

(xiii) A DISCLOSURE THAT EXECUTION OF A DEBT MANAGEMENT SERVICES AGREEMENT MAY IMPACT THE DEBTOR'S CREDIT RATING AND CREDIT SCORES.

(xiv) A DISCLOSURE THAT THE DEBTOR MUST READ AND RECEIVE A COPY OF THE COMPLETE DEBT MANAGEMENT SERVICES AGREEMENT.

(xv) THE FOLLOWING NOTICE:

"THE OFFICE OF FINANCIAL AND INSURANCE SERVICES FOR THE STATE OF MICHIGAN WILL ACCEPT QUESTIONS AND COMPLAINTS FROM MICHIGAN RESIDENTS REGARDING _____ (NAME AND LICENSE NUMBER OF THE DEBT MANAGEMENT SERVICES PROVIDER) AT _____.".

(2) Unless otherwise approved by the department and except for an amount due for 1 or more monthly fees or a closeout fee, 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 **AT LEAST MONTHLY.**

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

(a) Create and maintain records of the accounts, correspondence, memoranda, papers, books, and other records of the debt management **SERVICES** 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) Upon contracting with a debtor **FOR DEBT MANAGEMENT SERVICES**, give a copy of the ~~—contract—~~ **DEBT MANAGEMENT SERVICES**

1 **AGREEMENT** to the debtor.

2 (d) Deliver a receipt to a debtor upon receiving cash from a
3 debtor or within 3 business days after receiving a noncash payment
4 from a debtor, and at least monthly beginning with the first month
5 after contracting with a debtor deliver a statement that includes
6 the dates and amounts received and disbursed on behalf of the
7 debtor.

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

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

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

13 (iii) The total amount of charges deducted from the payments
14 received.

15 (iv) The amount held in reserve.

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

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

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

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

22 (iv) The amount held in reserve.

23 (g) At least annually, verify or cause the verification of
24 payments to selected creditor accounts and do or designate 1 or
25 more persons to do all of the following:

26 (i) Review each debtor's account file.

27 (ii) Review checks paid by the licensee.

1 (iii) Review procedures used by the licensee for processing
2 checks and handling cash.

3 (iv) Review the complaint file maintained by the licensee.

4 (v) Verify payments to selected creditor accounts.

5 (vi) Review selected counselor records and work papers.

6 (h) If a ~~contract with a debtor~~ **DEBT MANAGEMENT SERVICES**
7 **AGREEMENT** is lawfully sold, transferred, or assigned to a licensee
8 from another licensee, furnish to the debtor a written notice of
9 the sale, transfer, or assignment. The notice shall contain the
10 name and address of the licensee and the name of the counselor
11 authorized by the licensee to manage the ~~contract~~ **AGREEMENT**.

12 Sec. 18. (1) A licensee may charge a reasonable fee under a
13 debt management services ~~contract~~ **AGREEMENT**. The fees and charges
14 of the licensee shall not exceed 15% of the amount of the debt to
15 be liquidated during the express term of the ~~contract~~. The
16 **AGREEMENT**. A licensee may require the debtor to make an initial
17 payment of not more than ~~\$25.00, which~~ **\$50.00. THE INITIAL**
18 **PAYMENT** is part of the fees and charges of the licensee ~~— The~~
19 ~~initial payment~~ **AND** may be deducted from the amount of a
20 subsequent fee that is amortized, if any.

21 (2) Except for a cancellation described in subsection (3), for
22 which a licensee may not collect the additional fee described in
23 this subsection, in the event of cancellation or default on the
24 performance of the ~~contract~~ **DEBT MANAGEMENT SERVICES AGREEMENT** by
25 the debtor before its successful completion, the licensee may
26 collect \$25.00 in addition to fees and charges of the licensee
27 previously received. This \$25.00 fee is not subject to the 15%

1 limitation on fees and charges of the licensee in subsection (1).

2 (3) A ~~contract~~ **DEBT MANAGEMENT SERVICES AGREEMENT** is in
3 effect when it is signed by the licensee and the debtor and the
4 debtor has made a payment to the licensee. The debtor has the right
5 to cancel the ~~contract~~ **AGREEMENT** until 12 midnight of the third
6 business day after the first day the ~~contract~~ **AGREEMENT** is in
7 effect by delivering written notice of cancellation to the
8 licensee.

9 (4) If a debtor fails to make a payment to a licensee within
10 60 days after the date a payment is due under a ~~contract~~ **DEBT**
11 **MANAGEMENT SERVICES AGREEMENT**, the ~~contract~~ **AGREEMENT** is
12 considered canceled by the debtor. A debtor may file a letter of
13 continuation of a ~~contract~~ **DEBT MANAGEMENT SERVICES AGREEMENT**
14 even if the debtor did not make a payment within 60 days after a
15 payment was due. All of the following apply to a letter of
16 continuation of a ~~contract~~ **DEBT MANAGEMENT SERVICES AGREEMENT**:

17 (a) A debtor may file only 1 letter of continuation with a
18 licensee for any ~~contract~~ **AGREEMENT**.

19 (b) A letter of continuation must contain a detailed
20 explanation of the reason or reasons for the missed payment or
21 payments.

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

27 (d) ~~A contract~~ **AN AGREEMENT** between a licensee and a debtor

1 shall clearly provide for 1 letter of continuation by a debtor.

2 (e) A debtor may not file a letter of continuation with a
3 licensee at the beginning of ~~a contract~~ **AN AGREEMENT**.

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

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

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

13 (b) Execute a ~~contract or~~ **DEBT MANAGEMENT SERVICES** agreement
14 to be signed by the debtor unless the ~~contract or~~ agreement is
15 fully and completely filled in and finished.

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

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

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

24 (f) ~~Take, concurrent~~ **CONCURRENT** with the signing of ~~the~~
25 ~~contract~~ **A DEBT MANAGEMENT SERVICES AGREEMENT** or as a part of the
26 ~~contract~~ **AGREEMENT** or as part of the application for the ~~contract~~
27 **AGREEMENT, TAKE** a release of an obligation to be performed on the

1 part of the licensee.

2 (g) Offer, pay, or give any cash, fee, gift, bonus, premiums,
3 reward, or other compensation to a person for referring a
4 prospective customer to the licensee. A payment by the licensee for
5 the lawful sale, transfer, or assignment of a ~~contract~~ **DEBT**
6 **MANAGEMENT SERVICES AGREEMENT** to the licensee from another licensee
7 is not subject to this subdivision.

8 (h) Receive any cash, fee, gift, bonus, premium, reward, or
9 other compensation from a person other than the debtor or a person
10 in the debtor's behalf in connection with the licensee's business
11 of debt management, except under a plan approved by order of the
12 department.

13 (i) Disclose the debtors who have contracted with the licensee
14 other than to the director or his or her authorized representative,
15 or disclose the creditors of a debtor to anyone other than the
16 debtor, or the director or his or her authorized representative, or
17 another creditor of the debtor and then only to the extent
18 necessary to secure the cooperation of the creditor in a debt
19 management plan.

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

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

27 (l) Use advertisements containing any of the following

1 representations:

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

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

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

8 (m) Fail to provide to the debtor the full benefit of a
9 compromise of a debt arranged by the licensee with a creditor.

10 (n) In connection with the making of a debt management
11 ~~contract~~ **SERVICES AGREEMENT** or with operation of the debtor's
12 account:

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

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

18 (iii) Engage in any act, practice, or course of business that
19 operates or would operate as a fraud or deceit upon any person.

20 (o) Conduct the business of debt management without a surety
21 bond, or deposit or assignment satisfactory to the department in
22 lieu of a surety bond, as described in section 5(2), in place.