

1 AN ACT concerning debt settlement.

2 **Be it enacted by the People of the State of Illinois,**
3 **represented in the General Assembly:**

4 Section 1. Short title. This Act may be cited as the Debt
5 Settlement Consumer Protection Act.

6 Section 5. Purpose and construction. The purpose of this
7 Act is to protect consumers who enter into agreements with debt
8 settlement providers and to regulate debt settlement
9 providers. This Act shall be construed as a consumer protection
10 law for all purposes. This Act shall be liberally construed to
11 effectuate its purpose.

12 Section 10. Definitions. As used in this Act:

13 "Consumer" means any person who purchases or contracts for
14 the purchase of debt settlement services.

15 "Consumer settlement account" means any account or other
16 means or device in which payments, deposits, or other transfers
17 from a consumer are arranged, held, or transferred by or to a
18 debt settlement provider for the accumulation of the consumer's
19 funds in anticipation of proffering an adjustment or settlement
20 of a debt or obligation of the consumer to a creditor on behalf
21 of the consumer.

22 "Debt settlement provider" means any person or entity

1 engaging in, or holding itself out as engaging in, the business
2 of providing debt settlement service in exchange for any fee or
3 compensation, or any person who solicits for or acts on behalf
4 of any person or entity engaging in, or holding itself out as
5 engaging in, the business of providing debt settlement service
6 in exchange for any fee or compensation. "Debt settlement
7 provider" does not include:

8 (1) attorneys licensed, or otherwise authorized, to
9 practice in Illinois who are engaged in the practice of
10 law;

11 (2) escrow agents, accountants, broker dealers in
12 securities, or investment advisors in securities, when
13 acting in the ordinary practice of their professions and
14 through the entity used in the ordinary practice of their
15 profession;

16 (3) any bank, agent of a bank, operating subsidiary of
17 a bank, affiliate of a bank, trust company, savings and
18 loan association, savings bank, credit union, crop credit
19 association, development credit corporation, industrial
20 development corporation, title insurance company, title
21 insurance agent, independent escrowee or insurance company
22 operating or organized under the laws of a state or the
23 United States, or any other person authorized to make loans
24 under State law while acting in the ordinary practice of
25 that business;

26 (4) any person who performs credit services for his or

1 her employer while receiving a regular salary or wage when
2 the employer is not engaged in the business of offering or
3 providing debt settlement service;

4 (5) a collection agency licensed pursuant to the
5 Collection Agency Act that is collecting a debt on its own
6 behalf or on behalf of a third party;

7 (6) an organization that is described in Section
8 501(c)(3) and subject to Section 501(q) of Title 26 of the
9 United States Code and exempt from tax under Section 501(a)
10 of Title 26 of the United States Code and governed by the
11 Debt Management Service Act;

12 (7) public officers while acting in their official
13 capacities and persons acting under court order;

14 (8) any person while performing services incidental to
15 the dissolution, winding up, or liquidating of a
16 partnership, corporation, or other business enterprise; or

17 (9) persons licensed under the Real Estate License Act
18 of 2000 when acting in the ordinary practice of their
19 profession and not holding themselves out as debt
20 settlement providers.

21 "Debt settlement service" means:

22 (1) offering to provide advice or service, or
23 acting as an intermediary between or on behalf of a
24 consumer and one or more of a consumer's creditors,
25 where the primary purpose of the advice, service, or
26 action is to obtain a settlement, adjustment, or

1 satisfaction of the consumer's unsecured debt to a
2 creditor in an amount less than the full amount of the
3 principal amount of the debt or in an amount less than
4 the current outstanding balance of the debt; or

5 (2) offering to provide services related to or
6 providing services advising, encouraging, assisting,
7 or counseling a consumer to accumulate funds for the
8 primary purpose of proposing or obtaining or seeking to
9 obtain a settlement, adjustment, or satisfaction of
10 the consumer's unsecured debt to a creditor in an
11 amount less than the full amount of the principal
12 amount of the debt or in an amount less than the
13 current outstanding balance of the debt.

14 "Debt settlement service" does not include (A) the
15 services of attorneys licensed, or otherwise
16 authorized, to practice in Illinois who are engaged in
17 the practice of law or (B) debt management service as
18 defined in the Debt Management Service Act.

19 "Enrollment or set up fee" means any fee, obligation, or
20 compensation paid or to be paid by the consumer to a debt
21 settlement provider in consideration of or in connection with
22 establishing a contract or other agreement with a consumer
23 related to the provision of debt settlement service.

24 "Maintenance fee" means any fee, obligation, or
25 compensation paid or to be paid by the consumer on a periodic
26 basis to a debt settlement provider in consideration of

1 maintaining the relationship and services to be provided by a
2 debt settlement provider in accordance with a contract with a
3 consumer related to the provision of debt settlement service.

4 "Principal amount of the debt" means the total amount or
5 outstanding balance owed by a consumer to one or more creditors
6 for a debt that is included in a contract for debt settlement
7 service at the time when the consumer enters into a contract
8 for debt settlement service.

9 "Savings" means the difference between the principal
10 amount of the debt and the amount paid by the debt settlement
11 provider to the creditor or negotiated by the debt settlement
12 provider and paid by the consumer to the creditor pursuant to a
13 settlement negotiated by the debt settlement provider on behalf
14 of the consumer as full and complete satisfaction of the
15 creditor's claim with regard to that debt.

16 "Secretary" means the Secretary of Financial and
17 Professional Regulation.

18 "Settlement fee" means any fee, obligation, or
19 compensation paid or to be paid by the consumer to a debt
20 settlement provider in consideration of or in connection with a
21 completed agreement or other arrangement on the part of a
22 creditor to accept less than the principal amount of the debt
23 as satisfaction of the creditor's claim against the consumer.

24 Section 15. Requirement of license. It shall be unlawful
25 for any person or entity to act as a debt settlement provider

1 except as authorized by this Act and without first having
2 obtained a license under this Act.

3 Section 20. Application for license. An application for a
4 license to operate as a debt settlement provider in this State
5 shall be made to the Secretary and shall be in writing, under
6 oath, and in the form prescribed by the Secretary.

7 Each applicant, at the time of making such application,
8 shall pay to the Secretary the required fee as set by rule.

9 Every applicant shall submit to the Secretary, at the time
10 of the application for a license, a bond to be approved by the
11 Secretary in which the applicant shall be the obligor, in the
12 sum of \$100,000 or an additional amount as required by the
13 Secretary, and in which an insurance company, which is duly
14 authorized by the State of Illinois to transact the business of
15 fidelity and surety insurance, shall be a surety.

16 The bond shall run to the Secretary for the use of the
17 Department or of any person or persons who may have a cause of
18 action against the obligor in said bond arising out of any
19 violation of this Act or rules by a debt settlement provider.
20 Such bond shall be conditioned that the obligor must faithfully
21 conform to and abide by the provisions of this Act and of all
22 rules, regulations, and directions lawfully made by the
23 Secretary and pay to the Secretary or to any person or persons
24 any and all money that may become due or owing to the State or
25 to such person or persons, from the obligor under and by virtue

1 of the provisions of this Act.

2 Section 25. Qualifications for license. Upon the filing of
3 the application and the approval of the bond and the payment of
4 the specified fees, the Secretary may issue a license if he or
5 she finds all of the following:

6 (1) The financial responsibility, experience,
7 character, and general fitness of the applicant, the
8 managers, if the applicant is a limited liability company,
9 the partners, if the applicant is a partnership, and the
10 officers and directors, if the applicant is a corporation
11 or a not for profit corporation, are such as to command the
12 confidence of the community and to warrant belief that the
13 business will be operated fairly, honestly, and
14 efficiently within the purposes of this Act.

15 (2) The applicant, if an individual, the managers, if
16 the applicant is a limited liability company, the partners,
17 if the applicant is a partnership, and the officers and
18 directors, if the applicant is a corporation, have not been
19 convicted of a felony or a misdemeanor or disciplined with
20 respect to a license or are not currently the subject of a
21 license disciplinary proceeding concerning allegations
22 involving dishonesty or untrustworthiness.

23 (3) The person or persons have not had a record of
24 having defaulted in the payment of money collected for
25 others, including the discharge of those debts through

1 bankruptcy proceedings.

2 (4) The applicant, or any officers, directors,
3 partners, or managers have not previously violated any
4 provision of this Act or any rule lawfully made by the
5 Secretary.

6 (5) The applicant has not made any false statement or
7 representation to the Secretary in applying for a license
8 under this Section.

9 The Secretary shall deliver a license to the applicant to
10 operate as a debt settlement provider in accordance with the
11 provisions of this Act at the location specified in the
12 application. The license shall remain in full force and effect
13 until it is surrendered by the debt settlement provider or
14 revoked by the Secretary as provided in this Act; provided,
15 however, that each license shall expire by its terms on January
16 1 next following its issuance unless it is renewed as provided
17 in this Act. A license, however, may not be surrendered without
18 the approval of the Secretary.

19 More than one license may be issued to the same person for
20 separate places of business, but separate applications shall be
21 made for each location conducting business with Illinois
22 residents.

23 Section 30. Renewal of license.

24 (a) Each debt settlement provider under the provisions of
25 this Act may make application to the Secretary for renewal of

1 its license, which application for renewal shall be on the form
2 prescribed by the Secretary and shall be accompanied by a fee
3 of \$1,000 together with a bond or other surety as required, in
4 a minimum amount of \$100,000 or an amount as required by the
5 Secretary based on the amount of disbursements made by the
6 licensee in the previous year. The application must be received
7 by the Department no later than December 1 of the year
8 preceding the year for which the application applies.

9 Section 33. Annual report; debt settlement provider
10 disclosure of statistical information; Secretary to report
11 statistical information.

12 (a) A debt settlement provider must file an annual report
13 with the Secretary that must include all of the following data:

14 (1) for each Illinois resident:

15 (i) the number of accounts enrolled;

16 (ii) the principal amount of debt at the time each
17 account was enrolled;

18 (iii) the status of each account (for example,
19 active or terminated);

20 (iv) whether the account has been settled, and if
21 so, the settlement amount and the corresponding
22 principal amount of debt enrolled for that account;

23 (v) the total amount of fees paid to the debt
24 settlement service provider;

25 (vi) whether the creditor has filed suit on the

1 account debt;

2 (vii) the date the resident is expected to complete
3 the debt settlement program; and

4 (viii) the date the resident canceled, terminated,
5 or became inactive in the program, if applicable.

6 (2) for persons completing the program during the
7 reporting period, the median and mean percentage of savings
8 and the median and mean fees paid to the debt settlement
9 service provider;

10 (3) for persons who cancelled, became inactive, or
11 terminated the program during the reporting period, the
12 median and mean percentage of the savings and the median
13 and mean fees paid to the debt settlement service provider;

14 (4) the percentage of Illinois residents who canceled,
15 terminated, became inactive, or completed the program
16 without the settlement of all of the enrolled debt; and

17 (5) the total amount of fees collected from Illinois
18 residents.

19 The annual report must contain a declaration executed by an
20 official authorized by the debt settlement provider under
21 penalty of perjury that states that the report complies with
22 this Section.

23 (b) The Secretary may prepare and make available to the
24 public an annual consolidated report of all the data debt
25 settlement providers are required to report pursuant to
26 subsection (a) of this Section.

1 Section 35. License; display and location of license. Each
2 license issued shall be kept conspicuously posted in the place
3 of business of the debt settlement provider. The business
4 location may be changed by any debt settlement provider upon 10
5 days prior written notice to the Secretary. A debt settlement
6 provider must operate under the name as stated in its original
7 application.

8 Section 45. Denial of license. Any complete application for
9 a license shall be approved or denied within 60 days after the
10 filing of the complete application with the Secretary.

11 Section 50. Revocation or suspension of license.

12 (a) The Secretary may revoke or suspend any license if he
13 or she finds that:

14 (1) any debt settlement provider has failed to pay the
15 annual license fee or to maintain in effect the bond
16 required under the provisions of this Act;

17 (2) the debt settlement provider has violated any
18 provisions of this Act or any rule lawfully made by the
19 Secretary under the authority of this Act;

20 (3) any fact or condition exists that, if it had
21 existed at the time of the original application for a
22 license, would have warranted the Secretary in refusing its
23 issuance; or

1 (4) any applicant has made any false statement or
2 representation to the Secretary in applying for a license
3 under this Act.

4 (b) In every case in which a license is suspended or
5 revoked or an application for a license or renewal of a license
6 is denied, the Secretary shall serve notice of his or her
7 action, including a statement of the reasons for his or her
8 actions, either personally or by certified mail, return receipt
9 requested. Service by mail shall be deemed completed if the
10 notice is deposited in the U.S. Mail.

11 (c) In the case of a denial of an application or renewal of
12 a license, the applicant or debt settlement provider may
13 request, in writing, a hearing within 30 days after the date of
14 service. In the case of a denial of a renewal of a license, the
15 license shall be deemed to continue in force until 30 days
16 after the service of the notice of denial, or if a hearing is
17 requested during that period, until a final administrative
18 order is entered.

19 (d) An order of revocation or suspension of a license shall
20 take effect upon service of the order unless the debt
21 settlement provider requests, in writing, a hearing within 10
22 days after the date of service. In the event a hearing is
23 requested, the order shall be stayed until a final
24 administrative order is entered.

25 (e) If the debt settlement provider requests a hearing,
26 then the Secretary shall schedule the hearing within 30 days

1 after the request for a hearing unless otherwise agreed to by
2 the parties.

3 (f) The hearing shall be held at the time and place
4 designated by the Secretary. The Secretary and any
5 administrative law judge designated by the Secretary have the
6 power to administer oaths and affirmations, subpoena witnesses
7 and compel their attendance, take evidence, and require the
8 production of books, papers, correspondence, and other records
9 or information that the Secretary considers relevant or
10 material to the injury.

11 (g) The costs for the administrative hearing shall be set
12 by rule.

13 Section 55. Contracts, books, records, and contract
14 cancellation. Each debt settlement provider shall furnish to
15 the Secretary, when requested, a copy of the contract entered
16 into between the debt settlement provider and the debtor. The
17 debt settlement provider shall furnish the debtor with a copy
18 of the written contract at the time of execution, which shall
19 set forth the charges, if any, agreed upon for the services of
20 the debt settlement provider.

21 Each debt settlement provider shall maintain records and
22 accounts that will enable any debtor contracting with the debt
23 settlement provider, at any reasonable time, to ascertain the
24 status of all the debtor's accounts with the debt settlement
25 service provider, including, but not limited to, the amount of

1 any fees paid by the debtor, amount held in trust (if
2 applicable), settlement offers made and received on each of the
3 debtor's accounts, and legally enforceable settlements reached
4 with the debtor's creditors. A statement showing the total
5 amount received and the total disbursements to each creditor
6 shall be furnished by the debt settlement provider to any
7 individual within 7 days after a request therefor by the said
8 debtor. Each debt settlement provider shall issue a receipt for
9 each payment made by the debtor at a debt settlement provider
10 office. Each debt settlement provider shall prepare and retain
11 in the file of each debtor a written analysis of the debtor's
12 income and expenses to substantiate that the plan of payment is
13 feasible and practical.

14 Section 60. Examination of debt settlement provider; duty
15 to disclose a post-license event.

16 (a) The Secretary at any time, either in person or through
17 an appointed representative, may examine the condition and
18 affairs of a debt settlement provider. In connection with any
19 examination, the Secretary may examine on oath any debt
20 settlement provider and any director, officer, employee,
21 customer, manager, partner, member, creditor, or stockholder
22 of a debt settlement provider concerning the affairs and
23 business of the debt settlement provider. The Secretary shall
24 ascertain whether the debt settlement provider transacts its
25 business in the manner prescribed by law and the rules issued

1 thereunder. The debt settlement provider shall pay the cost of
2 the examination as determined by the Secretary by
3 administrative rule. Failure to pay the examination fee within
4 30 days after receipt of demand from the Secretary may result
5 in the suspension of the license until the fee is paid. The
6 Secretary shall have the right to investigate and examine any
7 person, whether licensed or not, who is engaged in the debt
8 settlement service business. The Secretary shall have the power
9 to subpoena the production of any books and records pertinent
10 to any investigation.

11 (b) Each debt settlement provider shall disclose promptly
12 to the Secretary, but in no event more than 30 days after the
13 occurrence of the event, any change in any of the criteria
14 listed in Section 25 of this Act for the issuance of a license.

15 Section 65. Trust funds; requirements and restrictions.

16 (a) All funds received by a debt settlement provider or his
17 agent from and for the purpose of paying bills, invoices, or
18 accounts of a debtor shall constitute trust funds owned by and
19 belonging to the debtor from whom they were received. All such
20 funds received by the debt settlement provider shall be
21 separated from the funds of the debt settlement provider not
22 later than the end of the business day following receipt by the
23 debt settlement provider. All such funds shall be kept separate
24 and apart at all times from funds belonging to the debt
25 settlement provider or any of its officers, employees, or

1 agents and may be used for no purpose other than paying bills,
2 invoices, or accounts of the debtor. All such trust funds
3 received at the main or branch offices of a debt settlement
4 provider shall be deposited in a bank in an account in the name
5 of the debt settlement provider-designated trust account, or by
6 some other appropriate name indicating that the funds are not
7 the funds of the debt settlement provider or its officers,
8 employees, or agents, on or before the close of the business
9 day following receipt.

10 (b) Such funds are not subject to attachment, lien, levy of
11 execution, or sequestration by order of court except by a
12 debtor for whom a debt settlement provider is acting as an
13 agent in paying bills, invoices, or accounts.

14 (c) At least once every month, the debt settlement provider
15 shall render an accounting to the debtor that shall itemize the
16 total amount received from the debtor, the total amount paid
17 each creditor, the amount of charges deducted, and any amount
18 held in reserve, if applicable, and the status of each of the
19 debtors' enrolled accounts. A debt settlement provider shall,
20 in addition, provide such an accounting to a debtor within 7
21 days after written demand, but not more than 3 times per
22 6-month period.

23 (d) Nothing in this Act requires the establishment of a
24 trust account if no consumer funds other than earned settlement
25 fees are held or controlled by a debt settlement provider.

1 Section 75. Rules. The Secretary shall adopt and enforce
2 all reasonable rules necessary or appropriate for the
3 administration of this Act. The rulemaking shall be subject to
4 the provisions of the Illinois Administrative Procedure Act.

5 Section 80. Penalties.

6 (a) Any person who operates as a debt settlement provider
7 without a license shall be guilty of a Class 4 felony.

8 (b) Any contract of debt settlement service as defined in
9 this Act made by an unlicensed person shall be null and void
10 and of no legal effect.

11 (c) The Secretary may, after 10 days notice by registered
12 mail to the debt settlement service provider at the address on
13 the license or unlicensed entity engaging in the debt
14 settlement service business, stating the contemplated action
15 and in general the grounds therefore, fine such debt settlement
16 service provider or unlicensed entity an amount not exceeding
17 \$10,000 per violation, and revoke or suspend any license issued
18 hereunder if he or she finds that:

19 (1) The debt settlement service provider has failed to
20 comply with any provision of this Act or any order,
21 decision, finding, rule, regulation or direction of the
22 Secretary lawfully made pursuant to the authority of this
23 Act; or

24 (2) Any fact or condition exists which, if it had
25 existed at the time of the original application for the

1 license, clearly would have warranted the Secretary in
2 refusing to issue the license.

3 Section 83. Additional liability for unlicensed activity.
4 Any person who, without the required license, engages in
5 conduct requiring a license under this Act without the required
6 license shall be liable to the Department in an amount equal to
7 the greater of (1) \$1,000 or (2) an amount equal to four times
8 the amount of consumer debt enrolled. The Department shall
9 cause any funds so recovered to be deposited in the Debt
10 Settlement Consumer Protection Fund.

11 Section 85. Injunction. To engage in debt settlement
12 service, render financial service, or accept debtors' funds, as
13 defined in this Act, without a valid license to do so, is
14 hereby declared to be inimical to the public welfare and to
15 constitute a public nuisance. The Secretary may, in the name of
16 the people of the State of Illinois, through the Attorney
17 General of the State of Illinois, file a complaint for an
18 injunction in the circuit court to enjoin such person from
19 engaging in that business. An injunction proceeding shall be in
20 addition to, and not in lieu of, penalties and remedies
21 otherwise provided in this Act.

22 Section 90. Review. All final administrative decisions of
23 the Secretary under this Act shall be subject to judicial

1 review pursuant to the provisions of the Administrative Review
2 Law, including all amendments, modifications, and adopted
3 rules.

4 Section 95. Cease and desist orders.

5 (a) The Secretary may issue a cease and desist order to any
6 debt settlement provider or other person doing business without
7 the required license when, in the opinion of the Secretary, the
8 debt settlement provider or other person is violating or is
9 about to violate any provision of the Act or any rule or
10 condition imposed in writing by the Department.

11 (b) The Secretary may issue a cease and desist order prior
12 to a hearing.

13 (c) The Secretary shall serve notice of his or her action,
14 including a statement of the reasons for his or her action
15 either personally or by certified mail, return receipt
16 requested. Service by mail shall be deemed completed if the
17 notice is deposited in the U.S. Mail.

18 (d) Within 10 days after service of the cease and desist
19 order, the licensee or other person may request, in writing, a
20 hearing.

21 (e) The Secretary shall schedule a hearing within 30 days
22 after the request for a hearing unless otherwise agreed to by
23 the parties.

24 (f) If it is determined that the Secretary had the
25 authority to issue the cease and desist order, then he or she

1 may issue such orders as may be reasonably necessary to
2 correct, eliminate, or remedy that conduct.

3 (g) The powers vested in the Secretary by this Section are
4 additional to any and all other powers and remedies vested in
5 the Secretary by law, and nothing in this Section shall be
6 construed as requiring that the Secretary shall employ the
7 power conferred in this Section instead of or as a condition
8 precedent to the exercise of any other power or remedy vested
9 in the Secretary.

10 (h) The cost for the administrative hearing shall be set by
11 rule.

12 Section 100. Moneys received; Financial Institution Fund.
13 All moneys received by the Division of Financial Institutions
14 under this Act, except for moneys received for the Debt
15 Settlement Consumer Protection Fund, shall be deposited in the
16 Financial Institution Fund created under Section 6z-26 of the
17 State Finance Act.

18 Section 103. Debt Settlement Consumer Protection Fund.

19 (a) A special income-earning fund is hereby created in the
20 State Treasury, known as the Debt Settlement Consumer
21 Protection Fund. This Fund is not subject to appropriation by
22 the Illinois General Assembly.

23 (b) All moneys paid into the Fund together with all
24 accumulated, undistributed income thereon shall be held as a

1 special Fund in the State Treasury. All interest earned on the
2 Fund is non-distributable and shall be returned to the Fund,
3 and shall be invested and re-invested in the Fund by the
4 Treasurer or his or her designee. The Fund shall be used solely
5 for the purpose of providing restitution to consumers who have
6 suffered monetary loss arising out of a transaction regulated
7 by this Act.

8 (c) The Fund shall be applied only to restitution when
9 restitution has been ordered by the Secretary. Restitution
10 shall not exceed the amount actually lost by the consumer. The
11 Fund shall not be used for the payment of any attorney or other
12 fees.

13 (d) The Fund shall be subrogated to the amount of the
14 restitution, and the Secretary shall request the Attorney
15 General to engage in all reasonable collection steps to collect
16 restitution from the party responsible for the loss and
17 reimburse the Fund.

18 (e) Notwithstanding any other provisions of this Section,
19 the payment of restitution from the Fund shall be a matter of
20 grace and not right, and no consumer shall have any vested
21 rights in the Fund as a beneficiary or otherwise. Before
22 seeking restitution from the Fund, the consumer or beneficiary
23 seeking payment of restitution shall apply for restitution on a
24 form provided by the Secretary. The form shall include any
25 information the Secretary may reasonably require in order to
26 determine that restitution is appropriate. All documentation

1 required by the Secretary, including the form, is subject to
2 audit. Distributions from the Fund shall be made solely at the
3 discretion of the Secretary, except that no payments or
4 distributions may be made under any circumstance if the Fund is
5 depleted.

6 (f) All deposits to this Fund shall be made pursuant to
7 Section 83 of this Act.

8 (g) Notwithstanding any other law to the contrary, the Fund
9 is not subject to administrative charges or charge-backs that
10 would in any way transfer moneys from the Fund into any other
11 fund of the State.

12 Section 105. Advertising and marketing practices.

13 (a) A debt settlement provider shall not represent,
14 expressly or by implication, any results or outcomes of its
15 debt settlement services in any advertising, marketing, or
16 other communication to consumers unless the debt settlement
17 provider possesses substantiation for such representation at
18 the time such representation is made.

19 (b) A debt settlement provider shall not, expressly or by
20 implication, make any unfair or deceptive representations, or
21 any omissions of material facts, in any of its advertising or
22 marketing communications concerning debt settlement services.

23 (c) All advertising and marketing communications
24 concerning debt settlement services shall disclose the
25 following material information clearly and conspicuously:

1 "Debt settlement services are not appropriate for
2 everyone. Failure to pay your monthly bills in a timely
3 manner will result in increased balances and will harm your
4 credit rating. Not all creditors will agree to reduce
5 principal balance, and they may pursue collection,
6 including lawsuits."

7 Section 110. Individualized financial analysis.

8 (a) Prior to entering into a written contract with a
9 consumer, a debt settlement provider shall prepare and provide
10 to the consumer in writing and retain a copy of:

11 (1) an individualized financial analysis, including
12 the individual's income, expenses, and debts; and

13 (2) a statement containing a good faith estimate of the
14 length of time it will take to complete the debt settlement
15 program, the total amount of debt owed to each creditor
16 included in the debt settlement program, the total savings
17 estimated to be necessary to complete the debt settlement
18 program, and the monthly targeted savings amount estimated
19 to be necessary to complete the debt settlement program.

20 (b) A debt settlement provider shall not enter into a
21 written contract with a consumer unless it makes written
22 determinations, supported by the financial analysis, that:

23 (1) the consumer can reasonably meet the requirements
24 of the proposed debt settlement program, including the fees
25 and the periodic savings amounts set forth in the savings

1 goals; and

2 (2) the debt settlement program is suitable for the
3 consumer at the time the contract is to be signed.

4 Section 115. Required pre-sale consumer disclosures and
5 warnings.

6 (a) Before the consumer signs a contract, the debt
7 settlement provider shall provide an oral and written notice to
8 the consumer that clearly and conspicuously discloses all of
9 the following:

10 (1) Debt settlement services may not be suitable for
11 all consumers.

12 (2) Using a debt settlement service likely will harm
13 the consumer's credit history and credit score.

14 (3) Using a debt settlement service does not stop
15 creditor collection activity, including creditor lawsuits
16 and garnishments.

17 (4) Not all creditors will accept a reduction in the
18 balance, interest rate, or fees a consumer owes.

19 (5) The consumer should inquire about other means of
20 dealing with debt, including, but not limited to, nonprofit
21 credit counseling and bankruptcy.

22 (6) The consumer remains obligated to make periodic or
23 scheduled payments to creditors while participating in a
24 debt settlement plan, and that the debt settlement provider
25 will not make any periodic or scheduled payments to

1 creditors on behalf of the consumer.

2 (7) The failure to make periodic or scheduled payments
3 to a creditor is likely to:

4 (A) harm the consumer's credit history, credit
5 rating, or credit score;

6 (B) lead the creditor to increase lawful
7 collection activity, including litigation, garnishment
8 of the consumer's wages, and judgment liens on the
9 consumer's property; and

10 (C) lead to the imposition by the creditor of
11 interest charges, late fees, and other penalty fees,
12 increasing the principal amount of the debt.

13 (8) The amount of time estimated to be necessary to
14 achieve the represented results.

15 (9) The estimated amount of money or the percentage of
16 debt the consumer must accumulate before a settlement offer
17 will be made to each of the consumer's creditors.

18 (b) The consumer shall sign and date an acknowledgment form
19 entitled "Consumer Notice and Rights Form" that states: "I, the
20 debtor, have received from the debt settlement provider a copy
21 of the form entitled "Consumer Notice and Rights Form"." The
22 debt settlement provider or its representative shall also sign
23 and date the acknowledgment form, which includes the name and
24 address of the debt settlement services provider. The
25 acknowledgment form shall be in duplicate and incorporated into
26 the "Consumer Notice and Rights Form". The original

1 acknowledgment form shall be retained by the debt settlement
2 provider, and the duplicate copy shall be retained within the
3 form by the consumer.

4 If the acknowledgment form is in electronic form, then it
5 shall contain the consumer disclosures required by Section
6 101(c) of the federal Electronic Signatures in Global and
7 National Commerce Act.

8 (c) The requirements of this Section are satisfied if the
9 provider provides the following warning verbatim, both orally
10 and in writing, with the caption "CONSUMER NOTICE AND RIGHTS
11 FORM" in at least 28-point font and the remaining portion in at
12 least 14-point font, to a consumer before the consumer signs a
13 contract for the debt settlement provider's services:

14 "CONSUMER NOTICE AND RIGHTS FORM

15 CAUTION

16 We CANNOT GUARANTEE that you successfully will reduce or
17 eliminate your debt.

18 If you stop paying your creditors, there is a strong
19 likelihood some or all of the following may happen:

- 20 - CREDITORS MAY STILL CONTACT YOU AND TRY TO COLLECT.
21 - CREDITORS MAY STILL SUE YOU FOR THE MONEY YOU OWE.
22 - YOUR WAGES OR BANK ACCOUNT MAY STILL BE GARNISHED.
23 - YOUR CREDIT RATING AND CREDIT SCORE LIKELY WILL BE
24 HARMED.

1 - NOT ALL CREDITORS WILL AGREE TO ACCEPT A BALANCE
2 REDUCTION.

3 - YOU SHOULD CONSIDER ALL YOUR OPTIONS FOR ADDRESSING YOUR
4 DEBT, SUCH AS CREDIT COUNSELING AND BANKRUPTCY FILING.

5 - THE AMOUNT OF MONEY YOU OWE MAY INCREASE DUE TO CREDITOR
6 IMPOSITION OF INTEREST CHARGES, LATE FEES, AND OTHER PENALTY
7 FEES.

8 - EVEN IF WE DO SETTLE YOUR DEBT, YOU MAY STILL BE REQUIRED
9 TO PAY TAXES ON THE AMOUNT FORGIVEN.

10 YOUR RIGHT TO CANCEL

11 If you sign a contract with a Debt Settlement Provider, you
12 have the right to cancel at any time and receive a full refund
13 of all unearned fees you have paid to the provider and all
14 funds placed in your settlement fund that have not been paid to
15 any creditors.

16 IF YOU ARE DISSATISFIED

17 OR YOU HAVE QUESTIONS

18 If you are dissatisfied with a debt settlement provider or
19 have any questions, please bring it to the attention of the
20 Illinois Attorney General's Office and the Department of
21 Financial and Professional Regulation.

22 Attorney General Toll-Free Numbers:

23 Carbondale (800) 243-0607

24 Springfield (800) 243-0618

1 Chicago (800) 386-5438

2 Website for Department of Financial and Professional
3 Regulation: www.idfpr.com

4 I, the debtor, have received from the debt settlement provider
5 a copy of the form entitled Consumer Notice and Rights Form.".

6 Section 120. Debt settlement contract.

7 (a) A debt settlement provider shall not provide debt
8 settlement service to a consumer without a written contract
9 signed and dated by both the consumer and the debt settlement
10 provider.

11 (b) Any contract for the provision of debt settlement
12 service entered into in violation of the provisions of this
13 Section is void.

14 (c) A contract between a debt settlement provider and a
15 consumer for the provision of debt settlement service shall
16 disclose all of the following clearly and conspicuously:

17 (1) The name and address of the consumer.

18 (2) The date of execution of the contract.

19 (3) The legal name of the debt settlement provider,
20 including any other business names used by the debt
21 settlement provider.

22 (4) The corporate address and regular business
23 address, including a street address, of the debt settlement
24 provider.

25 (5) The telephone number at which the consumer may

1 speak with a representative of the debt settlement provider
2 during normal business hours.

3 (6) A complete list of the consumer's accounts, debts,
4 and obligations to be included in the provision of debt
5 settlement service, including the name of each creditor and
6 principal amount of each debt.

7 (7) A description of the services to be provided by the
8 debt settlement provider, including the expected time
9 frame for settlement for each account, debt, or obligation
10 included in item (6) of this subsection (c).

11 (8) An itemized list of all fees to be paid by the
12 consumer to the debt settlement provider, and the date,
13 approximate date, or circumstances under which each fee
14 will become due.

15 (9) A good faith estimate of the total amount of all
16 fees and compensation, not to exceed the amounts specified
17 in Section 125 of this Act, to be collected by the debt
18 settlement provider from the consumer for the provision of
19 debt settlement service contemplated by the contract.

20 (10) A statement of the proposed savings goals for the
21 consumer, stating the amount to be saved per month or other
22 period, time period over which savings goal extends, and
23 the total amount of the savings expected to be paid by the
24 consumer pursuant to the terms of the contract.

25 (11) The amount of money or the percentage of debt the
26 consumer must accumulate before a settlement offer will be

1 made to each of the consumer's creditors.

2 (12) The written individualized financial analysis
3 required by Section 110 of this Act.

4 (13) The contents of the "Consumer Notice and Rights
5 Form" provided in Section 115.

6 (14) A written notice to the consumer that the consumer
7 may cancel the contract at any time until after the debt
8 settlement provider has fully performed each service the
9 debt settlement provider contracted to perform or
10 represented he or she would perform, and upon that event:

11 (A) the consumer shall be entitled to a full refund
12 of all unearned fees and compensation paid by the
13 consumer to the debt settlement provider, and a full
14 refund of all funds provided by the consumer to the
15 debt settlement provider for a consumer settlement
16 account, except for funds actually paid to a creditor
17 on behalf of the consumer, under the terms of the
18 contract for debt settlement service; and

19 (B) all powers of attorney granted to the debt
20 settlement provider by the consumer shall be
21 considered revoked and voided.

22 (15) A form the consumer may use to cancel the contract
23 pursuant to the provisions of Section 135 of this Act. The
24 form shall include the name and mailing address of the debt
25 settlement provider and shall disclose clearly and
26 conspicuously how the consumer can cancel the contract,

1 including applicable addresses, telephone numbers,
2 facsimile numbers, and electronic mail addresses the
3 consumer can use to cancel the contract.

4 (d) If a debt settlement provider communicates with a
5 consumer primarily in a language other than English, then the
6 debt settlement provider shall furnish to the consumer a
7 translation of all the disclosures and documents required by
8 this Act in that other language.

9 Section 125. Fees.

10 (a) A debt settlement provider shall not charge fees of any
11 type or receive compensation from a consumer in a type, amount,
12 or timing other than fees or compensation permitted in this
13 Section.

14 (b) A debt settlement provider shall not charge or receive
15 from a consumer any enrollment fee, set up fee, up front fee of
16 any kind, or any maintenance fee, except for a one-time
17 enrollment fee of no more than \$50.

18 (c) A debt settlement provider may charge a settlement fee,
19 which shall not exceed an amount greater than 15% of the
20 savings. If the amount paid by the debt settlement provider to
21 the creditor or negotiated by the debt settlement provider and
22 paid by the consumer to the creditor pursuant to a settlement
23 negotiated by the debt settlement provider on behalf of the
24 consumer as full and complete satisfaction of the creditor's
25 claim with regard to that debt is greater than the principal

1 amount of the debt, then the debt settlement provider shall not
2 be entitled to any settlement fee.

3 (d) A debt settlement provider shall not collect any
4 settlement fee from a consumer until a creditor enters into a
5 legally enforceable agreement to accept funds in a specific
6 dollar amount as full and complete satisfaction of the
7 creditor's claim with regard to that debt and those funds are
8 provided by the debt settlement provider on behalf of the
9 consumer or are provided directly by the consumer to the
10 creditor pursuant to a settlement negotiated by the debt
11 settlement provider

12 Section 130. Consumer settlement accounts and monthly
13 accounting.

14 (a) A debt settlement provider who receives funds from a
15 consumer shall hold all funds received for a consumer
16 settlement account in a properly designated trust account in a
17 federally insured depository institution. The funds shall
18 remain the property of the consumer until the debt settlement
19 provider disburses the funds to a creditor on behalf of the
20 consumer as full or partial satisfaction of the consumer's debt
21 to the creditor or the creditor's claim against the consumer.
22 Any interest earned on such account shall be credited to the
23 consumer.

24 (b) A debt settlement provider shall not be named on a
25 consumer's bank account, take a power of attorney in a

1 consumer's bank account, create a demand draft on a consumer's
2 bank account, or exercise any control over any bank account
3 held by or on behalf of the consumer.

4 (c) A debt settlement provider shall, no less than monthly,
5 provide each consumer with which it has a contract for the
6 provision of debt settlement service a statement of account
7 balances, fees paid, settlements completed, and remaining
8 debts.

9 Section 135. Cancellation of contract and right to fee and
10 settlement fund refunds.

11 (a) A consumer may cancel a contract with a debt settlement
12 provider at any time before the debt settlement provider has
13 fully performed each service the debt settlement provider
14 contracted to perform or represented it would perform.

15 (b) If a consumer cancels a contract with a debt settlement
16 provider, or at any time upon a material violation of this Act
17 on the part of the debt settlement provider, then the debt
18 settlement provider shall refund all fees and compensation,
19 with the exception of the application fee and any earned
20 settlement fee, as well as all funds paid by the consumer to
21 the debt settlement provider that have accumulated in a
22 consumer settlement account and that the debt settlement
23 provider has not disbursed to creditors. Upon cancellation, all
24 powers of attorney and direct debit authorizations granted to
25 the debt settlement provider by the consumer shall be

1 considered revoked and voided.

2 (c) A debt settlement provider shall make any refund
3 required under this Section within 5 business days after the
4 notice of cancellation, and shall include with the refund a
5 full statement of account showing fees received, fees refunded,
6 savings held, payments to creditors, settlement fees earned if
7 any, and savings refunded.

8 (d) Upon the cancellation of a contract under this Section,
9 the debt settlement provider shall provide timely notice of the
10 cancellation of the contract to each of the creditors with whom
11 the debt settlement provider has had any prior communication on
12 behalf of the consumer in connection with the provision of any
13 debt settlement service.

14 Section 140. Obligation of good faith. A debt settlement
15 provider shall act in good faith in all matters under this Act.

16 Section 145. Prohibited practices. A debt settlement
17 provider shall not do any of the following:

18 (1) Charge or collect from a consumer any fee not
19 permitted by, in an amount in excess of the maximum amount
20 permitted by, or at a time earlier than permitted by
21 Section 125 of this Act.

22 (2) Advise or represent, expressly or by implication,
23 that consumers should stop making payments to their
24 creditors.

1 (3) Advise or represent, expressly or by implication,
2 that consumers should stop communicating with their
3 creditors.

4 (4) Change the mailing address on any of a consumer's
5 creditor's statements.

6 (5) Make loans or offer credit or solicit or accept any
7 note, mortgage, or negotiable instrument other than a check
8 signed by the consumer and dated no later than the date of
9 signature.

10 (6) Take any confession of judgment or power of
11 attorney to confess judgment against the consumer or appear
12 as the consumer or on behalf of the consumer in any
13 judicial proceedings.

14 (7) Take any release or waiver of any obligation to be
15 performed on the part of the debt settlement provider or
16 any right of the consumer.

17 (8) Advertise, display, distribute, broadcast, or
18 televise services or permit services to be displayed,
19 advertised, distributed, broadcasted, or televised, in any
20 manner whatsoever, that contains any false, misleading, or
21 deceptive statements or representations with regard to any
22 matter, including services to be performed, the fees to be
23 charged by the debt settlement provider, or the effect
24 those services will have on a consumer's credit rating or
25 on creditor collection efforts.

26 (9) Receive any cash, fee, gift, bonus, premium,

1 reward, or other compensation from any person other than
2 the consumer explicitly for the provision of debt
3 settlement service to that consumer.

4 (10) Offer or provide gifts or bonuses to consumers for
5 signing a debt settlement service contract or for referring
6 another potential customer or customer.

7 (11) Disclose to anyone the name or any personal
8 information of a consumer for whom the debt settlement
9 provider has provided or is providing debt settlement
10 service other than to a consumer's own creditors or the
11 debt settlement provider's agents, affiliates, or
12 contractors for the purpose of providing debt settlement
13 service without the prior consent of the consumer.

14 (12) Enter into a contract with a consumer without
15 first providing the disclosures and financial analysis and
16 making the determinations required by this Section.

17 (13) Misrepresent any material fact, make a material
18 omission, or make a false promise directed to one or more
19 consumers in connection with the solicitation, offering,
20 contracting, or provision of debt settlement service.

21 (14) Violate the provisions of applicable do not call
22 statutes.

23 (15) Purchase debts or engage in the practice or
24 business of debt collection.

25 (16) Include in a debt settlement agreement any secured
26 debt.

1 (17) Employ an unfair, unconscionable, or deceptive
2 act or practice, including the knowing omission of any
3 material information.

4 (18) Engage in any practice that prohibits or limits
5 the consumer or any creditor from communication directly
6 with one another.

7 (19) Represent or imply to a person participating in or
8 considering debt settlement that purchase of any ancillary
9 goods or services is required.

10 Section 150. Noncompliance with the Act.

11 (a) Any waiver by any consumer of any protection provided
12 by or any right of the consumer under this Act:

13 (1) shall be treated as void; and

14 (2) may not be enforced by any federal or State court
15 or any other person.

16 (b) Any attempt by any person to obtain a waiver from any
17 consumer of any protection provided by or any right or
18 protection of the consumer or any obligation or requirement of
19 the debt settlement provider under this Act shall be a
20 violation of this Act.

21 (c) Any contract for debt settlement service that does not
22 comply with the applicable provisions of this Act:

23 (1) shall be treated as void; and

24 (2) may not be enforced by any federal or State court
25 or any other person; and

1 Upon notice of a void contract, a refund by the debt
2 settlement provider to the consumer shall be made as if the
3 contract had been cancelled as provided in Section 135 of this
4 Act.

5 Section 155. Civil remedies.

6 (a) A violation of Section 105, 110, 115, 120, 125, 130,
7 135, 140, 145, or 150 of this Act constitutes an unlawful
8 practice under the Consumer Fraud and Deceptive Business
9 Practices Act. All remedies, penalties, and authority granted
10 to the Attorney General or State's Attorney by the Consumer
11 Fraud and Deceptive Business Practices Act shall be available
12 to him or her for the enforcement of this Act.

13 (b) A consumer who suffers loss by reason of a violation of
14 Section 105, 110, 115, 120, 125, 130, 135, 140, 145, or 150 of
15 this Act may bring a civil action in accordance with the
16 Consumer Fraud and Deceptive Business Practices Act to enforce
17 that provision. All remedies and rights granted to a consumer
18 by the Consumer Fraud and Deceptive Business Practices Act
19 shall be available to the consumer bringing such an action. The
20 remedies and rights provided for in this Act are not exclusive,
21 but cumulative, and all other applicable claims are
22 specifically preserved.

23 Section 900. The State Finance Act is amended by changing
24 Section 6z-26 and by adding Sections 5.755 and 5.756 as

1 follows:

2 (30 ILCS 105/5.755 new)

3 Sec. 5.755. The Debt Management Service Consumer
4 Protection Fund.

5 (30 ILCS 105/5.756 new)

6 Sec. 5.756. The Debt Settlement Consumer Protection Fund.

7 (30 ILCS 105/6z-26)

8 Sec. 6z-26. The Financial Institution Fund. All moneys
9 received by the Department of Financial and Professional
10 Regulation under the Safety Deposit License Act, the Foreign
11 Exchange License Act, the Pawnors Societies Act, the Sale of
12 Exchange Act, the Currency Exchange Act, the Sales Finance
13 Agency Act, the Debt Management Service Act, the Consumer
14 Installment Loan Act, the Illinois Development Credit
15 Corporation Act, the Title Insurance Act, the Debt Settlement
16 Consumer Protection Act, the Debt Management Service Consumer
17 Protection Fund, and any other Act administered by the
18 Department of Financial and Professional Regulation as the
19 successor of the Department of Financial Institutions now or in
20 the future (unless an Act specifically provides otherwise)
21 shall be deposited in the Financial Institution Fund
22 (hereinafter "Fund"), a special fund that is hereby created in
23 the State Treasury.

1 Moneys in the Fund shall be used by the Department, subject
2 to appropriation, for expenses incurred in administering the
3 above named and referenced Acts.

4 The Comptroller and the State Treasurer shall transfer from
5 the General Revenue Fund to the Fund any monies received by the
6 Department after June 30, 1993, under any of the above named
7 and referenced Acts that have been deposited in the General
8 Revenue Fund.

9 As soon as possible after the end of each calendar year,
10 the Comptroller shall compare the balance in the Fund at the
11 end of the calendar year with the amount appropriated from the
12 Fund for the fiscal year beginning on July 1 of that calendar
13 year. If the balance in the Fund exceeds the amount
14 appropriated, the Comptroller and the State Treasurer shall
15 transfer from the Fund to the General Revenue Fund an amount
16 equal to the difference between the balance in the Fund and the
17 amount appropriated.

18 Nothing in this Section shall be construed to prohibit
19 appropriations from the General Revenue Fund for expenses
20 incurred in the administration of the above named and
21 referenced Acts.

22 Moneys in the Fund may be transferred to the Professions
23 Indirect Cost Fund, as authorized under Section 2105-300 of the
24 Department of Professional Regulation Law of the Civil
25 Administrative Code of Illinois.

26 (Source: P.A. 94-91, eff. 7-1-05.)

1 Section 905. The Debt Management Service Act is amended by
2 changing Sections 2, 4, 5, 6, 7, 8.5, 9, 10, 11, 11.5, 12,
3 12.1, 13, 14, 15, 16, 17, 18, 20, and 20.5 and by adding
4 Sections 1.5, 16.5, and 16.6 as follows:

5 (205 ILCS 665/1.5 new)

6 Sec. 1.5. Purpose and construction. The purpose of this Act
7 is to protect consumers who enter into agreements with debt
8 management service providers and to regulate debt management
9 service providers. This Act shall be construed as a consumer
10 protection law for all purposes. This Act shall be liberally
11 construed to effectuate its purpose.

12 (205 ILCS 665/2) (from Ch. 17, par. 5302)

13 Sec. 2. Definitions. As used in this Act:

14 "Credit counselor" means an individual, corporation, or
15 other entity that is not a debt management service that
16 provides (1) guidance, educational programs, or advice for the
17 purpose of addressing budgeting, personal finance, financial
18 literacy, saving and spending practices, or the sound use of
19 consumer credit; or (2) assistance or offers to assist
20 individuals and families with financial problems by providing
21 counseling; or (3) a combination of the activities described in
22 items (1) and (2) of this definition.

23 "Debt management service" means the planning and

1 management of the financial affairs of a debtor for a fee and
2 the receiving of money from the debtor for the purpose of
3 distributing it, ~~directly or indirectly,~~ to the debtor's
4 creditors in payment or partial payment of the debtor's
5 obligations or soliciting financial contributions from
6 creditors. The business of debt management is conducted in this
7 State if the debt management business, its employees, or its
8 agents are located in this State or if the debt management
9 business solicits or contracts with debtors located in this
10 State. "Debt management service" does not include "debt
11 settlement service" as defined in the Debt Settlement Consumer
12 Protection Act.

13 This term shall not include the following when engaged in
14 the regular course of their respective businesses and
15 professions:

16 (a) Attorneys at law licensed, or otherwise authorized
17 to practice, in Illinois who are engaged in the practice of
18 law.

19 (b) Banks, operating subsidiaries of banks, affiliates
20 of banks, fiduciaries, credit unions, savings and loan
21 associations, and savings banks as duly authorized and
22 admitted to transact business in the State of Illinois and
23 performing credit and financial adjusting service in the
24 regular course of their principal business.

25 (c) Title insurers, title agents, independent
26 escrowees, and abstract companies, while doing an escrow

1 business.

2 (d) Judicial officers or others acting pursuant to
3 court order.

4 (e) Employers for their employees, except that no
5 employer shall retain the services of an outside debt
6 management service to perform this service unless the debt
7 management service is licensed pursuant to this Act.
8 ~~Employers for their employees.~~

9 (f) Bill payment services, as defined in the
10 Transmitters of Money Act.

11 (g) Credit counselors, only when providing services
12 described in the definition of credit counselor in this
13 Section.

14 ~~"Director" means Director of Financial Institutions.~~

15 "Debtor" means the person or persons for whom the debt
16 management service is performed.

17 "Person" means an individual, firm, partnership,
18 association, limited liability company, corporation, or
19 not-for-profit corporation.

20 "Licensee" means a person licensed under this Act.

21 "Secretary" means the Secretary of Financial and
22 Professional Regulation.

23 (Source: P.A. 95-331, eff. 8-21-07.)

24 (205 ILCS 665/4) (from Ch. 17, par. 5304)

25 Sec. 4. Application for license. Application for a license

1 to engage in the debt management service business in this State
2 shall be made to the Secretary ~~Director~~ and shall be in
3 writing, under oath, and in the form prescribed by the
4 Secretary ~~Director~~.

5 Each applicant, at the time of making such application,
6 shall pay to the Secretary ~~Director~~ the sum of \$30.00 as a fee
7 for investigation of the applicant, and the additional sum of
8 \$100.00 as a license fee.

9 Every applicant shall submit to the Secretary ~~Director~~, at
10 the time of the application for a license, a bond to be
11 approved by the Secretary ~~Director~~ in which the applicant shall
12 be the obligor, in the sum of \$25,000 or such additional amount
13 as required by the Secretary ~~Director~~ based on the amount of
14 disbursements made by the licensee in the previous year, and in
15 which an insurance company, which is duly authorized by the
16 State of Illinois, to transact the business of fidelity and
17 surety insurance shall be a surety.

18 The bond shall run to the Secretary ~~Director~~ for the use of
19 the Department or of any person or persons who may have a cause
20 of action against the obligor in said bond arising out of any
21 violation of this Act or rules by a licensee. Such bond shall be
22 conditioned that the obligor will faithfully conform to and
23 abide by the provisions of this Act and of all rules,
24 regulations and directions lawfully made by the Secretary
25 ~~Director~~ and will pay to the Secretary ~~Director~~ or to any
26 person or persons any and all money that may become due or

1 owing to the State or to such person or persons, from said
2 obligor under and by virtue of the provisions of this Act.

3 (Source: P.A. 92-400, eff. 1-1-02.)

4 (205 ILCS 665/5) (from Ch. 17, par. 5305)

5 Sec. 5. Qualifications for license. Upon the filing of the
6 application and the approval of the bond and the payment of the
7 specified fees, the Secretary may ~~Director shall~~ issue a
8 license if he finds:

9 (1) That the financial responsibility, experience,
10 character and general fitness of the applicant, the managers
11 thereof, if the applicant is a limited liability company, the
12 partners thereof, if the applicant is a partnership, and of the
13 officers and directors thereof, if the applicant is a
14 corporation or a not-for-profit corporation, are such as to
15 command the confidence of the community and to warrant belief
16 that the business will be operated fairly, honestly and
17 efficiently within the purposes of this Act, and

18 (2) That the applicant, if an individual, the managers
19 thereof, if the applicant is a limited liability company, the
20 partners thereof, if the applicant is a partnership, and the
21 officers and directors thereof, if the applicant is a
22 corporation, have not been convicted of a felony or a
23 misdemeanor involving dishonesty or untrustworthiness, and

24 (3) That the person or persons have not had a record of
25 having defaulted in the payment of money collected for others,

1 including the discharge of such debts through bankruptcy
2 proceedings, and

3 (4) The applicant, or any officers, directors, partners or
4 managers, have not previously violated any provision of this
5 Act or any rule lawfully made by the Secretary ~~Director~~, and

6 (5) The applicant has not made any false statement or
7 representation to the Secretary ~~Director~~ in applying for a
8 license hereunder.

9 The Secretary ~~Director~~ shall deliver a license to the
10 applicant to engage in the debt management service business in
11 accordance with the provisions of this Act at the location
12 specified in the said application, which license shall remain
13 in full force and effect until it is surrendered by the
14 licensee or revoked by the Secretary ~~Director~~ as herein
15 provided; provided, however, that each license shall expire by
16 the terms thereof on January 1 next following the issuance
17 thereof unless the same be renewed as hereinafter provided. A
18 license, however, may not be surrendered without the approval
19 of the Secretary ~~Director~~.

20 More than one license may be issued to the same person for
21 separate places of business, but separate applications shall be
22 made for each location conducting business with Illinois
23 residents ~~place of business~~.

24 (Source: P.A. 90-545, eff. 1-1-98.)

25 (205 ILCS 665/6) (from Ch. 17, par. 5306)

1 Sec. 6. Renewal of license. Each debt management service
2 provider ~~licensee~~ under the provisions of this Act may make
3 application to the Secretary ~~Director~~ for renewal of its
4 license, which application for renewal shall be on the form
5 prescribed by the Secretary ~~Director~~ and shall be accompanied
6 by a fee of \$100.00 together with a bond or other surety as
7 required, in a minimum amount of \$25,000 or such an amount as
8 required by the Secretary ~~Director~~ based on the amount of
9 disbursements made by the licensee in the previous year. The
10 application must be received by the Department no later than
11 December 1 of the year preceding the year for which the
12 application applies.

13 (Source: P.A. 92-400, eff. 1-1-02.)

14 (205 ILCS 665/7) (from Ch. 17, par. 5307)

15 Sec. 7. License, display and location. Each license issued
16 shall be kept conspicuously posted in the place of business of
17 the debt management service provider ~~licensee~~. The business
18 location may be changed by any licensee upon 10 days prior
19 written notice to the Secretary ~~Director~~. A license must
20 operate under the name as stated in its original application.

21 (Source: P.A. 90-545, eff. 1-1-98.)

22 (205 ILCS 665/8.5)

23 Sec. 8.5. Temporary location. The Secretary ~~Director~~ may
24 approve a temporary additional business location for the

1 purpose of allowing a debt management service provider licensee
2 to conduct business outside the licensed location.

3 (Source: P.A. 90-545, eff. 1-1-98.)

4 (205 ILCS 665/9) (from Ch. 17, par. 5309)

5 Sec. 9. Denial of license. Any application for a license
6 shall be approved or denied within 60 days of the filing of a
7 completed ~~an~~ application with the Secretary ~~Director~~.

8 (Source: P.A. 90-545, eff. 1-1-98.)

9 (205 ILCS 665/10) (from Ch. 17, par. 5310)

10 Sec. 10. Revocation, ~~or~~ or suspension, or refusal to renew ~~of~~
11 license.

12 (a) The Secretary ~~Director~~ may revoke or suspend or refuse
13 to renew any license if he finds that:

14 (1) any licensee has failed to pay the annual license
15 fee, or to maintain in effect the bond required under the
16 provisions of this Act;

17 (2) the licensee has violated any provisions of this
18 Act or any rule, lawfully made by the Secretary ~~Director~~
19 within the authority of this Act;

20 (3) any fact or condition exists which, if it had
21 existed at the time of the original application for a
22 license, would have warranted the Secretary ~~Director~~ in
23 refusing its issuance; or

24 (4) any applicant has made any false statement or

1 representation to the Secretary ~~Director~~ in applying for a
2 license hereunder.

3 (b) In every case in which a license is suspended or
4 revoked or an application for a license or renewal of a license
5 is denied, the Secretary ~~Director~~ shall serve notice of his
6 action, including a statement of the reasons for his actions,
7 either personally or by certified mail, return receipt
8 requested. Service by mail shall be deemed completed if the
9 notice is deposited in the U.S. Mail.

10 (c) In the case of a denial of an application or renewal of
11 a license, the applicant or licensee may request in writing,
12 within 30 days after the date of service, a hearing. In the
13 case of a denial of a renewal of a license, the license shall
14 be deemed to continue in force until 30 days after the service
15 of the notice of denial, or if a hearing is requested during
16 that period, until a final administrative order is entered.

17 (d) An order of revocation or suspension of a license shall
18 take effect upon service of the order unless the licensee
19 requests, in writing, within 10 days after the date of service,
20 a hearing. In the event a hearing is requested, the order shall
21 be stayed until a final administrative order is entered.

22 (e) If the licensee requests a hearing, the Secretary
23 ~~Director~~ shall schedule either a status date or a ~~the~~ hearing
24 within 30 days after the request for a hearing unless otherwise
25 agreed to by the parties.

26 (f) The hearing shall be held at the time and place

1 designated by the Secretary ~~Director~~. The Secretary ~~Director~~
2 and any administrative law judge designated by him have the
3 power to administer oaths and affirmations, subpoena witnesses
4 and compel their attendance, take evidence, and require the
5 production of books, papers, correspondence, and other records
6 or information that he considers relevant or material to the
7 injury.

8 (g) The costs for the administrative hearing shall be set
9 by rule and shall be borne by the respondent.

10 ~~(h) The Director shall have the authority to prescribe~~
11 ~~rules for the administration of this Section.~~

12 (Source: P.A. 90-545, eff. 1-1-98.)

13 (205 ILCS 665/11) (from Ch. 17, par. 5311)

14 Sec. 11. Contracts, books, records and contract
15 cancellation. Each debt management service provider licensee
16 shall furnish to the Secretary ~~Director~~, when requested, a copy
17 of the contract entered into between the debt management
18 service provider licensee and the debtor. The debt management
19 service provider licensee shall furnish the debtor with a copy
20 of the written contract, at the time of execution, which shall
21 set forth the charges, if any, agreed upon for the services of
22 the debt management service provider licensee.

23 Each debt management service provider licensee shall
24 maintain records and accounts which will enable any debtor
25 contracting with the debt management service provider

1 ~~licensee~~, at any reasonable time, to ascertain the amounts paid
2 to creditors of the debtor. A statement showing the total
3 amount received and the total disbursements to each creditor
4 shall be furnished by the debt management service provider
5 ~~licensee~~ to any individual within seven days of a request
6 therefor by the said debtor. Each debt management service
7 provider licensee shall issue a receipt for each payment made
8 by the debtor at a debt management service provider's
9 ~~licensee's~~ office. Each debt management service provider
10 ~~licensee~~ shall prepare and retain in the file of each debtor a
11 written analysis of debtor's income and expenses to
12 substantiate that the plan of payment is feasible and
13 practical.

14 (Source: P.A. 90-545, eff. 1-1-98.)

15 (205 ILCS 665/11.5)

16 Sec. 11.5. Examination of debt management service provider
17 ~~licensee~~. The Secretary Director at any time, either in person
18 or through an appointed representative, may examine the
19 condition and affairs of a debt management service provider
20 ~~licensee~~. In connection with any examination, the Secretary
21 ~~Director~~ may examine on oath any debt management service
22 provider licensee and any director, officer, employee,
23 customer, manager, partner, member, creditor or stockholder of
24 a licensee concerning the affairs and business of the debt
25 management service provider licensee. The Secretary Director

1 shall ascertain whether the debt management service provider
2 ~~licensee~~ transacts its business in the manner prescribed by law
3 and the rules issued thereunder. The debt management service
4 provider ~~licensee~~ shall pay the cost of the examination as
5 determined by the Secretary ~~Director~~ by administrative rule.
6 Failure to pay the examination fee within 30 days after receipt
7 of demand from the Secretary ~~Director~~ may result in the
8 suspension of the license until the fee is paid. The Secretary
9 ~~Director~~ shall have the right to investigate and examine any
10 person, whether licensed or not, who is engaged in the debt
11 management service business. The Secretary ~~Director~~ shall have
12 the power to subpoena the production of any books and records
13 pertinent to any investigation.

14 (Source: P.A. 90-545, eff. 1-1-98.)

15 (205 ILCS 665/12) (from Ch. 17, par. 5312)

16 Sec. 12. Fees and charges of debt management service
17 providers ~~licensees~~. A debt management service provider
18 ~~licensee~~ may not charge a debtor any fees or penalties except
19 the following:

20 (1) an initial counseling fee not to exceed \$50 per debtor
21 counseled, ~~provided the average initial counseling fee does not~~
22 ~~exceed \$30 per debtor for all debtors counseled;~~ and

23 (2) additional fees at the completion of the initial
24 counseling services which shall not exceed \$50 per month,
25 ~~provided the average monthly fee does not exceed \$30 per debtor~~

1 ~~for all debtors counseled.~~

2 (Source: P.A. 90-545, eff. 1-1-98.)

3 (205 ILCS 665/12.1)

4 Sec. 12.1. All moneys received by the Department of
5 Financial Institutions under this Act, except moneys received
6 for the Debt Management Service Consumer Protection Fund, shall
7 be deposited in the Financial Institutions Fund created under
8 Section 6z-26 of the State Finance Act.

9 (Source: P.A. 88-13.)

10 (205 ILCS 665/13) (from Ch. 17, par. 5313)

11 Sec. 13. Prohibitions.

12 (1) No licensee shall advertise, in any manner whatsoever,
13 any statement or representation with regard to the rates, terms
14 or conditions of debt management service which is false,
15 misleading, or deceptive.

16 (2) No licensee shall require as a part of the agreement
17 between the licensee and any debtor, the purchase of any stock,
18 insurance, commodity, service or other property or any interest
19 therein.

20 (3) No licensee shall, directly or indirectly, accept
21 payment or any other consideration, whether in cash or in kind,
22 from any entity for referring applicants to that entity. The
23 licensee shall not, directly or indirectly, make payments in
24 any form, whether in cash or in kind, to any person,

1 corporation, or other entity for referring applicants or
2 clients to the licensee.

3 (4) No licensee shall make any loans.

4 (5) No licensee shall issue credit cards or act as an agent
5 in procuring customers for a credit card company or any
6 financial institution.

7 (6) No licensee shall act as a loan broker.

8 (7) No licensee shall operate any other business at the
9 licensed location. ~~without another business authorization from~~
10 ~~the Director, pursuant to Section 13.5.~~

11 (Source: P.A. 90-545, eff. 1-1-98.)

12 (205 ILCS 665/14) (from Ch. 17, par. 5314)

13 Sec. 14. Trust funds; requirements and restrictions.

14 (a) All funds received by a debt management service
15 provider licensee or his agent from and for the purpose of
16 paying bills, invoices, or accounts of a debtor shall
17 constitute trust funds owned by and belonging to the debtor
18 from whom they were received. All such funds received by a debt
19 management service provider licensee shall be separated from
20 the funds of the debt management service provider licensee not
21 later than the end of the business day following receipt by the
22 debt management service provider licensee. All such funds shall
23 be kept separate and apart at all times from funds belonging to
24 the debt management service provider licensee or any of its
25 officers, employees or agents and may be used for no purpose

1 other than paying bills, invoices, or accounts of the debtor.
2 All such trust funds received at the main or branch offices of
3 a debt management service provider licensee shall be deposited
4 in a bank in an account in the name of the debt management
5 service provider licensee designated "trust account", or by
6 some other appropriate name indicating that the funds are not
7 the funds of the debt management service provider licensee or
8 its officers, employees, or agents, on or before the close of
9 the business day following receipt.

10 (b) If a consumer's funds are kept in an interest earning
11 trust account, then any interest earned on the consumer funds
12 shall belong to the consumer. If multiple consumers funds are
13 kept in a single interest earning trust account, then the
14 interest earned shall belong to the consumers and shall be
15 deposited pro rata among the consumers whose funds are in the
16 account. Prior to separation and deposit by the licensee, such
17 funds may be used by the licensee only for the making of change
18 or the cashing of checks in the normal course of its business.
19 Such funds are not subject to attachment, lien, levy of
20 execution, or sequestration by order of court except by a
21 debtor for whom a licensee is acting as an agent in paying
22 bills, invoices, or accounts.

23 (c) Each debt management service provider licensee shall
24 make remittances within 30 days after initial receipt of funds,
25 and thereafter remittances shall be made within 15 days of
26 receipt, less fees and costs, unless the reasonable payment of

1 one or more of the debtor's obligations requires that the funds
2 be held for a longer period so as to accumulate a sum certain.

3 (d) At least once every quarter, the debt management
4 service provider licensee shall render an accounting to the
5 debtor which shall itemize the total amount received from the
6 debtor, the total amount paid each creditor, the amount of
7 charges deducted, and any amount held in reserve. A debt
8 management service provider licensee shall, in addition
9 thereto, provide such an accounting to a debtor within 7 days
10 after written demand, but not more than 3 times per 6 month
11 period.

12 (Source: P.A. 90-545, eff. 1-1-98.)

13 (205 ILCS 665/15) (from Ch. 17, par. 5315)

14 Sec. 15. Rules.) The Secretary ~~Director~~ shall make and
15 enforce all reasonable rules as shall be necessary for the
16 administration of this Act. Such rulemaking shall be subject to
17 the provisions of the Illinois Administrative Procedure Act.

18 (Source: P.A. 81-1403.)

19 (205 ILCS 665/16) (from Ch. 17, par. 5319)

20 Sec. 16. Penalties.

21 (a) Any person who engages in the business of debt
22 management service without a license shall be guilty of a Class
23 4 felony.

24 (b) Any contract of debt management service as defined in

1 this Act, made by an unlicensed person, shall be null and void
2 and of no legal effect.

3 (c) The Secretary ~~Director~~ may, after 10 days notice by
4 registered mail to the debt management service provider at the
5 address on the license or unlicensed entity engaging in the
6 debt management service business, stating the contemplated
7 action and in general the grounds therefore, fine that debt
8 management service provider or unlicensed entity an amount not
9 exceeding \$10,000 per violation, and revoke or suspend any
10 license issued if he or she finds that either:

11 (1) the debt management service provider or unlicensed
12 entity has failed to comply with any provision of this Act
13 or any order, decision, finding, rule, regulation, or
14 direction of the Secretary lawfully made pursuant to the
15 authority of this Act; or

16 (2) any fact or condition exists which, if it had
17 existed at the time of the original application for the
18 license, clearly would have warranted the Secretary in
19 refusing to issue the license. ~~—set by rule monetary~~
20 ~~penalties for violation of this Act.~~

21 (Source: P.A. 90-545, eff. 1-1-98.)

22 (205 ILCS 665/16.5 new)

23 Sec. 16.5. Additional liability for unlicensed activity.
24 Any person who, without the required license, engages in
25 conduct requiring a license under this Act, shall be liable to

1 the Department in an amount equal to the greater of (1) \$1,000
2 or (2) an amount equal to 4 times the amount of consumer debt
3 enrolled. The Department shall cause any funds so recovered to
4 be deposited in the Debt Management Service Consumer Protection
5 Fund.

6 (205 ILCS 665/16.6 new)

7 Sec. 16.6. Debt Management Service Consumer Protection
8 Fund.

9 (a) A special non-appropriated income-earning fund is
10 hereby created in the State Treasury, known as the Debt
11 Management Service Consumer Protection Fund. This Fund is not
12 subject to appropriation by the Illinois General Assembly.

13 (b) All moneys paid into the Fund together with all
14 accumulated, undistributed interest thereon shall be held as a
15 special Fund in the State Treasury. All interest earned on the
16 Fund is non-distributable and shall be returned to the Fund,
17 and shall be invested and re-invested in the Fund by the
18 Treasurer or his or her designee. The Fund shall be used solely
19 for the purpose of providing restitution to consumers who have
20 suffered monetary loss arising out of a transaction regulated
21 by this Act.

22 (c) The Fund shall be applied only to restitution when
23 restitution has been ordered by the Secretary. Restitution
24 shall not exceed the amount actually lost by the consumer. The
25 Fund shall not be used for the payment of any attorney or other

1 fees.

2 (d) The Fund shall be subrogated to the amount of the
3 restitution, and the Secretary shall request the Attorney
4 General to engage in all reasonable collection steps to collect
5 restitution from the party responsible for the loss and
6 reimburse the Fund.

7 (e) Notwithstanding any other provision of this Section,
8 the payment of restitution from the Fund shall be a matter of
9 grace and not of right, and no consumer shall have any vested
10 rights in the Fund as a beneficiary or otherwise. Before
11 seeking restitution from the Fund, the consumer or beneficiary
12 seeking payment of restitution shall apply for restitution on a
13 form provided by the Secretary. The form shall include any
14 information the Secretary may reasonably require in order to
15 determine that restitution is appropriate. All documentation
16 required by the Secretary, including the form, is subject to
17 audit. Distributions from the Fund shall be made solely at the
18 discretion of the Secretary, except that no payments or
19 distributions may be made under any circumstance if the Fund is
20 depleted.

21 (f) All deposits to this Fund shall be made pursuant to
22 Section 16.5 of this Act.

23 (g) Notwithstanding any other law to the contrary, the Fund
24 is not subject to administrative charges or charge-backs that
25 would in any way transfer moneys from the Fund into any other
26 fund of the State.

1 (205 ILCS 665/17) (from Ch. 17, par. 5320)

2 Sec. 17. Injunction. To engage in debt management service,
3 render financial service, or accept debtors' funds, as defined
4 in this Act, without a valid license so to do, is hereby
5 declared to be inimical to the public welfare and to constitute
6 a public nuisance. The Secretary ~~Director~~ may, in the name of
7 the people of the State of Illinois, through the Attorney
8 General of the State of Illinois, file a complaint for an
9 injunction in the circuit court to enjoin such person, from
10 engaging in said business. Such injunction proceeding shall be
11 in addition to, and not in lieu of, penalties and remedies
12 otherwise in this Act provided.

13 (Source: P.A. 90-545, eff. 1-1-98.)

14 (205 ILCS 665/18) (from Ch. 17, par. 5321)

15 Sec. 18. Review. All final administrative decisions of the
16 Secretary ~~Director~~ hereunder shall be subject to judicial
17 review pursuant to the provisions of the Administrative Review
18 Law, and all amendments and modifications thereof and the rules
19 adopted pursuant thereto.

20 (Source: P.A. 90-545, eff. 1-1-98.)

21 (205 ILCS 665/20) (from Ch. 17, par. 5323)

22 Sec. 20. Cease and desist orders.

23 (a) The Secretary ~~Director~~ may issue a cease and desist

1 order to any licensee, or other person doing business without
2 the required license, when in the opinion of the Secretary
3 ~~Director~~, the licensee, or other person, is violating or is
4 about to violate any provision of the Act or any rule or
5 condition imposed in writing by the Department.

6 (b) The Secretary ~~Director~~ may issue a cease and desist
7 order prior to a hearing.

8 (c) The Secretary ~~Director~~ shall serve notice of his
9 action, including a statement of the reasons for his action
10 either personally or by certified mail, return receipt
11 requested. Service by mail shall be deemed completed if the
12 notice is deposited in the U.S. Mail.

13 (d) Within 10 days after service of the cease and desist
14 order, the licensee or other person may request, in writing, a
15 hearing.

16 (e) The Secretary ~~Director~~ shall schedule either a status
17 date or a hearing within 30 days after the request for a
18 hearing unless otherwise agreed to by the parties.

19 ~~(f) The Director shall have the authority to prescribe~~
20 ~~rules for the administration of this Section.~~

21 (g) If it is determined that the Secretary ~~Director~~ had the
22 authority to issue the cease and desist order, he may issue
23 such orders as may be reasonably necessary to correct,
24 eliminate, or remedy such conduct.

25 (h) The powers vested in the Secretary ~~Director~~ by this
26 Section are additional to any and all other powers and remedies

1 vested in the Secretary ~~Director~~ by law, and nothing in this
2 Section shall be construed as requiring that the Secretary
3 ~~Director~~ shall employ the power conferred in this Section
4 instead of or as a condition precedent to the exercise of any
5 other power or remedy vested in the Secretary ~~Director~~.

6 (i) The cost for the administrative hearing shall be set by
7 rule and shall be borne by the respondent.

8 (Source: P.A. 90-545, eff. 1-1-98.)

9 (205 ILCS 665/20.5)

10 Sec. 20.5. Receivership.

11 (a) If the Secretary ~~Director~~ determines that a licensee is
12 insolvent or is violating this Act, he or she may appoint a
13 receiver. Under the direction of the Secretary ~~Director~~, the
14 receiver shall, for the purpose of receivership, take
15 possession of and title to the books, records, and assets of
16 the licensee. The Secretary ~~Director~~ may require the receiver
17 to provide security in an amount the Secretary ~~Director~~ deems
18 proper. Upon appointment of the receiver, the Secretary
19 ~~Director~~ shall have published, once each week for 4 consecutive
20 weeks in a newspaper having a general circulation in the
21 community, a notice informing all persons who have claims
22 against the licensee to present them to the receiver. Within 10
23 days after the receiver takes possession, the licensee may
24 apply to the Circuit Court of Sangamon County to enjoin further
25 proceedings. The receiver may operate the business until the

1 Secretary ~~Director~~ determines that possession should be
2 restored to the licensee or that the business should be
3 liquidated.

4 (b) If the Secretary ~~Director~~ determines that a business in
5 receivership should be liquidated, he or she shall direct the
6 Attorney General to file a complaint in the Circuit Court of
7 the county in which the business is located, in the name of the
8 People of the State of Illinois, for the orderly liquidation
9 and dissolution of the business and for an injunction
10 restraining the licensee and its officers and directors from
11 continuing the operation of the business. Within 30 days after
12 the day the Secretary ~~Director~~ determines that the business
13 should be liquidated, the receiver shall file with the
14 Secretary ~~Director~~ and with the clerk of the court that has
15 charge of the liquidation a correct list of all creditors, as
16 shown by the licensee's books and records, who have not
17 presented their claims. The list shall state the amount of the
18 claim after allowing all just credits, deductions, and set-offs
19 as shown by the licensee's books. These claims shall be deemed
20 proven unless some interested party files an objection within
21 the time fixed by the Secretary ~~Director~~ or court that has
22 charge of the liquidation.

23 (c) The General Assembly finds and declares that debt
24 management services provide an important service ~~and vital~~
25 ~~services~~ to Illinois citizens. It is therefore declared to be
26 the policy of this State that customers who receive these

1 services must be protected from interruptions of services. To
2 carry out this policy and to insure that customers of a
3 licensee are protected if it is determined that a business in
4 receivership should be liquidated, the Secretary ~~Director~~
5 shall make a distribution of moneys collected by the receiver
6 in the following order of priority:

7 (1) Allowed claims for the actual necessary expenses of
8 the receivership of the business being liquidated,
9 including:

10 (A) reasonable receiver's fees and receiver's
11 attorney's fees approved by the Secretary ~~Director~~;

12 (B) all expenses of any preliminary or other
13 examinations into the condition of the receivership;

14 (C) all expenses incurred by the Secretary
15 ~~Director~~ that are incident to possession and control of
16 any property or records of the licensee's business; and

17 (D) reasonable expenses incurred by the Secretary
18 ~~Director~~ as the result of business agreements or
19 contractual arrangements necessary to insure that the
20 services of the licensee are delivered to the community
21 without interruption. These business agreements or
22 contractual arrangements may include, but are not
23 limited to, agreements made by the Secretary ~~Director~~,
24 or by the receiver with the approval of the Secretary
25 ~~Director~~, with banks, bonding companies, and other
26 types of financial institutions.

1 (1.5) Secured claims.

2 (2) Allowed unsecured claims for wages or salaries,
3 excluding vacation, severance, and sick leave pay earned by
4 employees within 90 days before the appointment of a
5 receiver.

6 (3) Allowed unsecured claims of any tax, and interest
7 and penalty on the tax.

8 (4) Allowed unsecured claims, other than a kind
9 specified in items (1), (2), and (3) of this subsection,
10 filed with the Secretary ~~Director~~ within the time the
11 Secretary ~~Director~~ fixes for filing claims.

12 (5) Allowed unsecured claims, other than a kind
13 specified in items (1), (2), and (3) of this subsection,
14 filed with the Secretary ~~Director~~ after the time fixed for
15 filing claims by the Secretary ~~Director~~.

16 (6) Allowed creditor claims asserted by an owner,
17 member, or stockholder of the business in liquidation.

18 (7) After one year from the final dissolution of the
19 licensee's business, all assets not used to satisfy allowed
20 claims shall be distributed pro rata to the owner, owners,
21 members, or stockholders of the business.

22 The Secretary ~~Director~~ shall pay all claims of equal
23 priority according to the schedule established in this
24 subsection and shall not pay claims of lower priority until all
25 higher priority claims are satisfied. If insufficient assets
26 are available to meet all claims of equal priority, those

1 assets shall be distributed pro rata among those claims. All
2 unclaimed assets of a licensee and the licensee's business
3 shall be deposited with the Secretary ~~Director~~ to be paid out
4 when proper claims are presented to the Secretary ~~Director~~.

5 (d) Upon the order of the circuit court of the county in
6 which the business being liquidated is located, the receiver
7 may sell or compound any bad or doubtful debt, and on like
8 order may sell the personal property of the business on such
9 terms as the court approves. The receiver shall succeed to
10 whatever rights or remedies the unsecured creditors of the
11 business may have against the owner or owners, operators,
12 stockholders, directors, members, managers, or officers,
13 arising out of their claims against the licensee's business,
14 but nothing contained in this Section shall prevent those
15 creditors from filing their claims in the liquidation
16 proceeding. The receiver may enforce those rights or remedies
17 in any court of competent jurisdiction.

18 (e) At the close of a receivership, the receiver shall turn
19 over to the Secretary ~~Director~~ all books of account and ledgers
20 of the business for preservation. The Secretary ~~Director~~ shall
21 hold all records of receiverships received at any time for a
22 period of 2 years after the close of the receivership. The
23 records may be destroyed at the termination of the 2-year
24 period. All expenses of the receivership including, but not
25 limited to, reasonable receiver's and attorney's fees approved
26 by the Secretary ~~Director~~, all expenses of any preliminary or

1 other examinations into the condition of the licensee's
2 business or the receivership, and all expenses incident to the
3 possession and control of any property or records of the
4 business incurred by the Secretary ~~Director~~ shall be paid out
5 of the assets of the licensee's business. These expenses shall
6 be paid before all other claims.

7 (f) Upon the filing of a complaint by the Attorney General
8 for the orderly liquidation and dissolution of a debt
9 management service provider's ~~licensee's~~ business, as provided
10 in this Act, all pending suits and actions upon unsecured
11 claims against the business shall abate. Nothing contained in
12 this Act, however, prevents these claimants from filing their
13 claims in the liquidation proceeding. If a suit or an action is
14 instituted or maintained by the receiver on any bond or policy
15 of insurance issued pursuant to the requirements of this Act,
16 the bonding or insurance company sued shall not have the right
17 to interpose or maintain any counterclaim based upon
18 subrogation, upon any express or implied agreement of, or right
19 to, indemnity or exoneration, or upon any other express or
20 implied agreement with, or right against, the debt management
21 service provider's ~~licensee's~~ business. Nothing contained in
22 this Act prevents the bonding or insurance company from filing
23 this type of claim in the liquidation proceeding.

24 (g) A debt management service provider ~~licensee~~ may not
25 terminate its affairs and close up its business unless it has
26 first deposited with the Secretary ~~Director~~ an amount of money

1 equal to all of its debts, liabilities, and lawful demands
2 against it including the costs and expenses of a proceeding
3 under this Section, surrendered to the Secretary ~~Director~~ its
4 license, and filed with the Secretary ~~Director~~ a statement of
5 termination signed by the debt management service provider
6 ~~licensee~~ containing a pronouncement of intent to close up its
7 business and liquidate its liabilities and containing a sworn
8 list itemizing in full all of its debts, liabilities, and
9 lawful demands against it. Corporate licensees must attach to,
10 and make a part of the statement of termination, a copy of a
11 resolution providing for the termination and closing up of the
12 licensee's affairs, certified by the secretary of the licensee
13 and duly adopted at a shareholders' meeting by the holders of
14 at least two-thirds of the outstanding shares entitled to vote
15 at the meeting. Upon the filing with the Secretary ~~Director~~ of
16 a statement of termination, the Secretary ~~Director~~ shall cause
17 notice of that action to be published once each week for 3
18 consecutive weeks in a public newspaper of general circulation
19 published in the city or village where the business is located,
20 and if no newspaper is published in that place, then in a
21 public newspaper of general circulation nearest to that city or
22 village. The publication shall give notice that the debts,
23 liabilities, and lawful demands against the business will be
24 redeemed by the Secretary ~~Director~~ upon demand in writing made
25 by the owner thereof, at any time within 3 years after the date
26 of first publication. After the expiration of the 3-year

1 period, the Secretary ~~Director~~ shall return to the person or
2 persons designated in the statement of termination to receive
3 repayment, and in the proportion specified in that statement,
4 any balance of money remaining in his or her possession after
5 first deducting all unpaid costs and expenses incurred in
6 connection with a proceeding under this Section. The Secretary
7 ~~Director~~ shall receive for his or her services, exclusive of
8 costs and expenses, 2% of any amount up to \$5,000 and 1% of any
9 amount in excess of \$5,000 deposited with him or her under this
10 Section by any business. Nothing contained in this Section
11 shall affect or impair the liability of any bonding or
12 insurance company on any bond or insurance policy issued under
13 this Act relating to the business.

14 (Source: P.A. 92-400, eff. 1-1-02.)

15 Section 910. The Consumer Fraud and Deceptive Business
16 Practices Act is amended by adding Section 2III as follows:

17 (815 ILCS 505/2III new)

18 Sec. 2III. Violations of the Debt Settlement Consumer
19 Protection Act. Any person who violates the Debt Settlement
20 Consumer Protection Act commits an unlawful practice within the
21 meaning of this Act.

22 (205 ILCS 665/13.5 rep.)

23 (205 ILCS 665/15.1 rep.)

1 (205 ILCS 665/15.2 rep.)

2 (205 ILCS 665/15.3 rep.)

3 Section 915. The Debt Management Service Act is amended by
4 repealing Sections 13.5, 15.1, 15.2, and 15.3.

5 Section 970. Severability. The provisions of this Act are
6 severable under Section 1.31 of the Statute on Statutes.

7 Section 999. Effective date. This Act takes effect upon
8 becoming law.