



Rep. Marlow H. Colvin

Filed: 3/18/2010

09600HB4781ham003

LRB096 16778 AMC 39288 a

1 AMENDMENT TO HOUSE BILL 4781

2 AMENDMENT NO. _____. Amend House Bill 4781, AS AMENDED, by
3 replacing everything after the enacting clause with the
4 following:

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

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

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

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

1 "Consumer settlement account" means any account or other
2 means or device in which payments, deposits, or other transfers
3 from a consumer are arranged, held, or transferred by or to a
4 debt settlement provider for the accumulation of the consumer's
5 funds in anticipation of proffering an adjustment or settlement
6 of a debt or obligation of the consumer to a creditor on behalf
7 of the consumer.

8 "Debt settlement provider" means any person or entity
9 engaging in, or holding itself out as engaging in, the business
10 of providing debt settlement service in exchange for any fee or
11 compensation, or any person who solicits for or acts on behalf
12 of any person or entity engaging in, or holding itself out as
13 engaging in, the business of providing debt settlement service
14 in exchange for any fee or compensation. "Debt settlement
15 provider" does not include:

16 (1) attorneys licensed, or otherwise authorized, to
17 practice in Illinois who are engaged in the practice of
18 law;

19 (2) escrow agents, accountants, broker dealers in
20 securities, or investment advisors in securities, when
21 acting in the ordinary practice of their professions and
22 through the entity used in the ordinary practice of their
23 profession;

24 (3) any bank, agent of a bank, operating subsidiary of
25 a bank, affiliate of a bank, trust company, savings and
26 loan association, savings bank, credit union, crop credit

1 association, development credit corporation, industrial
2 development corporation, title insurance company, title
3 insurance agent, independent escrowee or insurance company
4 operating or organized under the laws of a state or the
5 United States, or any other person authorized to make loans
6 under State law while acting in the ordinary practice of
7 that business;

8 (4) any person who performs credit services for his or
9 her employer while receiving a regular salary or wage when
10 the employer is not engaged in the business of offering or
11 providing debt settlement service;

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

15 (6) an organization that is described in Section
16 501(c)(3) and subject to Section 501(q) of Title 26 of the
17 United States Code and exempt from tax under Section 501(a)
18 of Title 26 of the United States Code and governed by the
19 Debt Management Service Act;

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

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

25 (9) persons licensed under the Real Estate License Act
26 of 2000 when acting in the ordinary practice of their

1 profession and not holding themselves out as debt
2 settlement providers.

3 "Debt settlement service" means:

4 (1) offering to provide advice or service, or
5 acting as an intermediary between or on behalf of a
6 consumer and one or more of a consumer's creditors,
7 where the primary purpose of the advice, service, or
8 action is to obtain a settlement, adjustment, or
9 satisfaction of the consumer's unsecured debt to a
10 creditor in an amount less than the full amount of the
11 principal amount of the debt or in an amount less than
12 the current outstanding balance of the debt; or

13 (2) offering to provide services related to or
14 providing services advising, encouraging, assisting,
15 or counseling a consumer to accumulate funds for the
16 primary purpose of proposing or obtaining or seeking to
17 obtain a settlement, adjustment, or satisfaction of
18 the consumer's unsecured debt to a creditor in an
19 amount less than the full amount of the principal
20 amount of the debt or in an amount less than the
21 current outstanding balance of the debt.

22 "Debt settlement service" does not include (A) the
23 services of attorneys licensed, or otherwise
24 authorized, to practice in Illinois who are engaged in
25 the practice of law or (B) debt management service as
26 defined in the Debt Management Service Act.

1 "Enrollment or set up fee" means any fee, obligation, or
2 compensation paid or to be paid by the consumer to a debt
3 settlement provider in consideration of or in connection with
4 establishing a contract or other agreement with a consumer
5 related to the provision of debt settlement service.

6 "Maintenance fee" means any fee, obligation, or
7 compensation paid or to be paid by the consumer on a periodic
8 basis to a debt settlement provider in consideration of
9 maintaining the relationship and services to be provided by a
10 debt settlement provider in accordance with a contract with a
11 consumer related to the provision of debt settlement service.

12 "Principal amount of the debt" means the total amount or
13 outstanding balance owed by a consumer to one or more creditors
14 for a debt that is included in a contract for debt settlement
15 service at the time when the consumer enters into a contract
16 for debt settlement service.

17 "Savings" means the difference between the principal
18 amount of the debt and the amount paid by the debt settlement
19 provider to the creditor or negotiated by the debt settlement
20 provider and paid by the consumer to the creditor pursuant to a
21 settlement negotiated by the debt settlement provider on behalf
22 of the consumer as full and complete satisfaction of the
23 creditor's claim with regard to that debt.

24 "Secretary" means the Secretary of Financial and
25 Professional Regulation.

26 "Settlement fee" means any fee, obligation, or

1 compensation paid or to be paid by the consumer to a debt
2 settlement provider in consideration of or in connection with a
3 completed agreement or other arrangement on the part of a
4 creditor to accept less than the principal amount of the debt
5 as satisfaction of the creditor's claim against the consumer.

6 Section 15. Requirement of license. It shall be unlawful
7 for any person or entity to act as a debt settlement provider
8 except as authorized by this Act and without first having
9 obtained a license under this Act.

10 Section 20. Application for license. An application for a
11 license to operate as a debt settlement provider in this State
12 shall be made to the Secretary and shall be in writing, under
13 oath, and in the form prescribed by the Secretary.

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

16 Every applicant shall submit to the Secretary, at the time
17 of the application for a license, a bond to be approved by the
18 Secretary in which the applicant shall be the obligor, in the
19 sum of \$100,000 or an additional amount as required by the
20 Secretary, and in which an insurance company, which is duly
21 authorized by the State of Illinois to transact the business of
22 fidelity and surety insurance, shall be a surety.

23 The bond shall run to the Secretary for the use of the
24 Department or of any person or persons who may have a cause of

1 action against the obligor in said bond arising out of any
2 violation of this Act or rules by a debt settlement provider.
3 Such bond shall be conditioned that the obligor must faithfully
4 conform to and abide by the provisions of this Act and of all
5 rules, regulations, and directions lawfully made by the
6 Secretary and pay to the Secretary or to any person or persons
7 any and all money that may become due or owing to the State or
8 to such person or persons, from the obligor under and by virtue
9 of the provisions of this Act.

10 Section 25. Qualifications for license. Upon the filing of
11 the application and the approval of the bond and the payment of
12 the specified fees, the Secretary may issue a license if he or
13 she finds all of the following:

14 (1) The financial responsibility, experience,
15 character, and general fitness of the applicant, the
16 managers, if the applicant is a limited liability company,
17 the partners, if the applicant is a partnership, and the
18 officers and directors, if the applicant is a corporation
19 or a not for profit corporation, are such as to command the
20 confidence of the community and to warrant belief that the
21 business will be operated fairly, honestly, and
22 efficiently within the purposes of this Act.

23 (2) The applicant, if an individual, the managers, if
24 the applicant is a limited liability company, the partners,
25 if the applicant is a partnership, and the officers and

1 directors, if the applicant is a corporation, have not been
2 convicted of a felony or a misdemeanor or disciplined with
3 respect to a license or are not currently the subject of a
4 license disciplinary proceeding concerning allegations
5 involving dishonesty or untrustworthiness.

6 (3) The person or persons have not had a record of
7 having defaulted in the payment of money collected for
8 others, including the discharge of those debts through
9 bankruptcy proceedings.

10 (4) The applicant, or any officers, directors,
11 partners, or managers have not previously violated any
12 provision of this Act or any rule lawfully made by the
13 Secretary.

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

17 The Secretary shall deliver a license to the applicant to
18 operate as a debt settlement provider in accordance with the
19 provisions of this Act at the location specified in the
20 application. The license shall remain in full force and effect
21 until it is surrendered by the debt settlement provider or
22 revoked by the Secretary as provided in this Act; provided,
23 however, that each license shall expire by its terms on January
24 1 next following its issuance unless it is renewed as provided
25 in this Act. A license, however, may not be surrendered without
26 the approval of the Secretary.

1 More than one license may be issued to the same person for
2 separate places of business, but separate applications shall be
3 made for each location conducting business with Illinois
4 residents.

5 Section 30. Renewal of license.

6 (a) Each debt settlement provider under the provisions of
7 this Act may make application to the Secretary for renewal of
8 its license, which application for renewal shall be on the form
9 prescribed by the Secretary and shall be accompanied by a fee
10 of \$1000 together with a bond or other surety as required, in a
11 minimum amount of \$100,000 or an amount as required by the
12 Secretary based on the amount of disbursements made by the
13 licensee in the previous year. The application must be received
14 by the Department no later than December 1 of the year
15 preceding the year for which the application applies.

16 Section 33. Annual report; debt settlement provider
17 disclosure of statistical information; Secretary to report
18 statistical information.

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

21 (1) for each Illinois resident:

22 (i) the number of accounts enrolled;

23 (ii) the principal amount of debt at the time each
24 account was enrolled;

1 (iii) the status of each account (for example,
2 active or terminated);

3 (iv) whether the account has been settled, and if
4 so, the settlement amount and the corresponding
5 principal amount of debt enrolled for that account;

6 (v) the total amount of fees paid to the debt
7 settlement service provider;

8 (vi) whether the creditor has filed suit on the
9 account debt;

10 (vii) the date the resident is expected to complete
11 the debt settlement program; and

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

14 (2) for persons completing the program during the
15 reporting period, the median and mean percentage of savings
16 and the median and mean fees paid to the debt settlement
17 service provider;

18 (3) for persons who cancelled, became inactive, or
19 terminated the program during the reporting period, the
20 median and mean percentage of the savings and the median
21 and mean fees paid to the debt settlement service provider;

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

25 (5) the total amount of fees collected from Illinois
26 residents.

1 The annual report must contain a declaration executed by an
2 official authorized by the debt settlement provider under
3 penalty of perjury that states that the report complies with
4 this Section.

5 (b) The Secretary may prepare and make available to the
6 public an annual consolidated report of all the data debt
7 settlement providers are required to report pursuant to
8 subsection (a) of this Section.

9 Section 35. License; display and location of license. Each
10 license issued shall be kept conspicuously posted in the place
11 of business of the debt settlement provider. The business
12 location may be changed by any debt settlement provider upon 10
13 days prior written notice to the Secretary. A debt settlement
14 provider must operate under the name as stated in its original
15 application.

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

19 Section 50. Revocation or suspension of license.

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

22 (1) any debt settlement provider has failed to pay the
23 annual license fee or to maintain in effect the bond

1 required under the provisions of this Act;

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

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

9 (4) any applicant has made any false statement or
10 representation to the Secretary in applying for a license
11 under this Act.

12 (b) In every case in which a license is suspended or
13 revoked or an application for a license or renewal of a license
14 is denied, the Secretary shall serve notice of his or her
15 action, including a statement of the reasons for his or her
16 actions, either personally or by certified mail, return receipt
17 requested. Service by mail shall be deemed completed if the
18 notice is deposited in the U.S. Mail.

19 (c) In the case of a denial of an application or renewal of
20 a license, the applicant or debt settlement provider may
21 request, in writing, a hearing within 30 days after the date of
22 service. In the case of a denial of a renewal of a license, the
23 license shall be deemed to continue in force until 30 days
24 after the service of the notice of denial, or if a hearing is
25 requested during that period, until a final administrative
26 order is entered.

1 (d) An order of revocation or suspension of a license shall
2 take effect upon service of the order unless the debt
3 settlement provider requests, in writing, a hearing within 10
4 days after the date of service. In the event a hearing is
5 requested, the order shall be stayed until a final
6 administrative order is entered.

7 (e) If the debt settlement provider requests a hearing,
8 then the Secretary shall schedule the hearing within 30 days
9 after the request for a hearing unless otherwise agreed to by
10 the parties.

11 (f) The hearing shall be held at the time and place
12 designated by the Secretary. The Secretary and any
13 administrative law judge designated by the Secretary have the
14 power to administer oaths and affirmations, subpoena witnesses
15 and compel their attendance, take evidence, and require the
16 production of books, papers, correspondence, and other records
17 or information that the Secretary considers relevant or
18 material to the injury.

19 (g) The costs for the administrative hearing shall be set
20 by rule.

21 Section 55. Contracts, books, records, and contract
22 cancellation. Each debt settlement provider shall furnish to
23 the Secretary, when requested, a copy of the contract entered
24 into between the debt settlement provider and the debtor. The
25 debt settlement provider shall furnish the debtor with a copy

1 of the written contract at the time of execution, which shall
2 set forth the charges, if any, agreed upon for the services of
3 the debt settlement provider.

4 Each debt settlement provider shall maintain records and
5 accounts that will enable any debtor contracting with the debt
6 settlement provider, at any reasonable time, to ascertain the
7 status of all the debtor's accounts with the debt settlement
8 service provider, including, but not limited to, the amount of
9 any fees paid by the debtor, amount held in trust (if
10 applicable), settlement offers made and received on each of the
11 debtor's accounts, and legally enforceable settlements reached
12 with the debtor's creditors. A statement showing the total
13 amount received and the total disbursements to each creditor
14 shall be furnished by the debt settlement provider to any
15 individual within 7 days after a request therefor by the said
16 debtor. Each debt settlement provider shall issue a receipt for
17 each payment made by the debtor at a debt settlement provider
18 office. Each debt settlement provider shall prepare and retain
19 in the file of each debtor a written analysis of debtor's
20 income and expenses to substantiate that the plan of payment is
21 feasible and practical.

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

24 (a) The Secretary at any time, either in person or through
25 an appointed representative, may examine the condition and

1 affairs of a debt settlement provider. In connection with any
2 examination, the Secretary may examine on oath any debt
3 settlement provider and any director, officer, employee,
4 customer, manager, partner, member, creditor, or stockholder
5 of a debt settlement provider concerning the affairs and
6 business of the debt settlement provider. The Secretary shall
7 ascertain whether the debt settlement provider transacts its
8 business in the manner prescribed by law and the rules issued
9 thereunder. The debt settlement provider shall pay the cost of
10 the examination as determined by the Secretary by
11 administrative rule. Failure to pay the examination fee within
12 30 days after receipt of demand from the Secretary may result
13 in the suspension of the license until the fee is paid. The
14 Secretary shall have the right to investigate and examine any
15 person, whether licensed or not, who is engaged in the debt
16 settlement service business. The Secretary shall have the power
17 to subpoena the production of any books and records pertinent
18 to any investigation.

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

23 Section 65. Trust funds; requirements and restrictions.

24 (a) All funds received by a debt settlement provider or his
25 agent from and for the purpose of paying bills, invoices, or

1 accounts of a debtor shall constitute trust funds owned by and
2 belonging to the debtor from whom they were received. All such
3 funds received by the debt settlement provider shall be
4 separated from the funds of the debt settlement provider not
5 later than the end of the business day following receipt by the
6 debt settlement provider. All such funds shall be kept separate
7 and apart at all times from funds belonging to the debt
8 settlement provider or any of its officers, employees, or
9 agents and may be used for no purpose other than paying bills,
10 invoices, or accounts of the debtor. All such trust funds
11 received at the main or branch offices of a debt settlement
12 provider shall be deposited in a bank in an account in the name
13 of the debt settlement provider-designated trust account, or by
14 some other appropriate name indicating that the funds are not
15 the funds of the debt settlement provider or its officers,
16 employees, or agents, on or before the close of the business
17 day following receipt.

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

22 (c) At least once every month, the debt settlement provider
23 shall render an accounting to the debtor that shall itemize the
24 total amount received from the debtor, the total amount paid
25 each creditor, the amount of charges deducted, and any amount
26 held in reserve, if applicable, and the status of each of the

1 debtors, enrolled accounts. A debt settlement provider shall,
2 in addition, provide such an accounting to a debtor within 7
3 days after written demand, but not more than 3 times per
4 6-month period.

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

8 Section 75. Rules. The Secretary shall adopt and enforce
9 all reasonable rules necessary or appropriate for the
10 administration of this Act. The rulemaking shall be subject to
11 the provisions of the Illinois Administrative Procedure Act.

12 Section 80. Penalties.

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

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

18 (c) The Secretary may, after 10 days notice by registered
19 mail to the debt settlement service provider at the address on
20 the license or unlicensed entity engaging in the debt
21 settlement service business, stating the contemplated action
22 and in general the grounds therefore, fine such debt settlement
23 service provider or unlicensed entity an amount not exceeding
24 \$10,000 per violation, and revoke or suspend any license issued

1 hereunder if he or she finds that:

2 (1) The debt settlement service provider has failed to
3 comply with any provision of this Act or any order,
4 decision, finding, rule, regulation or direction of the
5 Secretary lawfully made pursuant to the authority of this
6 Act; or

7 (2) Any fact or condition exists which, if it had
8 existed at the time of the original application for the
9 license, clearly would have warranted the Secretary in
10 refusing to issue the license.

11 Section 83. Additional liability for unlicensed activity.
12 Any person who, without the required license, engages in
13 conduct requiring a license under this Act without the required
14 license shall be liable to the Department in an amount equal to
15 the greater of (1) \$1,000 or (2) an amount equal to four times
16 the amount of consumer debt enrolled. The Department shall
17 cause any funds so recovered to be deposited in the Debt
18 Settlement Consumer Protection Fund.

19 Section 85. Injunction. To engage in debt settlement
20 service, render financial service, or accept debtors' funds, as
21 defined in this Act, without a valid license so to do, is
22 hereby declared to be inimical to the public welfare and to
23 constitute a public nuisance. The Secretary may, in the name of
24 the people of the State of Illinois, through the Attorney

1 General of the State of Illinois, file a complaint for an
2 injunction in the circuit court to enjoin such person, from
3 engaging in that business. An injunction proceeding shall be in
4 addition to, and not in lieu of, penalties and remedies
5 otherwise in this Act provided.

6 Section 90. Review. All final administrative decisions of
7 the Secretary under this Act shall be subject to judicial
8 review pursuant to the provisions of the Administrative Review
9 Law, including all amendments, modifications, and adopted
10 rules.

11 Section 95. Cease and desist orders.

12 (a) The Secretary may issue a cease and desist order to any
13 debt settlement provider or other person doing business without
14 the required license when, in the opinion of the Secretary, the
15 debt settlement provider or other person is violating or is
16 about to violate any provision of the Act or any rule or
17 condition imposed in writing by the Department.

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

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

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

4 (e) The Secretary shall schedule a hearing within 30 days
5 after the request for a hearing unless otherwise agreed to by
6 the parties.

7 (f) If it is determined that the Secretary had the
8 authority to issue the cease and desist order, then he or she
9 may issue such orders as may be reasonably necessary to
10 correct, eliminate, or remedy that conduct.

11 (g) The powers vested in the Secretary by this Section are
12 additional to any and all other powers and remedies vested in
13 the Secretary by law, and nothing in this Section shall be
14 construed as requiring that the Secretary shall employ the
15 power conferred in this Section instead of or as a condition
16 precedent to the exercise of any other power or remedy vested
17 in the Secretary.

18 (h) The cost for the administrative hearing shall be set by
19 rule.

20 Section 100. Moneys received; Financial Institution Fund.
21 All moneys received by the Division of Financial Institutions
22 under this Act, except for moneys received for the Debt
23 Settlement Consumer Protection Fund, shall be deposited in the
24 Financial Institution Fund created under Section 6z-26 of the
25 State Finance Act.

1 Section 103. Debt Settlement Consumer Protection Fund.

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

6 (b) All moneys paid into the fund together with all
7 accumulated, undistributed income thereon shall be held as a
8 special fund in the State treasury. All interest earned on the
9 fund is non-distributable and shall be returned to the Fund,
10 and shall be invested and re-invested in the Fund by the
11 Treasurer or his or her designee. The fund shall be used solely
12 for the purpose of providing restitution to consumers who have
13 suffered monetary loss arising out of a transaction regulated
14 by this Act.

15 (c) The fund shall be applied only to restitution when
16 restitution has been ordered by the Secretary. Restitution
17 shall not exceed the amount actually lost by the consumer. The
18 fund shall not be used for the payment of any attorney or other
19 fees.

20 (d) The fund shall be subrogated to the amount of the
21 restitution, and the Secretary shall request the Attorney
22 General to engage in all reasonable collection steps to collect
23 restitution from the party responsible for the loss and
24 reimburse the fund.

25 (e) Notwithstanding any other provisions of this Section,

1 the payment of restitution from the fund shall be a matter of
2 grace and not right, and no consumer shall have any vested
3 rights in the fund as a beneficiary or otherwise. Before
4 seeking restitution from the fund, the consumer or beneficiary
5 seeking payment of restitution shall apply for restitution on a
6 form provided by the Secretary. The form shall include any
7 information the Secretary may reasonably require in order to
8 determine that restitution is appropriate. All documentation
9 required by the Secretary, including the form, is subject to
10 audit. Distributions from the fund shall be made solely at the
11 discretion of the Secretary, except that no payments or
12 distributions may be made under any circumstance if the fund is
13 depleted.

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

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

20 Section 105. Advertising and marketing practices.

21 (a) A debt settlement provider shall not represent,
22 expressly or by implication, any results or outcomes of its
23 debt settlement services in any advertising, marketing, or
24 other communication to consumers unless the debt settlement
25 provider possesses substantiation for such representation at

1 the time such representation is made.

2 (b) A debt settlement provider shall not, expressly or by
3 implication, make any unfair or deceptive representations, or
4 any omissions of material facts, in any of its advertising or
5 marketing communications concerning debt settlement services.

6 (c) All advertising and marketing communications
7 concerning debt settlement services shall disclose the
8 following material information clearly and conspicuously:

9 "Debt settlement services are not appropriate for
10 everyone. Failure to pay your monthly bills in a timely
11 manner will result in increased balances and will harm your
12 credit rating. Not all creditors will agree to reduce
13 principal balance, and they may pursue collection,
14 including lawsuits."

15 Section 110. Individualized financial analysis.

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

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

21 (2) a statement containing a good faith estimate of the
22 length of time it will take to complete the debt settlement
23 program, the total amount of debt owed to each creditor
24 included in the debt settlement program, the total savings
25 estimated to be necessary to complete the debt settlement

1 program, and the monthly targeted savings amount estimated
2 to be necessary to complete the debt settlement program.

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

6 (1) the consumer can reasonably meet the requirements
7 of the proposed debt settlement program, including the fees
8 and the periodic savings amounts set forth in the savings
9 goals; and

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

12 Section 115. Required pre-sale consumer disclosures and
13 warnings.

14 (a) Before the consumer signs a contract, the debt
15 settlement provider shall provide an oral and written notice to
16 the consumer that clearly and conspicuously discloses all of
17 the following:

18 (1) Debt settlement services may not be suitable for
19 all consumers.

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

22 (3) Using a debt settlement service does not stop
23 creditor collection activity, including creditor lawsuits
24 and garnishments

25 (4) Not all creditors will accept a reduction in the

1 balance, interest rate, or fees a consumer owes.

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

5 (6) The consumer remains obligated to make periodic or
6 scheduled payments to creditors while participating in a
7 debt settlement plan, and that the debt settlement provider
8 will not make any periodic or scheduled payments to
9 creditors on behalf of the consumer.

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

12 (A) harm the consumer's credit history, credit
13 rating, or credit score;

14 (B) lead the creditor to increase lawful
15 collection activity, including litigation, garnishment
16 of the consumer's wages, and judgment liens on the
17 consumer's property; and

18 (C) lead to the imposition by the creditor of
19 interest charges, late fees, and other penalty fees,
20 increasing the principal amount of the debt.

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

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

26 (b) The consumer shall sign and date an acknowledgment form

1 entitled "Consumer Notice and Rights Form" that states: "I, the
2 debtor, have received from the debt settlement provider a copy
3 of the form entitled "Consumer Notice and Rights Form"." The
4 debt settlement provider or its representative shall also sign
5 and date the acknowledgment form, which includes the name and
6 address of the debt settlement services provider. The
7 acknowledgment form shall be in duplicate and incorporated into
8 the "Consumer Notice and Rights Form". The original
9 acknowledgment form shall be retained by the debt settlement
10 provider, and the duplicate copy shall be retained within the
11 form by the consumer.

12 If the acknowledgment form is in electronic form, then it
13 shall contain the consumer disclosures required by Section
14 101(c) of the federal Electronic Signatures in Global and
15 National Commerce Act.

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

22 "CONSUMER NOTICE AND RIGHTS FORM

23 CAUTION

24 We CANNOT GUARANTEE that you successfully will reduce or

1 eliminate your debt.

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

4 - CREDITORS MAY STILL CONTACT YOU AND TRY TO COLLECT.

5 - CREDITORS MAY STILL SUE YOU FOR THE MONEY YOU OWE.

6 - YOUR WAGES OR BANK ACCOUNT MAY STILL BE GARNISHED.

7 - YOUR CREDIT RATING AND CREDIT SCORE LIKELY WILL BE
8 HARMED.

9 - NOT ALL CREDITORS WILL AGREE TO ACCEPT A BALANCE
10 REDUCTION.

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

13 - THE AMOUNT OF MONEY YOU OWE MAY INCREASE DUE TO CREDITOR
14 IMPOSITION OF INTEREST CHARGES, LATE FEES, AND OTHER PENALTY
15 FEES.

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

18 YOUR RIGHT TO CANCEL

19 If you sign a contract with a Debt Settlement Provider, you
20 have the right to cancel at any time and receive a full refund
21 of all unearned fees you have paid to the provider and all
22 funds placed in your settlement fund that have not been paid to
23 any creditors.

24 IF YOU ARE DISSATISFIED

1 OR YOU HAVE QUESTIONS

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

6 Attorney General Toll-Free Numbers:

7 Carbondale (800) 243-0607

8 Springfield (800) 243-0618

9 Chicago (800) 386-5438

10 Website for Department of Financial and Professional
11 Regulation: www.idfpr.com

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

14 Section 120. Debt settlement contract.

15 (a) A debt settlement provider shall not provide debt
16 settlement service to a consumer without a written contract
17 signed and dated by both the consumer and the debt settlement
18 provider.

19 (b) Any contract for the provision of debt settlement
20 service entered into in violation of the provisions of this
21 Section is void.

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

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

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

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

5 (4) The corporate address and regular business
6 address, including a street address, of the debt settlement
7 provider.

8 (5) The telephone number at which the consumer may
9 speak with a representative of the debt settlement provider
10 during normal business hours.

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

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

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

23 (9) A good faith estimate of the total amount of all
24 fees and compensation, not to exceed the amounts specified
25 in Section 125 of this Act, to be collected by the debt
26 settlement provider from the consumer for the provision of

1 debt settlement service contemplated by the contract.

2 (10) A statement of the proposed savings goals for the
3 consumer, stating the amount to be saved per month or other
4 period, time period over which savings goal extends, and
5 the total amount of the savings expected to be paid by the
6 consumer pursuant to the terms of the contract.

7 (11) The amount of money or the percentage of debt the
8 consumer must accumulate before a settlement offer will be
9 made to each of the consumer's creditors.

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

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

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

19 (A) the consumer shall be entitled to a full refund
20 of all unearned fees and compensation paid by the
21 consumer to the debt settlement provider, and a full
22 refund of all funds provided by the consumer to the
23 debt settlement provider for a consumer settlement
24 account, except for funds actually paid to a creditor
25 on behalf of the consumer, under the terms of the
26 contract for debt settlement service; and

1 (B) all powers of attorney granted to the debt
2 settlement provider by the consumer shall be
3 considered revoked and voided.

4 (15) A form the consumer may use to cancel the contract
5 pursuant to the provisions of Section 135 of this Act. The
6 form shall include the name and mailing address of the debt
7 settlement provider and shall disclose clearly and
8 conspicuously how the consumer can cancel the contract,
9 including applicable addresses, telephone numbers,
10 facsimile numbers, and electronic mail addresses the
11 consumer can use to cancel the contract.

12 (f) If a debt settlement provider communicates with a
13 consumer primarily in a language other than English, then the
14 debt settlement provider shall furnish to the consumer a
15 translation of all the disclosures and documents required by
16 this Act in that other language.

17 Section 125. Fees.

18 (a) A debt settlement provider shall not charge fees of any
19 type or receive compensation from a consumer in a type, amount,
20 or timing other than fees or compensation permitted in this
21 Section.

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

1 (c) A debt settlement provider may charge a settlement fee,
2 which shall not exceed an amount greater than 15% of the
3 savings. If the amount paid by the debt settlement provider to
4 the creditor or negotiated by the debt settlement provider and
5 paid by the consumer to the creditor pursuant to a settlement
6 negotiated by the debt settlement provider on behalf of the
7 consumer as full and complete satisfaction of the creditor's
8 claim with regard to that debt is greater than the principal
9 amount of the debt, then the debt settlement provider shall not
10 be entitled to any settlement fee.

11 (d) A debt settlement provider shall not collect any
12 settlement fee from a consumer until a creditor enters into a
13 legally enforceable agreement to accept funds in a specific
14 dollar amount as full and complete satisfaction of the
15 creditor's claim with regard to that debt and those funds are
16 provided by the debt settlement provider on behalf of the
17 consumer or are provided directly by the consumer to the
18 creditor pursuant to a settlement negotiated by the debt
19 settlement provider

20 Section 130. Consumer settlement accounts and monthly
21 accounting.

22 (a) A debt settlement provider who receives funds from a
23 consumer shall hold all funds received for a consumer
24 settlement account in a properly designated trust account in a
25 federally insured depository institution. The funds shall

1 remain the property of the consumer until the debt settlement
2 provider disburses the funds to a creditor on behalf of the
3 consumer as full or partial satisfaction of the consumer's debt
4 to the creditor or the creditor's claim against the consumer.
5 Any interest earned on such account shall be credited to the
6 consumer.

7 (b) A debt settlement provider shall not be named on a
8 consumer's bank account, take a power of attorney in a
9 consumer's bank account, create a demand draft on a consumer's
10 bank account, or exercise any control over any bank account
11 held by or on behalf of the consumer.

12 (c) A debt settlement provider shall, no less than monthly,
13 provide each consumer with which it has a contract for the
14 provision of debt settlement service a statement of account
15 balances, fees paid, settlements completed, and remaining
16 debts.

17 Section 135. Cancellation of contract and right to fee and
18 settlement fund refunds.

19 (a) A consumer may cancel a contract with a debt settlement
20 provider at any time before the debt settlement provider has
21 fully performed each service the debt settlement provider
22 contracted to perform or represented it would perform.

23 (b) If a consumer cancels a contract with a debt settlement
24 provider, or at any time upon a material violation of this Act
25 on the part of the debt settlement provider, then the debt

1 settlement provider shall refund all fees and compensation,
2 with the exception of the application fee and any earned
3 settlement fee, as well as all funds paid by the consumer to
4 the debt settlement provider that have accumulated in a
5 consumer settlement account and that the debt settlement
6 provider has not disbursed to creditors. Upon cancellation, all
7 powers of attorney and direct debit authorizations granted to
8 the debt settlement provider by the consumer shall be
9 considered revoked and voided.

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

16 (d) Upon the cancellation of a contract under this Section,
17 the debt settlement provider shall provide timely notice of the
18 cancellation of the contract to each of the creditors with whom
19 the debt settlement provider has had any prior communication on
20 behalf of the consumer in connection with the provision of any
21 debt settlement service.

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

24 Section 145. Prohibited practices. A debt settlement

1 provider shall not do any of the following:

2 (1) Charge or collect from a consumer any fee not
3 permitted by, in an amount in excess of the maximum amount
4 permitted by, or at a time earlier than permitted by
5 Section 125 of this Act.

6 (2) Advise or represent, expressly or by implication,
7 that consumers should stop making payments to their
8 creditors.

9 (3) Advise or represent, expressly or by implication,
10 that consumers should stop communicating with their
11 creditors.

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

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

18 (6) Take any confession of judgment or power of
19 attorney to confess judgment against the consumer or appear
20 as the consumer or on behalf of the consumer in any
21 judicial proceedings.

22 (7) Take any release or waiver of any obligation to be
23 performed on the part of the debt settlement provider or
24 any right of the consumer.

25 (8) Advertise, display, distribute, broadcast, or
26 televise services or permit services to be displayed,

1 advertised, distributed, broadcasted, or televised, in any
2 manner whatsoever, that contains any false, misleading, or
3 deceptive statements or representations with regard to any
4 matter, including services to be performed, the fees to be
5 charged by the debt settlement provider, or the effect
6 those services will have on a consumer's credit rating or
7 on creditor collection efforts.

8 (9) Receive any cash, fee, gift, bonus, premium,
9 reward, or other compensation from any person other than
10 the consumer explicitly for the provision of debt
11 settlement service to that consumer.

12 (10) Offer or provide gifts or bonuses to consumers for
13 signing a debt settlement service contract or for referring
14 another potential customer or customer.

15 (11) Disclose to anyone the name or any personal
16 information of a consumer for whom the debt settlement
17 provider has provided or is providing debt settlement
18 service other than to a consumer's own creditors or the
19 debt settlement provider's agents, affiliates, or
20 contractors for the purpose of providing debt settlement
21 service without the prior consent of the consumer.

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

25 (13) Misrepresent any material fact, make a material
26 omission, or make a false promise directed to one or more

1 consumers in connection with the solicitation, offering,
2 contracting, or provision of debt settlement service.

3 (14) Violate the provisions of applicable do not call
4 statutes.

5 (15) Purchase debts or engage in the practice or
6 business of debt collection.

7 (16) Include in a debt settlement agreement any secured
8 debt.

9 (17) Employ an unfair, unconscionable, or deceptive
10 act or practice, including the knowing omission of any
11 material information.

12 (18) Engage in any practice that prohibits or limits
13 the consumer or any creditor from communication directly
14 with one another.

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

18 Section 150. Noncompliance with the Act.

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

21 (1) shall be treated as void; and

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

24 (b) Any attempt by any person to obtain a waiver from any
25 consumer of any protection provided by or any right or

1 protection of the consumer or any obligation or requirement of
2 the debt settlement provider under this Act shall be a
3 violation of this Act.

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

6 (1) shall be treated as void; and

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

9 Upon notice of a void contract, a refund by the debt
10 settlement provider to the consumer shall be made as if the
11 contract had been cancelled as provided in Section 135 of this
12 Act.

13 Section 155. Civil remedies.

14 (a) A violation of Section 105, 110, 115, 120, 125, 130,
15 135, 140, 145, or 150 of this Act constitutes an unlawful
16 practice under the Consumer Fraud and Deceptive Business
17 Practices Act. All remedies, penalties, and authority granted
18 to the Attorney General or State's Attorney by the Consumer
19 Fraud and Deceptive Business Practices Act shall be available
20 to him or her for the enforcement of this Act.

21 (b) A consumer who suffers loss by reason of a violation of
22 Section 105, 110, 115, 120, 125, 130, 135, 140, 145, or 150 of
23 this Act may bring a civil action in accordance with the
24 Consumer Fraud and Deceptive Business Practices Act to enforce
25 that provision. All remedies and rights granted to a consumer

1 by the Consumer Fraud and Deceptive Business Practices Act
2 shall be available to the consumer bringing such an action. The
3 remedies and rights provided for in this Act are not exclusive,
4 but cumulative, and all other applicable claims are
5 specifically preserved.

6 Section 900. The State Finance Act is amended by changing
7 Section 6z-26 and by adding Sections 5.755 and 5.756 as
8 follows:

9 (30 ILCS 105/5.755 new)

10 Sec. 5.755. The Debt Management Service Consumer
11 Protection Fund.

12 (30 ILCS 105/5.756 new)

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

14 (30 ILCS 105/6z-26)

15 Sec. 6z-26. The Financial Institution Fund. All moneys
16 received by the Department of Financial and Professional
17 Regulation under the Safety Deposit License Act, the Foreign
18 Exchange License Act, the Pawnors Societies Act, the Sale of
19 Exchange Act, the Currency Exchange Act, the Sales Finance
20 Agency Act, the Debt Management Service Act, the Consumer
21 Installment Loan Act, the Illinois Development Credit
22 Corporation Act, the Title Insurance Act, the Debt Settlement

1 Consumer Protection Act, the Debt Management Service Consumer
2 Protection Fund, and any other Act administered by the
3 Department of Financial and Professional Regulation as the
4 successor of the Department of Financial Institutions now or in
5 the future (unless an Act specifically provides otherwise)
6 shall be deposited in the Financial Institution Fund
7 (hereinafter "Fund"), a special fund that is hereby created in
8 the State Treasury.

9 Moneys in the Fund shall be used by the Department, subject
10 to appropriation, for expenses incurred in administering the
11 above named and referenced Acts.

12 The Comptroller and the State Treasurer shall transfer from
13 the General Revenue Fund to the Fund any monies received by the
14 Department after June 30, 1993, under any of the above named
15 and referenced Acts that have been deposited in the General
16 Revenue Fund.

17 As soon as possible after the end of each calendar year,
18 the Comptroller shall compare the balance in the Fund at the
19 end of the calendar year with the amount appropriated from the
20 Fund for the fiscal year beginning on July 1 of that calendar
21 year. If the balance in the Fund exceeds the amount
22 appropriated, the Comptroller and the State Treasurer shall
23 transfer from the Fund to the General Revenue Fund an amount
24 equal to the difference between the balance in the Fund and the
25 amount appropriated.

26 Nothing in this Section shall be construed to prohibit

1 appropriations from the General Revenue Fund for expenses
2 incurred in the administration of the above named and
3 referenced Acts.

4 Moneys in the Fund may be transferred to the Professions
5 Indirect Cost Fund, as authorized under Section 2105-300 of the
6 Department of Professional Regulation Law of the Civil
7 Administrative Code of Illinois.

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

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

13 (205 ILCS 665/1.5 new)

14 Sec. 1.5. Purpose and construction. The purpose of this Act
15 is to protect consumers who enter into agreements with debt
16 management service providers and to regulate debt management
17 service providers. This Act shall be construed as a consumer
18 protection law for all purposes. This Act shall be liberally
19 construed to effectuate its purpose.

20 (205 ILCS 665/2) (from Ch. 17, par. 5302)

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

22 "Credit counselor" means an individual, corporation, or
23 other entity that is not a debt management service that

1 provides (1) guidance, educational programs, or advice for the
2 purpose of addressing budgeting, personal finance, financial
3 literacy, saving and spending practices, or the sound use of
4 consumer credit; or (2) assistance or offers to assist
5 individuals and families with financial problems by providing
6 counseling; or (3) a combination of the activities described in
7 items (1) and (2) of this definition.

8 "Debt management service" means the planning and
9 management of the financial affairs of a debtor for a fee and
10 the receiving of money from the debtor for the purpose of
11 distributing it, ~~directly or indirectly,~~ to the debtor's
12 creditors in payment or partial payment of the debtor's
13 obligations or soliciting financial contributions from
14 creditors. The business of debt management is conducted in this
15 State if the debt management business, its employees, or its
16 agents are located in this State or if the debt management
17 business solicits or contracts with debtors located in this
18 State. "Debt management service" does not include "debt
19 settlement service" as defined in the Debt Settlement Consumer
20 Protection Act.

21 This term shall not include the following when engaged in
22 the regular course of their respective businesses and
23 professions:

24 (a) Attorneys at law licensed, or otherwise authorized
25 to practice, in Illinois who are engaged in the practice of
26 law.

1 (b) Banks, operating subsidiaries of banks, affiliates
2 of banks, fiduciaries, credit unions, savings and loan
3 associations, and savings banks as duly authorized and
4 admitted to transact business in the State of Illinois and
5 performing credit and financial adjusting service in the
6 regular course of their principal business.

7 (c) Title insurers, title agents, independent
8 escrowees, and abstract companies, while doing an escrow
9 business.

10 (d) Judicial officers or others acting pursuant to
11 court order.

12 (e) Employers for their employees, except that no
13 employer shall retain the services of an outside debt
14 management service to perform this service unless the debt
15 management service is licensed pursuant to this Act.
16 ~~Employers for their employees.~~

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

19 (g) Credit counselors, only when providing services
20 described in the definition of credit counselor in this
21 Section.

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

23 "Debtor" means the person or persons for whom the debt
24 management service is performed.

25 "Person" means an individual, firm, partnership,
26 association, limited liability company, corporation, or

1 not-for-profit corporation.

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

3 "Secretary" means the Secretary of Financial and
4 Professional Regulation.

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

6 (205 ILCS 665/4) (from Ch. 17, par. 5304)

7 Sec. 4. Application for license. Application for a license
8 to engage in the debt management service business in this State
9 shall be made to the Secretary ~~Director~~ and shall be in
10 writing, under oath, and in the form prescribed by the
11 Secretary ~~Director~~.

12 Each applicant, at the time of making such application,
13 shall pay to the Secretary ~~Director~~ the sum of \$30.00 as a fee
14 for investigation of the applicant, and the additional sum of
15 \$100.00 as a license fee.

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

25 The bond shall run to the Secretary ~~Director~~ for the use of

1 the Department or of any person or persons who may have a cause
2 of action against the obligor in said bond arising out of any
3 violation of this Act or rules by a license. Such bond shall be
4 conditioned that the obligor will faithfully conform to and
5 abide by the provisions of this Act and of all rules,
6 regulations and directions lawfully made by the Secretary
7 ~~Director~~ and will pay to the Secretary ~~Director~~ or to any
8 person or persons any and all money that may become due or
9 owing to the State or to such person or persons, from said
10 obligor under and by virtue of the provisions of this Act.

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

12 (205 ILCS 665/5) (from Ch. 17, par. 5305)

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

17 (1) That the financial responsibility, experience,
18 character and general fitness of the applicant, the managers
19 thereof, if the applicant is a limited liability company, the
20 partners thereof, if the applicant is a partnership, and of the
21 officers and directors thereof, if the applicant is a
22 corporation or a not-for-profit corporation, are such as to
23 command the confidence of the community and to warrant belief
24 that the business will be operated fairly, honestly and
25 efficiently within the purposes of this Act, and

1 (2) That the applicant, if an individual, the managers
2 thereof, if the applicant is a limited liability company, the
3 partners thereof, if the applicant is a partnership, and the
4 officers and directors thereof, if the applicant is a
5 corporation, have not been convicted of a felony or a
6 misdemeanor involving dishonesty or untrustworthiness, and

7 (3) That the person or persons have not had a record of
8 having defaulted in the payment of money collected for others,
9 including the discharge of such debts through bankruptcy
10 proceedings, and

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

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

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

1 of the Secretary ~~Director~~.

2 More than one license may be issued to the same person for
3 separate places of business, but separate applications shall be
4 made for each location conducting business with Illinois
5 residents ~~place of business~~.

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

7 (205 ILCS 665/6) (from Ch. 17, par. 5306)

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

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

21 (205 ILCS 665/7) (from Ch. 17, par. 5307)

22 Sec. 7. License, display and location. Each license issued
23 shall be kept conspicuously posted in the place of business of
24 the debt management service provider ~~licensee~~. The business

1 location may be changed by any licensee upon 10 days prior
2 written notice to the Secretary ~~Director~~. A license must
3 operate under the name as stated in its original application.

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

5 (205 ILCS 665/8.5)

6 Sec. 8.5. Temporary location. The Secretary ~~Director~~ may
7 approve a temporary additional business location for the
8 purpose of allowing a debt management service provider ~~licensee~~
9 to conduct business outside the licensed location.

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

11 (205 ILCS 665/9) (from Ch. 17, par. 5309)

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

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

16 (205 ILCS 665/10) (from Ch. 17, par. 5310)

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

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

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

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

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

8 (4) any applicant has made any false statement or
9 representation to the Secretary ~~Director~~ in applying for a
10 license hereunder.

11 (b) In every case in which a license is suspended or
12 revoked or an application for a license or renewal of a license
13 is denied, the Secretary ~~Director~~ shall serve notice of his
14 action, including a statement of the reasons for his actions,
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 (c) In the case of a denial of an application or renewal of
19 a license, the applicant or licensee may request in writing,
20 within 30 days after the date of service, a hearing. In the
21 case of a denial of a renewal of a license, the license shall
22 be deemed to continue in force until 30 days after the service
23 of the notice of denial, or if a hearing is requested during
24 that period, until a final administrative order is entered.

25 (d) An order of revocation or suspension of a license shall
26 take effect upon service of the order unless the licensee

1 requests, in writing, within 10 days after the date of service,
2 a hearing. In the event a hearing is requested, the order shall
3 be stayed until a final administrative order is entered.

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

8 (f) The hearing shall be held at the time and place
9 designated by the Secretary ~~Director~~. The Secretary ~~Director~~
10 and any administrative law judge designated by him have the
11 power to administer oaths and affirmations, subpoena witnesses
12 and compel their attendance, take evidence, and require the
13 production of books, papers, correspondence, and other records
14 or information that he considers relevant or material to the
15 injury.

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

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

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

21 (205 ILCS 665/11) (from Ch. 17, par. 5311)

22 Sec. 11. Contracts, books, records and contract
23 cancellation. Each debt management service provider ~~licensee~~
24 shall furnish to the Secretary ~~Director~~, when requested, a copy
25 of the contract entered into between the debt management

1 service provider licensee and the debtor. The debt management
2 service provider licensee shall furnish the debtor with a copy
3 of the written contract, at the time of execution, which shall
4 set forth the charges, if any, agreed upon for the services of
5 the debt management service provider licensee.

6 Each debt management service provider licensee shall
7 maintain records and accounts which will enable any debtor
8 contracting with the debt management service provider
9 licensee, at any reasonable time, to ascertain the amounts paid
10 to creditors of the debtor. A statement showing the total
11 amount received and the total disbursements to each creditor
12 shall be furnished by the debt management service provider
13 licensee to any individual within seven days of a request
14 therefor by the said debtor. Each debt management service
15 provider licensee shall issue a receipt for each payment made
16 by the debtor at a debt management service provider's
17 licensee's office. Each debt management service provider
18 licensee shall prepare and retain in the file of each debtor a
19 written analysis of debtor's income and expenses to
20 substantiate that the plan of payment is feasible and
21 practical.

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

23 (205 ILCS 665/11.5)

24 Sec. 11.5. Examination of debt management service provider
25 licensee. The Secretary Director at any time, either in person

1 or through an appointed representative, may examine the
2 condition and affairs of a debt management service provider
3 licensee. In connection with any examination, the Secretary
4 Director may examine on oath any debt management service
5 provider licensee and any director, officer, employee,
6 customer, manager, partner, member, creditor or stockholder of
7 a licensee concerning the affairs and business of the debt
8 management service provider licensee. The Secretary Director
9 shall ascertain whether the debt management service provider
10 licensee transacts its business in the manner prescribed by law
11 and the rules issued thereunder. The debt management service
12 provider licensee shall pay the cost of the examination as
13 determined by the Secretary Director by administrative rule.
14 Failure to pay the examination fee within 30 days after receipt
15 of demand from the Secretary Director may result in the
16 suspension of the license until the fee is paid. The Secretary
17 Director shall have the right to investigate and examine any
18 person, whether licensed or not, who is engaged in the debt
19 management service business. The Secretary Director shall have
20 the power to subpoena the production of any books and records
21 pertinent to any investigation.

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

23 (205 ILCS 665/12) (from Ch. 17, par. 5312)

24 Sec. 12. Fees and charges of debt management service
25 providers licensees. A debt management service provider

1 ~~licensee~~ may not charge a debtor any fees or penalties except
2 the following:

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

6 (2) additional fees at the completion of the initial
7 counseling services which shall not exceed \$50 per month, ~~7~~
8 ~~provided the average monthly fee does not exceed \$30 per debtor~~
9 ~~for all debtors counseled.~~

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

11 (205 ILCS 665/12.1)

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

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

18 (205 ILCS 665/13) (from Ch. 17, par. 5313)

19 Sec. 13. Prohibitions.

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

24 (2) No licensee shall require as a part of the agreement

1 between the licensee and any debtor, the purchase of any stock,
2 insurance, commodity, service or other property or any interest
3 therein.

4 (3) No licensee shall, directly or indirectly, accept
5 payment or any other consideration, whether in cash or in kind,
6 from any entity for referring applicants to that entity. The
7 licensee shall not, directly or indirectly, make payments in
8 any form, whether in cash or in kind, to any person,
9 corporation, or other entity for referring applicants or
10 clients to the licensee.

11 (4) No licensee shall make any loans.

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

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

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

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

20 (205 ILCS 665/14) (from Ch. 17, par. 5314)

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

22 (a) All funds received by a debt management service
23 provider ~~licensee~~ or his agent from and for the purpose of
24 paying bills, invoices, or accounts of a debtor shall
25 constitute trust funds owned by and belonging to the debtor

1 from whom they were received. All such funds received by a debt
2 management service provider licensee shall be separated from
3 the funds of the debt management service provider licensee not
4 later than the end of the business day following receipt by the
5 debt management service provider licensee. All such funds shall
6 be kept separate and apart at all times from funds belonging to
7 the debt management service provider licensee or any of its
8 officers, employees or agents and may be used for no purpose
9 other than paying bills, invoices, or accounts of the debtor.
10 All such trust funds received at the main or branch offices of
11 a debt management service provider licensee shall be deposited
12 in a bank in an account in the name of the debt management
13 service provider licensee designated "trust account", or by
14 some other appropriate name indicating that the funds are not
15 the funds of the debt management service provider licensee or
16 its officers, employees, or agents, on or before the close of
17 the business day following receipt.

18 (b) If a consumer's funds are kept in an interest earning
19 trust account, then any interest earned on the consumer funds
20 shall belong to the consumer. If multiple consumers funds are
21 kept in a single interest earning trust account, then the
22 interest earned shall belong to the consumers and shall be
23 deposited pro rata among the consumers whose funds are in the
24 account. Prior to separation and deposit by the licensee, such
25 funds may be used by the licensee only for the making of change
26 or the cashing of checks in the normal course of its business.

1 Such funds are not subject to attachment, lien, levy of
2 execution, or sequestration by order of court except by a
3 debtor for whom a licensee is acting as an agent in paying
4 bills, invoices, or accounts.

5 (c) Each debt management service provider ~~licensee~~ shall
6 make remittances within 30 days after initial receipt of funds,
7 and thereafter remittances shall be made within 15 days of
8 receipt, less fees and costs, unless the reasonable payment of
9 one or more of the debtor's obligations requires that the funds
10 be held for a longer period so as to accumulate a sum certain.

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

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

21 (205 ILCS 665/15) (from Ch. 17, par. 5315)

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

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

2 (205 ILCS 665/16) (from Ch. 17, par. 5319)

3 Sec. 16. Penalties.

4 (a) Any person who engages in the business of debt
5 management service without a license shall be guilty of a Class
6 4 felony.

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

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

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

23 (2) any fact or condition exists which, if it had
24 existed at the time of the original application for the
25 license, clearly would have warranted the Secretary in

1 refusing to issue the license. ~~set by rule monetary~~
2 ~~penalties for violation of this Act.~~

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

4 (205 ILCS 665/16.5 new)

5 Sec. 16.5. Sec. 16.5. Additional liability for unlicensed
6 activity. Any person who, without the required license, engages
7 in conduct requiring a license under this Act, shall be liable
8 to the Department in an amount equal to the greater of (1)
9 \$1,000 or (2) an amount equal to 4 times the amount of consumer
10 debt enrolled. The Department shall cause any funds so
11 recovered to be deposited in the Debt Management Service
12 Consumer Protection Fund.

13 (205 ILCS 665/16.6 new)

14 Sec. 16.6. Debt Management Service Consumer Protection
15 Fund.

16 (a) A special non-appropriated income-earning fund is
17 hereby created in the State treasury, known as the Debt
18 Management Service Consumer Protection Fund. This Fund is not
19 subject to appropriation by the Illinois General Assembly.

20 (b) All moneys paid into the Fund together with all
21 accumulated, undistributed interest thereon shall be held as a
22 special fund in the State treasury. All interest earned on the
23 fund is non-distributable and shall be returned to the Fund,
24 and shall be invested and re-invested in the Fund by the

1 Treasurer or his or her designee. The Fund shall be used solely
2 for the purpose of providing restitution to consumers who have
3 suffered monetary loss arising out of a transaction regulated
4 by this Act.

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

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

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

1 distributions may be made under any circumstance if the Fund is
2 depleted.

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

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

9 (205 ILCS 665/17) (from Ch. 17, par. 5320)

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

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

22 (205 ILCS 665/18) (from Ch. 17, par. 5321)

23 Sec. 18. Review. All final administrative decisions of the
24 Secretary ~~Director~~ hereunder shall be subject to judicial

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

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

5 (205 ILCS 665/20) (from Ch. 17, par. 5323)

6 Sec. 20. Cease and desist orders.

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

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

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

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

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

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

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

7 (h) The powers vested in the Secretary ~~Director~~ by this
8 Section are additional to any and all other powers and remedies
9 vested in the Secretary ~~Director~~ by law, and nothing in this
10 Section shall be construed as requiring that the Secretary
11 ~~Director~~ shall employ the power conferred in this Section
12 instead of or as a condition precedent to the exercise of any
13 other power or remedy vested in the Secretary ~~Director~~.

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

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

17 (205 ILCS 665/20.5)

18 Sec. 20.5. Receivership.

19 (a) If the Secretary ~~Director~~ determines that a licensee is
20 insolvent or is violating this Act, he or she may appoint a
21 receiver. Under the direction of the Secretary ~~Director~~, the
22 receiver shall, for the purpose of receivership, take
23 possession of and title to the books, records, and assets of
24 the licensee. The Secretary ~~Director~~ may require the receiver
25 to provide security in an amount the Secretary ~~Director~~ deems

1 proper. Upon appointment of the receiver, the Secretary
2 ~~Director~~ shall have published, once each week for 4 consecutive
3 weeks in a newspaper having a general circulation in the
4 community, a notice informing all persons who have claims
5 against the licensee to present them to the receiver. Within 10
6 days after the receiver takes possession, the licensee may
7 apply to the Circuit Court of Sangamon County to enjoin further
8 proceedings. The receiver may operate the business until the
9 Secretary ~~Director~~ determines that possession should be
10 restored to the licensee or that the business should be
11 liquidated.

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

1 as shown by the licensee's books. These claims shall be deemed
2 proven unless some interested party files an objection within
3 the time fixed by the Secretary ~~Director~~ or court that has
4 charge of the liquidation.

5 (c) The General Assembly finds and declares that debt
6 management services provide an important service ~~and vital~~
7 ~~services~~ to Illinois citizens. It is therefore declared to be
8 the policy of this State that customers who receive these
9 services must be protected from interruptions of services. To
10 carry out this policy and to insure that customers of a
11 licensee are protected if it is determined that a business in
12 receivership should be liquidated, the Secretary ~~Director~~
13 shall make a distribution of moneys collected by the receiver
14 in the following order of priority:

15 (1) Allowed claims for the actual necessary expenses of
16 the receivership of the business being liquidated,
17 including:

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

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

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

25 (D) reasonable expenses incurred by the Secretary
26 ~~Director~~ as the result of business agreements or

1 contractual arrangements necessary to insure that the
2 services of the licensee are delivered to the community
3 without interruption. These business agreements or
4 contractual arrangements may include, but are not
5 limited to, agreements made by the Secretary ~~Director~~,
6 or by the receiver with the approval of the Secretary
7 ~~Director~~, with banks, bonding companies, and other
8 types of financial institutions.

9 (1.5) Secured claims.

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

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

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

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

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

26 (7) After one year from the final dissolution of the

1 licensee's business, all assets not used to satisfy allowed
2 claims shall be distributed pro rata to the owner, owners,
3 members, or stockholders of the business.

4 The Secretary ~~Director~~ shall pay all claims of equal
5 priority according to the schedule established in this
6 subsection and shall not pay claims of lower priority until all
7 higher priority claims are satisfied. If insufficient assets
8 are available to meet all claims of equal priority, those
9 assets shall be distributed pro rata among those claims. All
10 unclaimed assets of a licensee and the licensee's business
11 shall be deposited with the Secretary ~~Director~~ to be paid out
12 when proper claims are presented to the Secretary ~~Director~~.

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

26 (e) At the close of a receivership, the receiver shall turn

1 over to the Secretary ~~Director~~ all books of account and ledgers
2 of the business for preservation. The Secretary ~~Director~~ shall
3 hold all records of receiverships received at any time for a
4 period of 2 years after the close of the receivership. The
5 records may be destroyed at the termination of the 2-year
6 period. All expenses of the receivership including, but not
7 limited to, reasonable receiver's and attorney's fees approved
8 by the Secretary ~~Director~~, all expenses of any preliminary or
9 other examinations into the condition of the licensee's
10 business or the receivership, and all expenses incident to the
11 possession and control of any property or records of the
12 business incurred by the Secretary ~~Director~~ shall be paid out
13 of the assets of the licensee's business. These expenses shall
14 be paid before all other claims.

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

1 to, indemnity or exoneration, or upon any other express or
2 implied agreement with, or right against, the debt management
3 service provider's licensee's business. Nothing contained in
4 this Act prevents the bonding or insurance company from filing
5 this type of claim in the liquidation proceeding.

6 (g) A debt management service provider's licensee may not
7 terminate its affairs and close up its business unless it has
8 first deposited with the Secretary Director an amount of money
9 equal to all of its debts, liabilities, and lawful demands
10 against it including the costs and expenses of a proceeding
11 under this Section, surrendered to the Secretary Director its
12 license, and filed with the Secretary Director a statement of
13 termination signed by the debt management service provider's
14 licensee containing a pronouncement of intent to close up its
15 business and liquidate its liabilities and containing a sworn
16 list itemizing in full all of its debts, liabilities, and
17 lawful demands against it. Corporate licensees must attach to,
18 and make a part of the statement of termination, a copy of a
19 resolution providing for the termination and closing up of the
20 licensee's affairs, certified by the secretary of the licensee
21 and duly adopted at a shareholders' meeting by the holders of
22 at least two-thirds of the outstanding shares entitled to vote
23 at the meeting. Upon the filing with the Secretary Director of
24 a statement of termination, the Secretary Director shall cause
25 notice of that action to be published once each week for 3
26 consecutive weeks in a public newspaper of general circulation

1 published in the city or village where the business is located,
2 and if no newspaper is published in that place, then in a
3 public newspaper of general circulation nearest to that city or
4 village. The publication shall give notice that the debts,
5 liabilities, and lawful demands against the business will be
6 redeemed by the Secretary ~~Director~~ upon demand in writing made
7 by the owner thereof, at any time within 3 years after the date
8 of first publication. After the expiration of the 3-year
9 period, the Secretary ~~Director~~ shall return to the person or
10 persons designated in the statement of termination to receive
11 repayment, and in the proportion specified in that statement,
12 any balance of money remaining in his or her possession after
13 first deducting all unpaid costs and expenses incurred in
14 connection with a proceeding under this Section. The Secretary
15 ~~Director~~ shall receive for his or her services, exclusive of
16 costs and expenses, 2% of any amount up to \$5,000 and 1% of any
17 amount in excess of \$5,000 deposited with him or her under this
18 Section by any business. Nothing contained in this Section
19 shall affect or impair the liability of any bonding or
20 insurance company on any bond or insurance policy issued under
21 this Act relating to the business.

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

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

1 (815 ILCS 505/2III new)

2 Sec. 2III. Violations of the Debt Settlement Consumer
3 Protection Act. Any person who violates the Debt Settlement
4 Consumer Protection Act commits an unlawful practice within the
5 meaning of this Act.

6 (205 ILCS 665/13.5 rep.)

7 (205 ILCS 665/15.1 rep.)

8 (205 ILCS 665/15.2 rep.)

9 (205 ILCS 665/15.3 rep.)

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

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

14 Section 999. Effective date. This Act takes effect upon
15 becoming law."