

ASSEMBLY, No. 1949

STATE OF NEW JERSEY

214th LEGISLATURE

INTRODUCED FEBRUARY 8, 2010

Sponsored by:

Assemblyman JACK CONNERS

District 7 (Burlington and Camden)

Assemblywoman L. GRACE SPENCER

District 29 (Essex and Union)

SYNOPSIS

The “Debt-Management Services Act of New Jersey.”

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 12/14/2010)

1 AN ACT concerning debt-management services, supplementing Title
2 17 of the Revised Statutes, and repealing P.L.1979, c.16 and
3 section 3 of P.L.2005, c.287.

4
5 **BE IT ENACTED** *by the Senate and General Assembly of the State*
6 *of New Jersey:*

7
8 1. This act shall be known and may be cited as the “Debt-
9 Management Services Act of New Jersey.”

10
11 2. As used in this act:

12 “Affiliate” means, with respect to an individual: (1) a spouse; (2)
13 a sibling or sibling’s spouse; (3) a lineal ancestor or lineal
14 descendant of the individual or individual’s spouse, or aunt, great
15 aunt, uncle, great uncle, first cousin, niece, grandniece, nephew, or
16 grand nephew, whether related in whole or part by blood or by law,
17 or the spouse of any of them; or (4) any other individual occupying
18 the residence of the individual.

19 “Affiliate” means, with respect to an entity: (1) any person that
20 directly or indirectly controls, is controlled by, or is under common
21 control with, the entity, or the spouse of, or individual occupying
22 the residence of, this person; (2) an officer or director of, or any
23 individual performing similar functions with respect to, the entity or
24 the entity’s affiliate described under paragraph (1) herein, or the
25 spouse of, or individual occupying the residence of, this person; (3)
26 any person that receives or received more than \$25,000 or a greater
27 amount established by the commissioner by regulation, from the
28 entity in either the current or preceding calendar year, or any person
29 that owns more than 10 percent of this receiving person, or an
30 individual who is employed by, or is an officer or director of, this
31 receiving person, or the spouse of, or individual occupying the
32 residence of, any of them; or (4) a sibling or sibling’s spouse, or a
33 lineal ancestor or lineal descendant of an individual or individual’s
34 spouse, or aunt, great aunt, uncle, great uncle, first cousin, niece,
35 grandniece, nephew, or grand nephew, whether related in whole or
36 part by blood or by law, or the spouse of any of them, of any
37 affiliate described in paragraphs (1) through (3) herein.

38 “Business address” means the physical location of a business,
39 including its street name and number.

40 “Certified counselor” means an individual employed by a debt-
41 management provider, who is certified pursuant to this act, to
42 provide education and assistance in connection with debt-
43 management services involving the reduction of finance charges or
44 fees for late payment, default, or delinquency.

45 “Certified debt specialist” means an individual employed by a
46 debt-management provider, who is certified pursuant to this act, to
47 provide education and assistance in connection with debt-

1 management services involving the settlement of debts by creditors
2 for less than the full principal amount owed by a debtor.

3 “Commissioner” means the Commissioner of Banking and
4 Insurance.”

5 “Debt-management agreement” means a contract between a debt-
6 management provider and an individual for the performance of
7 debt-management services.

8 “Debt-management plan” means a written program or strategy in
9 which a debt-management provider furnishes debt-management
10 services to an individual, and which includes a schedule of
11 payments to be made by or on behalf of the individual to pay the
12 individual’s debt or debts.

13 “Debt-management provider” or “provider” means a person
14 registered pursuant to this act, that provides, offers to provide, or
15 agrees to provide debt-management services directly or through
16 others to an individual.

17 “Debt-management service” means any function by a debt-
18 management provider as an intermediary between an individual
19 with whom the provider has a debt-management agreement and one
20 or more creditors of the individual, for the purpose of obtaining
21 concessions from a creditor for repayment of a debt on terms more
22 favorable to the individual than the terms of the original agreement
23 between the individual and creditor. The term “debt-management
24 service” shall not include: (1) any legal service provided in an
25 attorney-client relationship by an attorney-at-law of this State or
26 person otherwise authorized to practice law in this State; (2) any
27 accounting service provided in an accountant-client relationship by
28 a certified public accountant, public accountant, or person otherwise
29 authorized to engage in the practice of public accountancy in this
30 State; or (3) any financial planning service provided in a financial
31 planner-client relationship by a member of a financial planning
32 profession whose members, as determined by the commissioner
33 pursuant to regulation, are: (a) licensed by this State or otherwise
34 authorized to engage in financial planning practices in this State;
35 (b) subject to a code of professional responsibility; (c) subject to
36 regulatory oversight and a disciplinary mechanism; and (d) subject
37 to a continuing education requirement.

38 “Debt-management settlement fee” means a charge imposed
39 upon or paid by an individual, pursuant to a debt-management
40 agreement, in connection with a creditor’s assent to accept in full
41 satisfaction of the individual’s debt an amount less than the
42 principal amount of that debt.

43 “Department” means the Department of Banking and Insurance.

44 “Entity” means a person other than an individual.

45 “Financial institution” means any State or federally chartered
46 bank, savings bank, savings and loan association, credit union, trust
47 company or other entity engaged in the business of banking and
48 subject to regulation under applicable State or federal law.

1 “Individual” means a natural person.

2 “Record” means information preserved by a debt-management
3 provider that is inscribed on a tangible medium, or that is stored in
4 an electronic or other medium and is retrievable in a perceivable
5 form.

6 “Trust account” means an account held by a debt-management
7 provider that is: (1) established in an insured financial institution;
8 (2) separate from any other account of the provider or provider’s
9 designee; (3) appropriately designated by the debt-management
10 provider to indicate that the money in the account is not the money
11 of the provider or provider’s designee; and (4) used to hold money
12 of one or more individuals with a debt-management agreement for
13 the purpose of disbursement to creditors.

14

15 3. This act shall not apply to the following:

16 a. While engaged in its regular course of business, any financial
17 institution or an affiliate of a financial institution, if the affiliate is
18 regulated by a State or federal banking regulatory authority;

19 b. Any debt-management provider who provides debt-
20 management services to an individual for no compensation;

21 c. While engaged in the person’s regular course of business:

22 (1) Any judicial officer or other person acting pursuant to any
23 order or judgment of a court or administrative agency;

24 (2) Any title insurer, escrow company, or other person that
25 provides bill paying services so long as any debt-management
26 services provided are incidental to the bill paying services; and

27 (3) Any assignee of a creditor acting for the benefit of the
28 creditor; and

29 d. Any out-of-state person who provides or agrees to provide
30 debt-management services to an individual residing in this State,
31 but whom the person does not know and had no reason to know is a
32 resident of this State at the time of providing or agreeing to provide
33 the service.

34

35 4. a. A debt-management provider shall not provide, offer to
36 provide, or agree to provide debt-management services in this State
37 unless the provider is registered with the Department of Banking
38 and Insurance, for which the commissioner shall charge a
39 nonrefundable application fee to be prescribed by regulation.

40 b. An application for registration shall be in a form prescribed
41 by the commissioner pursuant to regulation, properly certified, and
42 shall include the following information:

43 (1) the applicant’s name, all names under which the applicant
44 shall conduct business, the principal business address, telephone
45 number, electronic-mail address, and Internet website;

46 (2) the business address, if different than the principal business
47 address submitted pursuant to paragraph (1) of this subsection, for

- 1 each location in this State, if any, at which debt-management
2 services shall be provided;
- 3 (3) if the applicant does not provide an in-State business address:
4 (a) the name and business address of an in-State agent to accept
5 service of process in any action, suit, or proceeding that may arise
6 under this act; or (b) designation of the commissioner as this agent;
- 7 (4) evidence of accreditation for debt-management services by
8 an independent accrediting organization recognized by the
9 commissioner pursuant to regulation;
- 10 (5) the identification of each jurisdiction in which, during the
11 immediately preceding five-year period, any individual received
12 debt-management services from the applicant;
- 13 (6) a demonstration of coverage by a surety bond or other form
14 of financial assurance as required by sections 10 or 11 of this act;
- 15 (7) a demonstration of insurance coverage as required by section
16 12 of this act;
- 17 (8) the name and home address of each officer and director of
18 the applicant, and of any person that owns at least 10 percent of the
19 applicant;
- 20 (9) the identification of each jurisdiction in which, during the
21 immediately preceding five-year period, the applicant or any of its
22 officers, owners or directors has been licensed or registered to
23 provide debt-management services;
- 24 (10) the designation of each director who is also an affiliate, as
25 defined under section 2 of this act, of the applicant, based upon a
26 relationship, other than as director, to the applicant;
- 27 (11) if applicable, the name and business address of the
28 employer of each director during the immediately preceding 10-year
29 period;
- 30 (12) a description of any ownership interest of at least 10
31 percent by a director, owner, officer, or employee of the applicant
32 in:
- 33 (a) any affiliate of the applicant; or
34 (b) any entity that provides products or services to the applicant,
35 or to any individual with a debt-management agreement, relating to
36 the applicant's debt-management services;
- 37 (13) an affirmation, with supporting evidence as appropriate,
38 that each counselor employed by the applicant is, or will become
39 within 12 month of being employed, a certified counselor or
40 certified debt specialist based upon an accreditation from an
41 independent accrediting organization recognized by the
42 commissioner pursuant to regulation;
- 43 (14) a statement of the amount of compensation of the
44 applicant's five most highly compensated employees for each of the
45 three years immediately preceding the submission of the
46 application, or, if it has not been in operation for the three
47 immediately preceding years, for the applicable period of its
48 existence;

1 (15) in coordination with the submission of information for a
2 criminal history record background check pursuant to subsection c.
3 of this section, a statement by the applicant describing, to the extent
4 known, any material civil or criminal judgment or litigation, and
5 any material administrative or enforcement action by a
6 governmental agency in any jurisdiction against the applicant, any
7 officer, director, and owner of the applicant, and any employee or
8 agent of the applicant who is authorized to access the applicant's
9 trust accounts designated in accordance with paragraph (16) of this
10 subsection;

11 (16) an identification of all trust accounts, if any, to be used by
12 the provider in the performance of debt-management services;

13 (17) a copy of the applicant's financial statements, audited by an
14 appropriately authorized accountant, for each of the two years
15 immediately preceding the submission of the application, or, if the
16 applicant has not been in operation for the two immediately
17 preceding years, for the applicable period of its existence;

18 (18) a description of the applicant's financial analysis and initial
19 budget plan, including any form or electronic model, used or to be
20 used to screen and evaluate the financial condition of individuals
21 for debt-management services;

22 (19) a description of the three educational programs most
23 commonly used or to be used by the applicant, with copies of any
24 materials for those programs;

25 (20) a copy of each form of debt-management agreement to be
26 used to provide debt-management services;

27 (21) the schedule of fees and charges to be used by the applicant
28 with respect to providing debt-management services; and

29 (22) any other information deemed necessary by the
30 commissioner.

31 c. An application for registration shall be accompanied by the
32 applicant's submission to the commissioner of the name, address,
33 fingerprints and written consent for a criminal history record
34 background check to be performed on each officer, director, and
35 owner of the applicant, and any employee or agent of the applicant
36 who is authorized to access the applicant's trust accounts
37 designated in accordance with paragraph (16) of subsection b. of
38 this section. The commissioner is authorized to exchange
39 fingerprint data with and receive criminal history record
40 information from the State Bureau of Identification in the Division
41 of State Police and the Federal Bureau of Investigation consistent
42 with applicable State and federal laws, rules and regulations, for the
43 purposes of facilitating determinations concerning the registration
44 eligibility for the applicant, based upon any findings related to an
45 officer, director, owner, employee, or agent. The applicant shall
46 bear the cost for the criminal history record background check,
47 including all costs of administering and processing the check. The
48 Division of State Police shall promptly notify the commissioner in

1 the event an officer, director, owner, employee, or agent who was
2 the subject of a criminal history record background check pursuant
3 to this subsection, is arrested for a crime or offense in this State
4 after the date the background check was performed, whether the
5 person represents a prospective new registrant, or subsequently, a
6 current registrant.

7 d. Any information provided with respect to an application for
8 registration as a debt-management provider shall be subject to
9 public access unless exempt from access pursuant to P.L.1963, c.73
10 (C.47:1A-1 et seq.).

11 e. Any nonprofit social service agency or nonprofit consumer
12 credit counseling agency that was licensed as a debt adjuster
13 pursuant to P.L.1979, c.16 (C.17:16G-1 et seq.) prior to the
14 effective date of this act may continue on or after that effective date
15 to provide debt-management services, so long as the nonprofit
16 social service agency or nonprofit consumer credit counseling
17 agency applies and is registered as a debt-management provider
18 pursuant to this act.

19
20 5. a. (1) Within 120 days of receipt of an application for
21 registration as a debt-management provider, the commissioner shall
22 issue a one-year certificate of registration to an applicant in order
23 for the applicant to act as a debt-management provider in this State,
24 if:

25 (a) the applicant provides all of the information and supporting
26 materials to the commissioner as set forth under section 4 of this
27 act; and

28 (b) the commissioner finds the applicant is duly qualified to
29 engage in the business of debt-management services, based upon an
30 examination of the financial responsibility, experience, character,
31 and general fitness of the applicant and its owners, directors,
32 employees, and agents.

33 (2) The commissioner may extend the 120-day review period for
34 up to an additional 60 days, or issue, in lieu of a one-year certificate
35 of registration, a temporary certificate of registration, to expire no
36 later than 180 days after issuance, for an applicant that has
37 submitted an incomplete application but is making a timely effort to
38 obtain any further information or supporting material, as set forth
39 under section 4 of this act, required to complete the application.

40 (3) The commissioner shall maintain and make publicly
41 available, including through the department's Internet website, a
42 complete list of all registered debt-management providers.

43 b. (1) The commissioner may deny a certificate of registration
44 to an applicant if:

45 (a) the application contains information that is materially
46 erroneous or incomplete;

47 (b) an officer, director, or owner of the applicant has been
48 convicted of a crime, or had a civil judgment entered against him,

1 involving dishonesty or any violation of a state or federal securities
2 law; or

3 (c) the applicant or any officer, director, or owner has defaulted
4 in the payment of money collected for others.

5 (2) The commissioner shall deny a certificate of registration to
6 an applicant that is organized as a not-for-profit entity or has
7 obtained tax-exempt status under section 501 of the federal Internal
8 Revenue Code (26 U.S.C. s.501), if the applicant's board of
9 directors is not independent of the applicant's employees and
10 agents. For purposes of this paragraph, a board of directors shall be
11 deemed not independent if more than one-fourth of its members: (a)
12 are affiliates of the applicant, as defined under section 2 of this act,
13 based upon a relationship, other than as director, to the applicant; or
14 (b) were employed by or directors of a person that received from
15 the applicant more than \$25,000 in a calendar year, or a greater
16 amount established by the commissioner by regulation, beginning
17 from the date 10 years prior to the date of first becoming directors
18 of the affiliate.

19 c. Within seven days of the denial of a certificate of registration
20 pursuant to this section, the commissioner shall provide a follow-up
21 writing to the applicant stating the reasons for the denial. This
22 denial may be appealed by the applicant in accordance with the
23 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
24 seq.).

25

26 6. a. A registered debt-management provider shall obtain a
27 renewal of its registration annually in order to continue conducting
28 the business of debt-management services in this State. The
29 commissioner shall charge the debt-management provider a
30 nonrefundable application fee for the renewal, which shall be
31 prescribed by regulation.

32 b. An application for registration renewal shall be filed not more
33 than 60 days, but not less than 30 days, prior to the expiration of the
34 debt-management provider's current registration. The application
35 shall be in a form prescribed by the commissioner pursuant to
36 regulation, properly certified, and shall include the following:

37 (1) disclosure of any changes in the information or supporting
38 materials submitted to the commissioner with the provider's
39 immediately preceding application for a certificate of registration,
40 as set forth pursuant to subsection b. of section 4 of this act; and

41 (2) in addition to any disclosures under paragraph (1) of this
42 subsection, and even if the information or supporting material is the
43 same as that contained in the provider's immediately preceding
44 application:

45 (a) evidence of accreditation for debt-management services by
46 an independent accrediting organization recognized by the
47 commissioner pursuant to regulation;

1 (b) a demonstration of coverage by a surety bond or other form
2 of financial assurance as required by sections 10 or 11 of this act;

3 (c) a demonstration of insurance coverage as required by section
4 12 of this act;

5 (d) a copy of a financial statement, audited by an appropriately
6 authorized accountant, for the year immediately preceding the
7 submission of the application of registration renewal;

8 (e) disclosure of the total amount of money:

9 (i) received by the provider from or on behalf of any individual
10 pursuant to any debt-management plan during the immediately
11 preceding year for the purpose of making payments on an
12 individual's debt or debts, and the total amount of money
13 distributed during this period to each individual's creditors; and

14 (ii) otherwise accumulated by the provider pursuant to any debt-
15 management agreement during the immediately preceding year; and

16 (f) any other information deemed necessary by the
17 commissioner.

18 c. Any information provided with respect to an application for
19 registration renewal as a debt-management provider shall be subject
20 to public access unless exempt from access pursuant to P.L.1963,
21 c.73 (C.47:1A-1 et seq.).
22

23 7. a. A debt-management provider's application for registration
24 renewal shall be reviewed, and approved or disapproved in the same
25 manner and within the same timeframe as set forth for the review,
26 and approval or disapproval of an initial application for registration
27 as set forth in section 5 of this act.

28 b. If a debt-management provider files a timely and complete
29 application for registration renewal, the provider's currently issued
30 certificate of registration in force at the time of the application shall
31 remain in effect until the commissioner either issues a renewed
32 certificate, or denies the renewal. If denied, the debt-management
33 provider may, within 30 days of receipt of the written notice of
34 denial pursuant to subsection c. of section 5 of this act, appeal the
35 decision in accordance with the "Administrative Procedure Act,"
36 P.L.1968, c.410 (C.52:14B-1 et seq.). Pending the final outcome of
37 this appeal process, the provider shall be permitted to continue to
38 provide debt-management services to individuals with whom it
39 already has debt-management agreements. If the denial of the
40 registration renewal is affirmed, the commissioner shall, subject to
41 the final order from the appeal process, oversee the transfer of any
42 on-going debt-management agreements to another registered debt-
43 management provider or the return of all unexpended money
44 received from or on behalf of individuals with agreements that is
45 under the control of the provider.
46

47 8. a. If a debt-management provider holds a current license or
48 certificate of registration issued in another state, authorizing it to

1 provide debt-management services in that state, the provider may
2 submit to the commissioner a copy of this other state's license or
3 registration, along with a copy of the other state's application for
4 this license or registration, and this shall be accepted by the
5 commissioner as an application for a certificate of registration or
6 registration renewal, as appropriate, in lieu of an application set
7 forth in sections 4 and 6 of this act, if:

8 (1) the submission from the other state contains information and
9 supporting materials substantially similar or more comprehensive
10 than that required in an application set forth in sections 4 or 6 of
11 this act;

12 (2) the submission contains, in addition to any information and
13 supporting material provided under subsection a. of this section,
14 and even if the information or supporting material is the same as
15 that provided under subsection a. of this section:

16 (a) any name, business address, or other contact information, as
17 set forth under paragraph (1) of subsection b. of section 4 of this
18 act;

19 (b) any in-State location at which debt-management services
20 shall be provided, as set forth under paragraph (2) of subsection b.
21 of section 4 of this act;

22 (c) a description of the three educational programs most
23 commonly used or to be used for providing debt-management
24 services, with copies of any materials for those programs, as set
25 forth under paragraph (19) of subsection b. of section 4 of this act;

26 (d) the forms to debt-management agreements to be used to
27 provide debt-management services, as set forth under paragraph
28 (20) of subsection b. of section 4 of this act; and

29 (e) the schedule of fees and charges to be used with respect to
30 providing debt-management services, as set forth under paragraph
31 (21) of subsection b. of section 4 of this act;

32 (3) the submission is properly certified with an indication that
33 all information and supporting materials are current or, to the extent
34 not current on the original form from the other state, properly noted
35 and updated to be current by an attachment to the original form;

36 (4) the submission is accompanied by all necessary information
37 and fees required to perform criminal history record background
38 checks, as set forth under subsection c. of section 4 of this act; and

39 (5) the submission is accompanied by a nonrefundable
40 application fee, in an amount to be prescribed by the commissioner
41 by regulation.

42 b. The submission in lieu of an application by an out-of-State
43 debt-management provider pursuant to this section shall be
44 reviewed, and a certificate of registration or registration renewal
45 issued or denied, in the same manner as set forth for an application
46 pursuant to sections 5 and 7 of this act.

1 9. An applicant for a certificate of registration as a debt-
2 management provider, or a currently registered debt-management
3 provider, shall:

4 a. Notify the commissioner within 10 days of any change
5 involving the information or materials previously submitted to the
6 commissioner concerning:

7 (1) any name, business address, or other contact information, as
8 set forth under paragraph (1) of subsection b. of section 4 of this
9 act;

10 (2) an in-State location at which debt-management services shall
11 be provided, as set forth under paragraph (2) of subsection b. of
12 section 4 of this act;

13 (3) coverage by a surety bond or other form of financial
14 assurance, as set forth under paragraph (6) of subsection b. of
15 section 4 of this act;

16 (4) insurance coverage, as set forth under paragraph (7) of
17 subsection b. of section 4 of this act;

18 (5) any material civil or criminal judgment or litigation, and any
19 material administrative or enforcement action by a governmental
20 agency, as set forth under paragraph (15) of subsection b. of section
21 4 of this act;

22 (6) the forms for debt-management agreements to be used to
23 provide debt-management services, as set forth under paragraph
24 (20) of subsection b. of section 4 of this act; or

25 (7) the schedule of fees and charges to be used with respect to
26 providing debt-management services, as set forth under paragraph
27 (21) of subsection b. of section 4 of this act; and

28 b. Notify the commissioner within 30 days of receipt of service
29 of any notice of a civil action for a violation of this act by any
30 person, in order for the commissioner to make a determination as to
31 whether to investigate the allegations presented in the civil action,
32 as authorized by section 22 of this act.

33

34 10. a. Except as otherwise permitted by section 11 of this act,
35 an applicant for a certificate of registration or registration renewal
36 as a debt-management provider shall file a surety bond with the
37 commissioner with its application. The surety bond shall have
38 payment conditioned upon noncompliance with this act, and shall:

39 (1) be in effect during the period of registration, and for two
40 years after the debt-management provider ceases to provide any
41 further debt-management services to any individual in this State;
42 and

43 (2) apply to the benefit of this State and to any individuals who
44 reside in this State when executing debt-management agreements
45 with the provider, as their interests may appear.

46 b. The surety bond shall be in an amount set forth by the
47 commissioner by regulation, as determined by an examination of
48 the financial condition and business experience of the debt-

1 management provider, the history of the provider in performing
2 debt-management services, the risk to individuals with whom the
3 provider makes agreements, and any other factor deemed
4 appropriate by the commissioner.

5 c. The surety bond shall be issued by a bonding, surety, or
6 insurance company authorized to do business in this State and rated
7 with at least an "A" rating or equivalent by a nationally recognized
8 rating organization.

9 d. If the amount of a surety bond is reduced by payment of a
10 judgment or claim, the debt-management provider shall
11 immediately notify the commissioner and, within 30 days after
12 providing this notice, file a new or additional surety bond in an
13 amount determined by the commissioner by regulation. The
14 amount of the new or additional surety bond shall be at least the
15 amount of the surety bond that is reduced by the judgment or claim.

16 e. If the surety bond is terminated by the bonding, surety, or
17 insurance company, the debt-management provider shall
18 immediately notify the commissioner and file a new surety bond in
19 at least the same amount as the surety bond being terminated.

20

21 11. In lieu of the surety bond requirement for an applicant for a
22 certificate of registration or registration renewal as a debt-
23 management provider, a provider may file with the commissioner:

24 a. A certificate of insurance, issued by an insurance company
25 authorized to do business in this State and rated with at least an "A"
26 rating or equivalent by a nationally recognized rating organization:

27 (1) with no deductible; or

28 (2) if the provider supplies a bond in the amount of \$5,000, a
29 deductible not exceeding \$5,000; or

30 b. With the approval of the commissioner:

31 (1) an irrevocable letter of credit, issued or confirmed by a
32 financial institution approved by the commissioner, payable upon
33 presentation of an order or other certificate by the commissioner
34 determining that the provider has not complied with this act; or

35 (2) bonds or other obligations of the United States or guaranteed
36 by the United States, or bonds or other obligations of this State or
37 political subdivision of this State or guaranteed by this State or its
38 political subdivision, to be deposited and maintained with a
39 financial institution approved by the commissioner for this purpose.

40 Other than with respect to the specific form of financial
41 assurance, the provisions of section 10 shall otherwise apply to the
42 debt-management provider.

43

44 12. An applicant for a certificate of registration or registration
45 renewal as a debt-management provider shall provide to the
46 commissioner evidence of insurance coverage, in the amount of at
47 least \$250,000 and a deductible not to exceed \$5,000, as set forth
48 by the commissioner by regulation, issued by an insurance company

1 authorized to do business in this State and rated with at least an “A”
2 rating or equivalent by a nationally recognized rating organization.
3 This coverage shall insure against the risks of dishonesty, fraud,
4 theft, and other misconduct committed by the provider or any
5 officer, director, owner, employee, or agent. The coverage shall be
6 payable for the benefit of the provider, this State, and any
7 individuals who reside in this State when executing debt-
8 management agreements with the provider, as their interests may
9 appear. The coverage shall not be subject to cancellation by the
10 provider or the issuing insurance company until at least 60 days
11 after written notice has been delivered to the commissioner.
12

13 13. A certified debt-management provider shall maintain a toll-
14 free communication system, including, but not limited to, a toll-free
15 telephone number, staffed at a level that reasonably permits
16 individuals to communicate with the provider regarding debt-
17 management services with appropriate provider employees,
18 including a certified counselor or certified debt specialist, during
19 ordinary business hours.
20

21 14. a. Prior to providing any debt-management service for an
22 individual, a debt-management provider shall give the individual an
23 itemized list of goods and services, and the corresponding fee or
24 other charge for each. This list shall be in a clear and conspicuous
25 form, that the individual may maintain whether or not assenting to a
26 debt-management agreement with the provider, and shall indicate
27 which goods and services the provider offers:

28 (1) for a charge, by dollar amount or other method of
29 determination, independent of whether the individual enters into a
30 debt-management agreement with the provider;

31 (2) for a charge, by dollar amount or other method of
32 determination, if the individual enters into a debt-management
33 agreement, which shall be based upon the following categories and
34 subject to any applicable limitations set forth under section 18 of
35 this act:

36 (a) set-up fee;

37 (b) monthly service fee;

38 (c) debt-management settlement fee; and

39 (d) goods and services outside of those provided in connection
40 with a debt settlement plan.

41 b. A debt-management provider shall not provide any debt-
42 management service to an individual, unless a certified counselor or
43 certified debt specialist of the provider:

44 (1) provides the individual with reasonable education about the
45 management of personal finance;

46 (2) has prepared a financial analysis of the individual; and

47 (3) if the individual will make payments on any debt as part of
48 the debt-management services:

1 (a) has completed a debt-management plan for the individual;

2 (b) has made a determination, based upon the financial analysis
3 prepared pursuant to paragraph (2) of this subsection and other
4 available information, that the plan is suitable for the individual and
5 will be able to meet the payment obligations under the plan; and

6 (c) reasonably believes that each creditor of the individual listed
7 as a participating creditor under the plan pursuant to subsection c.
8 of this section will accept payment of the individual's debt as
9 provided in the plan.

10 c. A debt-management provider shall not enter into a debt-
11 management agreement to execute a debt-management plan with an
12 individual until it:

13 (1) provides the individual with a copy of the individual's
14 financial analysis and debt-management plan, prepared as required
15 under paragraphs (2) and (3) of subsection b. of this section, and
16 which the individual may keep regardless of whether the individual
17 assents to the debt-management agreement;

18 (2) informs the individual of the availability of assistance
19 through the provider's toll-free communication system established
20 pursuant to section 13 of this act; and

21 (3) with respect to all creditors identified by the individual or
22 otherwise determined by the provider, presents the individual with a
23 list of:

24 (a) creditors that the provider reasonably expects to participate
25 in the debt-management plan and grant concessions concerning a
26 debt;

27 (b) creditors that the provider reasonably expects to participate in
28 the debt-management plan but not grant any concessions concerning
29 a debt;

30 (c) creditors that the provider reasonably expects not to
31 participate in the debt-management plan; and

32 (d) all other creditors.

33 d. A debt-management provider shall inform an individual with
34 whom it seeks to enter into a debt-management agreement, in a
35 separate notice that may be retained whether or not the individual
36 assents to the agreement, stating:

37 (1) the name and business address of the provider;

38 (2) an indication that debt-management plans are not suitable for
39 all individuals, and the individual may inquire with the provider
40 about other means, including but not limited to bankruptcy, to
41 handle the individual's indebtedness;

42 (3) an indication that a debt-management plan may adversely
43 impact the individual's credit rating or credit score, making it more
44 difficult to obtain credit;

45 (4) an indication that nonpayment of debt may lead creditors to
46 increase finance and other charges or undertake collection actions
47 against the individual, including litigation;

1 (5) if applicable, an indication that the provider may receive
2 compensation from a creditor of the individual; and

3 (6) if applicable, an indication that if a creditor settles for less
4 than the full amount of a debt owed as a result of a debt-
5 management plan, it may result in the creation of taxable income to
6 the individual, even though the individual did not actually receive
7 any money.

8
9 15. a. A debt-management agreement shall be in a written
10 format and:

11 (1) be dated and signed by the debt-management provider and
12 the individual;

13 (2) include the name of the individual and the address where the
14 individual resides;

15 (3) include the name, business address, telephone number, and
16 other contact information for the provider;

17 (4) be delivered to the individual immediately upon formation
18 and execution of the agreement; and

19 (5) disclose the following:

20 (a) the debt-management services and other services to be
21 provided;

22 (b) the amount, or method of determination, of all fees,
23 individually itemized, to be paid by or on behalf of the individual;

24 (c) the schedule of payments to be made by or on behalf of the
25 individual, including the amount of each payment and the date by
26 which it is due, in accordance with a debt-management plan;

27 (d) if the debt-management plan provides for regular, periodic
28 payments to multiple creditors, a breakdown of the schedule of
29 payments listed under subparagraph (c) of this paragraph that
30 includes each creditor to which payment will be made, the amount
31 owed to each creditor, and any concession on a debt the provider
32 reasonably believes each creditor will offer;

33 (e) a list of each creditor that the provider reasonably believes
34 will not participate in the debt-management plan and to which the
35 provider shall not direct any payment;

36 (f) a notice that the provider shall notify the individual within
37 five days of learning of a creditor's final decision to reject or
38 withdraw from a debt-management plan, which indicates the name
39 of the creditor and that this change grants the individual the right to
40 modify or cancel the agreement in accordance with section 16 of
41 this act;

42 (g) a notice of the provider's methods of compliance with respect
43 to record keeping and periodic reports to the individual pursuant to
44 section 19 of this act;

45 (h) that the individual authorizes any financial institution in
46 which the provider has established a trust account to disclose to the
47 commissioner any financial records relating to that trust account;

- 1 (i) a notice that the provider may cancel the debt-management
2 agreement for good cause, and return any unexpended moneys of
3 the individual held in the provider's trust account as set forth in
4 subsection d. of section 16 of this act;
- 5 (j) a notice that the individual may cancel the debt-management
6 agreement in accordance with section 16 of this act; and
- 7 (k) a notice that the provider may contact the department, as the
8 regulatory entity overseeing the debt-management activities of the
9 provider, for further assistance or to file a complaint, and include
10 the mailing address, telephone number, and Internet website of the
11 department.
- 12 b. (1) A debt-management agreement may confer on the debt-
13 management provider a power of attorney to settle an individual's
14 debt for no more than 50% of the principal amount of that debt. An
15 agreement shall not confer a power of attorney to settle a debt for
16 more than 50% of the principal amount of that debt, but may confer
17 a power of attorney to negotiate with creditors of the individual
18 regarding an amount of more than 50% of the principal amount of a
19 debt. An agreement shall provide that the provider shall obtain the
20 approval of the individual of a negotiated settlement of more than
21 50% of the principal amount owed by an individual in order to
22 finalize that negotiated settlement between the creditor and
23 individual.
- 24 (2) Any grant of a power of attorney provided by a debt-
25 management agreement shall be automatically revoked if the
26 agreement is subsequently cancelled by either party to the
27 agreement.
- 28 c. A debt-management agreement shall not:
29 (1) provide for the application of the law of any jurisdiction
30 other than the United States and this State;
31 (2) contain any provision, other than as set forth in a pre-dispute
32 arbitration clause, modifying or limiting otherwise available forums
33 or procedural rights, including the right to a jury trial, that are
34 generally available to the individual under the law;
35 (3) contain any provision that modifies or limits the individual's
36 available remedies under this act and any other applicable law; and
37 (4) contain any provision that limits or releases the liability of
38 any person for failing to perform in accordance with a debt-
39 management agreement or violating any provision of this act, or
40 indemnifies the person from liability arising under the agreement or
41 this act.
- 42 d. (1) Any debt-management agreement that violates any
43 provision of subsections b. or c. of this section shall be void.
- 44 (2) Any debt-management agreement signed and executed
45 between an individual and debt-management provider without a
46 valid registration in this State shall be voidable by the individual.

1 16. a. (1) An individual may cancel a debt-management
2 agreement for any reason, and receive a full refund of any moneys
3 paid to a debt-management provider, within three business days
4 after the individual assents to the agreement. However, this period
5 shall be extended to 30 days with respect to any agreement that
6 does not comply with the cancellation notice requirement set forth
7 in subsection c. of this section, or the requirements concerning debt-
8 management agreements set forth in section 15 of this act.

9 (2) An individual may waive this right to cancel, if a personal
10 financial emergency necessitates the disbursement of an
11 individual's money to a creditor before the expiration of the period
12 stated in subsection a. of this section, and the individual provides
13 the debt-management provider a signed and dated written statement
14 describing the circumstances that necessitate the waiver and an
15 explicit acknowledgment of waiving this right.

16 b. An individual may cancel a debt-management agreement at
17 any time after the initial period stated in subsection a. of this
18 section, however, the provider shall only be required to refund:

19 (1) any unexpended money received from the individual and held
20 in a trust account for the reduction or satisfaction of the individual's
21 debt; and

22 (2) with respect to an agreement that provided for creditors to
23 settle debts for less than their principal amount, 65% of any portion
24 of the set-up fee, as indicated to the individual pursuant to
25 subparagraph (a) of paragraph (2) of subsection a. of section 14 of
26 this act, that has not been credited against the provider's debt-
27 management settlement fee, as indicated to the individual pursuant
28 to subparagraph (c) of paragraph (2) of subsection a. of section 14
29 of this act.

30 c. The debt-management agreement shall be accompanied by a
31 cancellation notice that contains the following text in clearly
32 legible, bold-face type:

33
34 **Notice of Right to Cancel**

35
36 **You may cancel this agreement, without penalty or**
37 **obligation, at any time within three business days after initially**
38 **consenting to the agreement as indicated by your signature,**
39 **which may have been done electronically. This period under**
40 **law extends to 30 days if certain requirements by [name of debt-**
41 **management provider] were not fulfilled when forming the**
42 **agreement.**

43 **To cancel this agreement during this period, send this notice**
44 **or another written notice, which may be an e-mail, to [name of**
45 **debt-management provider] at [provider's business address] or**
46 **[provider's electronic-mail address]. If you cancel the**
47 **agreement within the 3-day or 30-day period, if applicable,**
48 **[name of debt-management provider] will refund all money you**

1 have already paid to [name of debt-management provider]
2 regarding the agreement.

3 You may also cancel this agreement at a later time, but in
4 accordance with the agreement and applicable law, [name of
5 debt-management provider] may not be required to refund
6 certain fees, or portions of fees, already paid to [name of debt-
7 management provider].

8
9 I hereby cancel this agreement,

10
11 [name of individual]

12 [signature of individual]

13 [date]
14

15 d. A debt-management provider may cancel an agreement with
16 an individual if a payment from that individual, as required by the
17 agreement, is at least 60 days overdue. The provider shall return
18 any unexpended money received from the individual and held in a
19 trust account and, if applicable, a portion of any set-up fee in the
20 same manner as set forth in subsection b. of this section.

21
22 17. a. A debt-management provider shall hold in trust all money
23 paid to it by or on behalf of an individual with whom it has a debt-
24 management agreement for distribution to creditors in accordance
25 with an agreed upon debt-management plan. Within two business
26 days after receipt, the provider shall deposit the money in a trust
27 account as indicated in the information submitted to the
28 commissioner pursuant to paragraph (16) of subsection b. of section
29 4 of this act.

30 b. The money held in trust by a debt-management provider shall
31 not be deemed the property of the provider and shall not be made
32 available to the creditors of the provider by way of any proceeding,
33 order, or judgment.

34 c. With respect to the administration of any trust account, the
35 debt-management provider shall:

36 (1) maintain separate records of accounts for each individual for
37 whom the provider is furnishing debt-management services;

38 (2) disburse money from a trust account to creditors of an
39 individual as set forth in the debt-management plan agreed to as
40 part of a debt-management agreement, except that:

41 (a) the provider may delay payment to the extent that a payment
42 by the individual is not final; and

43 (b) if the debt-management plan provides for regular, periodic
44 payments to multiple creditors, this disbursement shall comply with
45 the due dates established by each creditor; and

46 (3) promptly correct any payments that are not made or
47 misdirected as a result of an error by the provider, and reimburse

1 the individual for any cost or fee imposed by a creditor as a result
2 of the non-payment or misdirected payment;

3 d. (1) A debt-management provider shall ensure that a trust
4 account at all times has a cash balance equal to the sum of the
5 balances of each individual's account within the trust account.

6 (2) The provider shall reconcile the trust account at least once
7 per month. This reconciliation shall compare the cash balance in
8 the trust account with the sum of the balances in each individual's
9 account within the trust account. If the provider has more than one
10 trust account, each one shall be individually reconciled.

11 e. If a debt-management provider knows, or has a reasonable
12 suspicion, of embezzlement or other unlawful appropriation of
13 money held in trust, the provider shall immediately notify the
14 department in a manner established by the commissioner by
15 regulation. Unless otherwise set forth in regulation, within five
16 days of first notifying the department of any occurrence of unlawful
17 appropriation, the provider shall provide the department with
18 further information describing the remedial action taken or to be
19 taken in response to the occurrence.

20 f. If the debt-management provider intends to relocate any trust
21 account to another financial institution, and this institution or
22 account number is not included in the information submitted to the
23 commissioner pursuant to paragraph (16) of subsection b. of section
24 4 of this act, the provider shall promptly inform the commissioner
25 of the name, business address, and other contact information for the
26 new financial institution and corresponding trust account number.

27
28 18. a. A debt-management provider shall not impose directly or
29 indirectly any fee or other charge on an individual for debt-
30 management services except as permitted pursuant to this section.
31 If a provider imposes a fee or other charge not authorized by this
32 section, the individual may void the agreement.

33 b. Except as provided in subsection d. of this section, a debt-
34 management provider shall not impose upon an individual any fee
35 or other charge pursuant to this section until the provider and
36 individual have signed and executed a debt-management agreement
37 that complies with the provisions of this act.

38 c. Upon assenting to a debt-management agreement, a debt-
39 management provider:

40 (1) may impose a fee or other charge upon an individual for
41 educational or counseling services, based upon the nature and
42 extent of the services as determined by the commissioner by
43 regulation; and

44 (2) additionally may impose, as set forth under subparagraph (a)
45 or (b) of this paragraph, but not both:

46 (a) if an individual assents to a debt-management plan that
47 involves creditors reducing finance charges or fees for late
48 payment, default, or delinquency, the provider may charge:

1 (i) a fee not to exceed \$50 or a higher amount set forth under
2 regulation for consultation, obtaining a credit report, establishing an
3 account, and similar set-up activities; and

4 (ii) a monthly service fee, not to exceed \$10 or a higher amount
5 set forth in regulation, multiplied by the number of creditors
6 remaining in the plan at the time the fee is assessed, but not more
7 than \$50 total, or a higher amount set forth in regulation, in any
8 month.

9 (b) If an individual assents to a debt-management plan that
10 involves creditors settling debts for less than their principal amount,
11 a provider may charge:

12 (i) a fee for consultation, obtaining a credit report, establishing
13 an account, and similar set-up activities, in an amount not to exceed
14 the lesser of \$400 or four percent of the individual's total debt at the
15 inception of the plan, or a higher amount set forth in regulation;

16 (ii) a monthly service fee, not to exceed \$10 or a higher amount
17 set forth in regulation, multiplied by the number of creditors
18 remaining in the plan at the time the fee is assessed, but not more
19 than \$50 total, or a higher amount set forth in regulation, in any
20 month; and

21 (iii) a debt-management settlement fee for each debt settled with
22 each individual creditor, not to exceed 30% of the difference
23 between the debt originally owed and the amount the creditor
24 accepts as settlement for that debt, less a credit for any fee or other
25 charge collected from the individual pursuant to sub-subparagraphs
26 (i) and (ii) of this subparagraph.

27 d. If an individual does not assent to a debt-management
28 agreement, a debt-management provider may still receive a fee or
29 other charge for educational or counseling services provided to the
30 individual in an amount not to exceed \$100, or a higher amount set
31 forth in regulation based upon the nature and extent of the services.
32 This fee shall be refunded to the individual if, within 90 days of the
33 completion or termination of any educational or counseling
34 services, the individual assents to a debt-management agreement
35 with the debt-management provider.

36 e. A debt-management provider may impose a fee or other
37 charge not to exceed \$25, or a higher amount set forth in regulation,
38 if any payment made to a provider by an individual is dishonored.

39

40 19. a. A debt-management provider shall provide a record in
41 writing to any individual with whom it has a debt-management plan
42 as part of a debt-management agreement, indicating:

43 (1) the amount of money received from the individual, since the
44 inception of the plan and since the date of the immediately
45 preceding report;

46 (2) any amounts deducted by the provider for fees or other
47 charges from the amount received from the individual;

- 1 (3) the amounts and dates of disbursement made on the
- 2 individual's behalf, or by the individual upon the direction of the
- 3 provider, to each creditor since the date of the immediately
- 4 preceding report;
- 5 (4) the amount held in reserve in a trust account; and
- 6 (5) if, since the immediately preceding report, a creditor has
- 7 agreed to accept as full settlement on a debt an amount that is less
- 8 than the principal amount owed:
- 9 (a) the total amount and terms of the settlement;
- 10 (b) the amount of the total debt when the individual assents to
- 11 the debt-management plan;
- 12 (c) the amount of the remaining debt when the creditor agreed to
- 13 the settlement; and
- 14 (d) the calculation of the debt-management settlement fee, in
- 15 accordance with sub-subparagraph (iii) of subparagraph (b) of
- 16 paragraph (2) of subsection c. of section 18 of this act.
- 17 b. A debt-management provider shall forward this report to an
- 18 individual:
- 19 (1) at least once each month;
- 20 (2) within five business days after a request for a report by the
- 21 individual, except that the provider shall not be required to honor
- 22 more than one request each month; and
- 23 (3) upon fulfillment or earlier cancellation of a debt-management
- 24 agreement.
- 25 c. A debt-management provider shall maintain records for each
- 26 individual with whom it has a debt-management agreement for not
- 27 less than five years after the fulfillment or earlier cancellation of the
- 28 agreement, and provide a record to an individual within a
- 29 reasonable time following a request for this record.
- 30
- 31 20. a. A debt-management provider may satisfy its written
- 32 notice, disclosure, and periodic reporting requirements under this
- 33 act, including the requirements for an itemized list of goods and
- 34 services, financial analysis, and debt-management plan pursuant to
- 35 section 14 of this act, a debt-management agreement pursuant to
- 36 section 15 of this act, and records on activities pursuant to section
- 37 19 of this act, and obtain an individual's consent for services,
- 38 through the Internet or other electronic means, if the provider
- 39 obtains the individual's consent in the manner provided by section
- 40 101(c)(1) of the federal "Electronic Signatures in Global and
- 41 National Commerce Act," Pub.L.106-229 (15 U.S.C. s.7001(c)(1)).
- 42 Any notice, disclosure, or periodic report provided through the
- 43 Internet or other electronic means shall be presented in a printable
- 44 format.
- 45 b. At the time of providing any materials pursuant to subsection
- 46 a. of this section, the debt-management provider shall inform the
- 47 individual that upon a written, telephonic, or electronic request, the
- 48 provider shall provide a written copy of any requested material.

1 This request for a written copy shall be fulfilled within the same
2 timeframe as set forth for individual requests for materials set forth
3 throughout this act.

4 c. If an individual consents to the use of electronic
5 communication pursuant to section 101(c)(1) of the federal
6 “Electronic Signatures in Global and National Commerce Act,”
7 Pub.L.106-229 (15U.S.C. s.7001(c)(1)), but then withdraws this
8 consent as permitted under that federal law, a debt-management
9 provider may, upon 30 days notice, cancel a debt-management
10 agreement with the individual. However, the provider’s 30-day
11 notice shall inform the individual that the agreement shall remain
12 valid if the individual renews, pursuant to section 101(c)(1) of the
13 federal act, the consent to use electronic communications, and the
14 notice of cancellation shall be void if the individual renews his
15 consent within the 30-day timeframe.

16 d. A debt-management provider that maintains an Internet
17 website to conduct any activities pursuant to this section shall
18 disclose on the home page of its website, or on a separate page that
19 is linked in a clear and conspicuous manner from the home page:

- 20 (1) its name and all names under which it conducts business;
21 (2) its principal business address, telephone number, electronic-
22 mail address, and Internet website; and
23 (3) the name of its principal officers.

24 e. The provisions of this section, and of this act generally,
25 modify, limit, and supersede the federal “Electronic Signatures in
26 Global and National Commerce Act,” Pub.L.106-229 (15 U.S.C.
27 s.7001 et seq.), but do not modify, limit, or supersede section 101(c)
28 of that act (15 U.S.C. s.7001(c)) or authorize electronic delivery of
29 any of the notices described in section 103(b) of that act (15 U.S.C.
30 s.7003(b)).

31

32 21. A debt-management provider, in addition to any other
33 prohibitions established by this act, shall not:

- 34 a. Misappropriate or misapply money held in trust;
35 b. Initiate a transfer from an individual’s account with a
36 financial institution or other person, unless the transfer is:
37 (1) properly authorized by a debt-management agreement with
38 an individual; or

- 39 (2) a return of money to the individual, due to the cancellation
40 of the agreement or other reason;

41 c. Offer a gift or bonus, premium, reward, or other
42 compensation to an individual in exchange for executing a debt-
43 management agreement;

44 d. Offer, pay, or otherwise provide a gift or bonus, premium,
45 reward, or other compensation to a person for referring an
46 individual as a prospective customer for debt-management services,
47 if the person making the referral has a financial interest in the
48 outcome of any services provided the customer and that interest is

- 1 communicated to the prospective customer by either the debt-
- 2 management provider or referring person;
- 3 e. Receive a bonus, commission, benefit, or other compensation
- 4 for making any referral of an individual to any person;
- 5 f. Structure a debt-management plan in a manner that results in a
- 6 negative amortization of any individual's debt, unless a creditor that
- 7 is owed a negatively amortizing debt agrees to refund or waive the
- 8 finance charge upon payment of the principal amount of the debt;
- 9 g. Compensate its employees on the basis of any formula that
- 10 incorporates the volume of individuals the employee assists in
- 11 entering into debt-management agreements with the provider;
- 12 h. Settle a debt or lead an individual to believe that a payment to
- 13 a creditor shall settle a debt unless, at the time of settlement, the
- 14 individual receives a certification from the creditor that the payment
- 15 represents the settlement of the debt;
- 16 i. Make any representation that:
- 17 (1) the debt-management provider will furnish money to pay
- 18 bills or prevent attachments for an individual;
- 19 (2) the payment of a certain amount on an individual's debts
- 20 will permit satisfaction of a certain amount or range of
- 21 indebtedness; or
- 22 (3) participation in a debt-management plan may or will prevent
- 23 or stay any litigation or other legal proceeding, including
- 24 garnishment, attachment, repossession, or eviction for an
- 25 individual;
- 26 j. Represent that it is authorized or competent to furnish legal
- 27 advice or perform legal services;
- 28 k. Represent that it is:
- 29 (1) a not-for-profit entity unless it is organized and properly
- 30 operating as a not-for profit entity under federal law and the state of
- 31 its incorporation; or
- 32 (2) a tax-exempt entity unless it has received certification of tax-
- 33 exempt status from the federal Internal Revenue Service and is
- 34 properly operating as a not-for-profit entity under federal law and
- 35 the state of its incorporation;
- 36 l. Accept a confession of judgment or power of attorney to
- 37 confess judgment against an individual;
- 38 m. Employ any unfair, unconscionable, or deceptive act or
- 39 practice, including the knowing omission of any material
- 40 information;
- 41 n. Purchase a debt or obligation of an individual to whom it
- 42 provides debt-management services;
- 43 o. Receive from or on behalf of an individual to whom it
- 44 provides debt-management services a promissory note or other
- 45 negotiable instrument other than a check or demand draft;
- 46 p. Lend money or provide credit to an individual to whom it
- 47 provides debt-management services, except as a deferral of a debt-

- 1 management settlement fee at no additional expense to the
- 2 individual;
- 3 q. Obtain from an individual to whom it provides debt-
- 4 management services a mortgage or other security interest from any
- 5 person in connection with the services provided to the individual;
- 6 r. Disclose, except as permitted by federal and State law, the
- 7 identity or personal identifying information of an individual to
- 8 whom it provides debt-management services, except to:
- 9 (1) the commissioner or department, as appropriate for handling
- 10 regulatory oversight of debt-management services;
- 11 (2) a creditor of the individual, to the extent necessary to secure
- 12 the cooperation of the creditor to a debt-management plan; or
- 13 (3) to the extent necessary to administer a debt-management
- 14 plan;
- 15 s. Except as otherwise established by an agreed upon debt-
- 16 management settlement fee, provide an individual to whom it
- 17 provides debt-management services less than the full benefit of any
- 18 concession on a debt arranged by the provider;
- 19 t. Charge an individual to whom it provides debt-management
- 20 services, or provide credit or other insurance, coupons for goods or
- 21 services, club memberships, access to computers or the Internet, or
- 22 any other matter not directly related to any service concerning the
- 23 individual's personal finance;
- 24 u. Receive a gift or bonus, premium, reward, or other
- 25 compensation, directly or indirectly, for advising, arranging, or
- 26 assisting an individual in connection with obtaining an extension of
- 27 credit or other service from a lender or service provider, except for
- 28 educational or counseling services required pursuant to a
- 29 government-sponsored program; and
- 30 v. Purchase goods, services, or facilities from a person, if an
- 31 employee of the debt-management provider, or a person that the
- 32 provider reasonably should know is an affiliate of the provider,
- 33 unless the person supplies goods, services, or facilities generally
- 34 and supplies them to the debt-management provider at the same cost
- 35 as charged to others.
- 36
- 37 22. a. The commissioner may take appropriate actions to
- 38 enforce the provisions of this act, including investigations, requests
- 39 for voluntary compliance, making references on activities to the
- 40 Attorney General, and seeking remedies as provided by section 23
- 41 of this act.
- 42 b. The commissioner may investigate and examine the activities,
- 43 books, accounts, and other records of any person that provides,
- 44 offers to provide, or agrees to provide debt-management services to
- 45 individuals residing in this State. With respect to any investigation,
- 46 the commissioner may:
- 47 (1) charge the person the reasonable expenses, including
- 48 attorney's fees, necessarily incurred in conducting the investigation;

1 (2) require the person to submit to testimony under oath as to
2 any facts or circumstances concerning the matter being
3 investigated; and

4 (3) obtain a court order from a court of competent jurisdiction
5 authorizing the commissioner to seize any money, books, accounts,
6 and other property of a person related to a trust account that is
7 under the control of a financial institution.

8 c. The commissioner may enter into cooperative arrangements
9 with any other state or federal agency having authority over debt-
10 management providers or debt-management services, and exchange
11 information with any agency about any person under investigation
12 by the commissioner.

13

14 23. a. The commissioner shall enforce this act and any
15 regulations promulgated pursuant to this act by:

16 (1) suspending, revoking, refusing to renew, or denying a
17 certificate of registration, if:

18 (a) a debt-management provider violates any provision of this
19 act;

20 (b) a fact or condition develops that, had it existed when a
21 provider applied for a certificate of registration or registration
22 renewal, would have been grounds for a denial of the registration;

23 (c) a provider becomes insolvent, based upon financial criteria
24 set forth by the commissioner by regulation;

25 (d) a provider refuses or otherwise obstructs the commissioner,
26 or makes a material misrepresentation or omission to the
27 commissioner, regarding any investigation or examination
28 conducted pursuant to section 22 of this act; or

29 (e) the provider does not respond within a reasonable time and
30 in an appropriate form to any communication from the
31 commissioner.

32 If the commissioner suspends, revokes, refuses to renew, or
33 denies a certificate of registration pursuant to this subsection, the
34 commissioner may additionally obtain a court order from a court of
35 competent jurisdiction authorizing the commissioner to seize any
36 money, books, accounts, and other property of a provider related to
37 a trust account that is under the control of a financial institution, as
38 set forth under paragraph (3) of subsection b. of section 22 of this
39 act. Any decision by the commissioner regarding the suspension,
40 revocation, refusal to renew, or denial of a certificate of registration
41 may be appealed in accordance with the “Administrative Procedure
42 Act,” P.L.1968, c.410 (C.52:14B-1 et seq.).

43 (2) issuance of cease and desist orders, enforceable against a
44 debt-management provider or any officer, director, owner,
45 employee, or agent of the provider, or any other appropriate person;

46 (3) ordering a civil penalty in an amount not to exceed \$10,000
47 for each violation;

48 (4) ordering restitution to any person harmed by a violation; and

1 (5) entering as an intervenor in any private cause of action filed
2 pursuant to section 24 of this act, as appropriate.

3 b. The commissioner may, with respect to any enforcement
4 action under this section, be reimbursed for the reasonable expenses
5 of that action, including attorney's fees.

6

7 24. A person may file a private cause of action in a court of
8 competent jurisdiction against any person who violates any
9 provision of this act.

10 a. The person initiating the action may recover:

11 (1) (a) compensatory damages, including for noneconomic
12 injury, or \$5,000, whichever is greater, for each violation, except
13 for monies already paid to creditors; or

14 (b) treble damages calculated pursuant to subparagraph (a) of
15 this paragraph, if the private cause of action involves an individual
16 who voided a debt-management agreement due to a debt-
17 management provider imposing a fee or other charge not permitted
18 by section 18 of this act;

19 (2) punitive damages; and

20 (3) reasonable attorney's fees and costs.

21 b. (1) A debt-management provider shall not be liable in a
22 private cause of action initiated pursuant to this section if the
23 provider's action or omission was not intentional and resulted from
24 a good faith error, notwithstanding the maintenance of procedures
25 adapted to avoid any error; except that, this good faith defense shall
26 not apply if, in connection with any violation concerning fees or
27 other charges imposed, the provider received more money than
28 authorized by this act or an agreement with an individual, and the
29 provider did not refund the excess money to the individual within
30 two business days of discovering the violation.

31 (2) An error in legal judgment with respect to a provider's
32 obligations under this act shall not be deemed a good faith error.

33 c. Any private cause of action shall be commenced within two
34 years of the violation or within two years as measured, if
35 applicable, from the latest of:

36 (1) an individual's last transmission of money to a debt-
37 management provider;

38 (2) an individual's last transmission of money to a creditor at the
39 direction of the provider pursuant to a debt-management plan;

40 (3) the provider's last disbursement to a creditor of the
41 individual;

42 (4) the provider's last report presented to an individual pursuant
43 to subsection b. of section 19 of this act; or

44 (5) the date on which an individual discovered or reasonably
45 should have discovered the information giving rise to the private
46 cause of action.

47 d. If a violation of this act is also a violation of the consumer
48 fraud act, P.L.1960, c.39 (C.56:8-1 et seq.), a person shall not be

1 permitted to collect any damages, or make another recovery of any
2 kind, under both enactments.

3
4 25. The following are repealed:

5 P.L.1979, c.16 (C.17:16G-1 et seq.); and

6 Section 3 of P.L.2005, c.287 (C.17:16G-9).

7
8 26. This act shall take effect on the first day of the thirteenth
9 month next following enactment, but the Commissioner of Banking
10 and Insurance may take any anticipatory administrative action in
11 advance thereof as shall be necessary for the implementation of this
12 act.

13
14
15 STATEMENT

16
17 This bill, titled the "Debt-Management Services Act of New
18 Jersey," is based upon a national model act drafted by the National
19 Conference of Commissioners on Uniform State Laws. The bill
20 intends to provide a comprehensive reworking of the State's debt
21 settlement law, P.L.1979, c.16 (C.17:16G-1 et seq.), by repealing
22 this existing law and establishing a new registration requirement for
23 debt-management providers (covering credit counseling and debt
24 settlement activities), mandatory notices and other provisions for
25 consumer agreements, and enforcement through the Department of
26 Banking and Insurance, as well as private causes of action.

27 Under the bill, a debt-management provider, which may be
28 organized for-profit or nonprofit, shall not provide, offer to provide,
29 or agree to provide any debt-management services in this State
30 unless the provider is registered with the department. An
31 application for registration shall be in a form prescribed by the
32 Commissioner of Banking and Insurance, properly certified, and
33 which documents the applicant's contact information, business
34 organization, proof of coverage by a surety bond or other form of
35 financial assurance and insurance coverage, past and proposed
36 business practices, and includes a submission for criminal history
37 record background checks on officers, directors, owners, and
38 employees and agents authorized to access the applicant's trust
39 accounts containing consumer money. The application shall also
40 include evidence of accreditation for debt-management services by
41 an independent accrediting organization recognized by the
42 commissioner pursuant to regulation, and an affirmation, with
43 supporting evidence as appropriate, that each consumer counselor
44 employed is, or will become within 12 months of being employed,
45 properly certified for counseling based upon accreditation from a
46 similarly recognized independent accrediting organization.

47 Within 120 days of receipt of an application for registration, the
48 commissioner shall issue a one-year certificate of registration to an

1 applicant in order for the applicant to act as a debt-management
2 provider in this State, if: the application and all supporting materials
3 are provided; and the commissioner finds the applicant is duly
4 qualified, based upon an examination of the financial responsibility,
5 experience, character, and general fitness of the applicant and its
6 owners, directors, employees, and agents. Under the bill, the
7 commissioner may extend this review period for up to an additional
8 60 days, or issue a temporary certificate of registration, to last no
9 more than 180 days after issuance, for an applicant that has
10 submitted an incomplete application but is making a timely effort to
11 obtain any necessary information or supporting material.

12 A registered debt-management provider shall obtain a renewal of
13 its registration annually in order to continue conducting business in
14 this State. This application for registration renewal, containing
15 updated information for review by the commissioner as well as
16 financial disclosures concerning the previous year's business
17 operations, shall be filed not more than 60 days, but not less than 30
18 days, prior to the expiration of the debt-management provider's
19 current registration. If the commissioner denies the registration
20 renewal, the debt-management provider, pending outcome of an
21 appeal of the denial, shall be permitted to continue to provide
22 services to individuals with whom it already has debt-management
23 agreements. If the denial is affirmed, the commissioner shall
24 oversee the transfer of any on-going debt-management agreements
25 to another registered debt-management provider or the return of all
26 unexpended money received from or on behalf of individuals with
27 agreements under the control of the provider.

28 A debt-management provider holding a current license or
29 certificate of registration issued in another state to provide debt-
30 management services may submit to the commissioner a copy of
31 this other state's license or registration, along with a copy of the
32 other state's application for this license or registration, and this
33 shall be accepted by the commissioner as an application for this
34 State, if: (1) the submission from the other state contains
35 information and supporting materials substantially similar or more
36 comprehensive than that required by an application prepared
37 pursuant to this bill; and (2) the submission contains additional
38 information specific to conducting business in this State, including
39 a listing of in-State service locations and a submission for criminal
40 history record background checks on officers, directors, owners,
41 employees, and agents. This submission in lieu of a standard
42 application shall be reviewed, and a certificate of registration (or
43 registration renewal) issued or denied, in the same manner as set
44 forth for a standard, in-State application.

45 Any nonprofit social service agency or nonprofit consumer credit
46 counseling agency that was licensed as a debt adjuster pursuant to
47 P.L.1979, c.16 (C.17:16G-1 et seq.) prior to the effective date of
48 this bill may continue on or after that effective date to provide debt-

1 management services, so long as the nonprofit social service agency
2 or nonprofit consumer credit counseling agency applies and is
3 registered accordingly as a debt-management provider pursuant to
4 this bill.

5 Prior to providing any debt-management services for any
6 individual, a debt-management provider shall give the individual an
7 itemized list of goods and services, and the corresponding fee or
8 other charge for each. This list shall indicate all goods and services
9 the provider offers for a charge, by dollar amount or other method
10 of determination, which may include with respect to a debt-
11 management agreement a set-up fee, monthly service fee, and debt-
12 management settlement fee. The debt-management provider shall
13 not provide any debt-management service to an individual, unless a
14 properly certified consumer counselor provides the individual with
15 reasonable education about the management of personal finance,
16 has prepared a financial analysis of the individual, and made a
17 determination about the suitability of any payment plan to reduce
18 debt prepared for the individual.

19 Further, in a separate notice, the debt-management provider shall
20 inform the individual, prior to entering an agreement, of the
21 potential financial and legal consequences of entering the
22 agreement, which shall include: (1) an indication that a debt-
23 management plan may adversely impact the individual's credit
24 rating or credit score, making it more difficult to obtain credit; (2)
25 an indication that nonpayment of debt may lead creditors to
26 increase finance and other charges or undertake collection actions
27 against the individual, including litigation; and (3) if applicable, an
28 indication that if a creditor settles for less than the full amount of a
29 debt owed as a result of a debt-management plan, it may result in
30 the creation of taxable income to the individual, even though the
31 individual did not actually receive any money.

32 The debt-management agreement shall be in writing, in
33 accordance with the provisions of the bill. Any such agreement
34 may confer on the debt-management provider a power of attorney to
35 settle an individual's debt for no more than 50% of the principal
36 amount of that debt. An agreement shall provide that the debt-
37 management provider obtain approval from the individual of a
38 negotiated settlement of more than 50% of the principal amount
39 owed on any debt. An agreement shall not: provide for the
40 application of the law of any jurisdiction other than the United
41 States and this State; contain any provision modifying or limiting
42 otherwise available legal forums or procedural rights, except as set
43 forth in any pre-dispute arbitration clause; and contain any
44 provision that modifies or limits the individual's available remedies
45 under this bill and any other applicable law.

46 An individual may cancel a debt-management agreement for any
47 reason, and receive a full refund of any moneys paid to a debt-
48 management provider, within three business days after assenting to

1 the agreement. However, this period shall extend to 30 days if the
2 agreement does not comply with the requirements set forth under
3 the bill as stated above as well as the requirement to notify the
4 individual in writing regarding this right to cancel. This right to
5 cancel may also be waived, in writing, by the individual, if a
6 personal financial emergency necessitates the disbursement of an
7 individual's money to a creditor before the expiration of the initial
8 cancellation period.

9 A debt-management provider shall hold in trust all money paid to
10 it by or on behalf of an individual with whom it has a debt-
11 management agreement for distribution to creditors. Within two
12 business days after receipt, the provider shall deposit the money in a
13 trust account indicated in the information submitted to the
14 commissioner as part of its application to be registered to conduct
15 business in this State.

16 The debt-management provider shall reconcile each trust account
17 at least once per month, by comparing the cash balance in the trust
18 account with the sum of balances in each individual's account
19 within the trust account. If the debt-management provider knows,
20 or has a reasonable suspicion, of embezzlement or other unlawful
21 appropriation of money held in trust, the provider shall immediately
22 notify the department. Unless otherwise set forth in regulation,
23 within five business days of first notifying the department of any
24 occurrence, the debt-management provider shall provide the
25 department with further information describing the remedial action
26 taken or to be taken in response to the occurrence.

27 With respect to enforcement, the commissioner may take
28 appropriate actions to enforce the provisions of this bill, including
29 investigations, requests for voluntary compliance, making
30 references on activities to the Attorney General, and seeking
31 various remedies, including: the suspension or revocation of a
32 certificate of registration; issuance of cease and desist orders;
33 ordering a civil penalty in an amount not to exceed \$10,000 for each
34 violation; and ordering restitution for any person harmed by a
35 violation. The commissioner may also enter into cooperative
36 arrangements with any other state or federal agency having
37 authority over debt-management providers or debt-management
38 services, and exchange information with any agency about any
39 person under investigation by the commissioner.

40 Additionally, a person may file a private cause of action in a
41 court of competent jurisdiction against any person who violates the
42 bill. The person may recover: (1) compensatory damages, including
43 for noneconomic injury, or \$5,000, whichever is greater, for each
44 violation, except for monies already paid to creditors; or (2) treble
45 these damages, if the private cause of action involves an individual
46 who voided a debt-management agreement due to a debt-
47 management provider imposing a fee or other charge not permitted
48 under the bill. The person may also recover punitive damages,

1 reasonable attorney's fees and costs. A debt-management provider
2 shall not be liable in a private cause of action if the provider's
3 action or omission was not intentional and resulted from a good
4 faith error; except that, this good faith defense shall not apply if, in
5 connection with any violation concerning fees or other charges
6 imposed, the provider received more money than authorized by the
7 bill or the agreement with an individual, and the provider did not
8 refund the excess money within two business days of discovering
9 the violation.

10 This bill shall take effect on the first day of the thirteenth month
11 next following enactment, but the Commissioner of Banking and
12 Insurance may take any anticipatory administrative action in
13 advance thereof as shall be necessary for the implementation of the
14 bill.