



Sen. Iris Y. Martinez

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LRB096 14868 MJR 38291 a

1 AMENDMENT TO SENATE BILL 2480

2 AMENDMENT NO. \_\_\_\_\_. Amend Senate Bill 2480 by replacing  
3 everything after the enacting clause with the following:

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

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

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

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

15 "Consumer settlement account" means any account or other

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

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

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

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

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

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

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

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

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

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

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

24 (9) persons licensed under the Real Estate License Act  
25 of 2000 when acting in the ordinary practice of their  
26 profession and not holding themselves out as debt

1 settlement providers.

2 "Debt settlement service" means:

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

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

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

26 "Enrollment or set up 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  
3 establishing a contract or other agreement with a consumer  
4 related to the provision of debt settlement service.

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

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

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

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

25 "Settlement fee" means any fee, obligation, or  
26 compensation paid or to be paid by the consumer to a debt

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

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

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

13 Each applicant, at the time of making such application,  
14 shall pay to the Secretary the sum of \$300 as a fee for  
15 investigation of the applicant, and the additional sum of \$1000  
16 as a license fee.

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

24 The bond shall run to the Secretary for the use of the

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

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

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

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

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

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

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

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

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



1 the approval of the Secretary.

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.

6 Section 30. Renewal of license.

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

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

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

22 (1) for each Illinois resident:

23 (i) the number of accounts enrolled;

24 (ii) the principal amount of debt at the time each

1 account was enrolled;

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

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

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

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

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

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

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

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

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

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

1 residents.

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

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

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

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

20 Section 50. Revocation or suspension of license.

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

23 (1) any debt settlement provider has failed to pay the

1 annual license fee or to maintain in effect the bond  
2 required under the provisions of this Act;

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

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

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

13 (b) In every case in which a license is suspended or  
14 revoked or an application for a license or renewal of a license  
15 is denied, the Secretary shall serve notice of his or her  
16 action, including a statement of the reasons for his or her  
17 actions, 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 (c) In the case of a denial of an application or renewal of  
21 a license, the applicant or debt settlement provider may  
22 request, in writing, a hearing within 30 days after the date of  
23 service. In the case of a denial of a renewal of a license, the  
24 license shall be deemed to continue in force until 30 days  
25 after the service of the notice of denial, or if a hearing is  
26 requested during that period, until a final administrative

1 order is entered.

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

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

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

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

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

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

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

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

25 (a) The Secretary at any time, either in person or through

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

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

24 Section 65. Trust funds; requirements and restrictions.

25 (a) All funds received by a debt settlement provider or his

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

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

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



1 held in reserve, if applicable, and the status of each of the  
2 debtors, enrolled accounts. A debt settlement provider shall,  
3 in addition, provide such an accounting to a debtor within 7  
4 days after written demand, but not more than 3 times per  
5 6-month period.

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

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

13 Section 80. Penalties.

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

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

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

1 \$10,000 per violation, and revoke or suspend any license issued  
2 hereunder if he or she finds that:

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

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

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

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

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

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

12 Section 95. Cease and desist orders.

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

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

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

1 notice is deposited in the U.S. Mail.

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

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

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

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

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

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

1 State Finance Act.

2 Section 103. Debt Settlement Consumer Protection Fund.

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

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

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

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

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

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

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

21           Section 105. Advertising and marketing practices.

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

1 provider possesses substantiation for such representation at  
2 the time such representation is made.

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

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

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

16 Section 110. Individualized financial analysis.

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

23   "CONSUMER NOTICE AND RIGHTS FORM

24   CAUTION

1 We CANNOT GUARANTEE that you successfully will reduce or  
2 eliminate your debt.

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

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

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

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

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

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

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

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

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

#### 19 YOUR RIGHT TO CANCEL

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

1 IF YOU ARE DISSATISFIED

2 OR YOU HAVE QUESTIONS

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

7 Attorney General Toll-Free Numbers:

8 Carbondale (800) 243-0607

9 Springfield (800) 243-0618

10 Chicago (800) 386-5438

11 Website for Department of Financial and Professional  
12 Regulation: [www.idfpr.com](http://www.idfpr.com)

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

15 Section 120. Debt settlement contract.

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

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

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

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

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

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

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

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

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

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

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

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

1 settlement provider from the consumer for the provision of  
2 debt settlement service contemplated by the contract.

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

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

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

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

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

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

1 contract for debt settlement service; and

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

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

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

18 Section 125. Fees.

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

23 (b) A debt settlement provider shall not charge or receive  
24 from a consumer any enrollment fee, set up fee, up front fee of  
25 any kind, or any maintenance fee.

1           (c) A debt settlement provider may charge a settlement fee,  
2           which shall not exceed an amount greater than 10% 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 any earned settlement fee, as well as all  
3 funds paid by the consumer to the debt settlement provider that  
4 have accumulated in a consumer settlement account and that the  
5 debt settlement provider has not disbursed to creditors. Upon  
6 cancellation, all powers of attorney and direct debit  
7 authorizations granted to the debt settlement provider by the  
8 consumer shall be considered revoked and voided.

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

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

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

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

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

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

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

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

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

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

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

24           (8) Advertise, display, distribute, broadcast, or  
25 televise services or permit services to be displayed,  
26 advertised, distributed, broadcasted, or televised, in any

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

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

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

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

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

24 (13) Misrepresent any material fact, make a material  
25 omission, or make a false promise directed to one or more  
26 consumers in connection with the solicitation, offering,

1 contracting, or provision of debt settlement service.

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

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

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

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

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

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

17 Section 150. Noncompliance with the Act.

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

20 (1) shall be treated as void; and

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

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

1 the debt settlement provider under this Act shall be a  
2 violation of this Act.

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

5 (1) shall be treated as void; and

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

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

12 Section 155. Civil remedies.

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

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

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

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

8 (30 ILCS 105/5.755 new)

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

11 (30 ILCS 105/5.756 new)

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

13 (30 ILCS 105/6z-26)

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

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

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

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

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

25 Nothing in this Section shall be construed to prohibit  
26 appropriations from the General Revenue Fund for expenses



1 incurred in the administration of the above named and  
2 referenced Acts.

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

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

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

12 (205 ILCS 665/1.5 new)

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

19 (205 ILCS 665/2) (from Ch. 17, par. 5302)

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

21 "Credit counselor" means an individual, corporation, or  
22 other entity that is not a debt management service that  
23 provides (1) guidance, educational programs, or advice for the

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

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

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

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

26 (b) Banks, operating subsidiaries of banks, affiliates

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

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

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

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

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

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

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

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

24      "Person" means an individual, firm, partnership,  
25      association, limited liability company, corporation, or  
26      not-for-profit corporation.

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

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

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

5 (205 ILCS 665/4) (from Ch. 17, par. 5304)

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

11 Each applicant, at the time of making such application,  
12 shall pay to the Secretary ~~Director~~ the sum of \$60.00 ~~\$30.00~~ as  
13 a fee for investigation of the applicant, and the additional  
14 sum of \$200 ~~\$100.00~~ as a license fee.

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

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

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

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

11 (205 ILCS 665/5) (from Ch. 17, par. 5305)

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

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

25 (2) That the applicant, if an individual, the managers

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

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

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

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

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

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 ~~place of business~~.

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

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

7 Sec. 6. Renewal of license. Each debt management service  
8 provider ~~licensee~~ under the provisions of this Act may make  
9 application to the Secretary ~~Director~~ for renewal of its  
10 license, which application for renewal shall be on the form  
11 prescribed by the Secretary ~~Director~~ and shall be accompanied  
12 by a fee of \$200 ~~\$100.00~~ together with a bond or other surety  
13 as required, in a minimum amount of \$25,000 or such an amount  
14 as required by the Secretary ~~Director~~ based on the amount of  
15 disbursements made by the licensee in the previous year. The  
16 application must be received by the Department no later than  
17 December 1 of the year preceding the year for which the  
18 application applies.

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

20 (205 ILCS 665/7) (from Ch. 17, par. 5307)

21 Sec. 7. License, display and location. Each license issued  
22 shall be kept conspicuously posted in the place of business of  
23 the debt management service provider ~~licensee~~. The business  
24 location may be changed by any licensee upon 10 days prior

1 written notice to the Secretary ~~Director~~. A license must  
2 operate under the name as stated in its original application.

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

4 (205 ILCS 665/8.5)

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

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

10 (205 ILCS 665/9) (from Ch. 17, par. 5309)

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

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

15 (205 ILCS 665/10) (from Ch. 17, par. 5310)

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

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

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

23 (2) the licensee has violated any provisions of this



1 Act or any rule, lawfully made by the Secretary ~~Director~~  
2 within the authority of this Act;

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

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

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

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

24 (d) An order of revocation or suspension of a license shall  
25 take effect upon service of the order unless the licensee  
26 requests, in writing, within 10 days after the date of service,

1 a hearing. In the event a hearing is requested, the order shall  
2 be stayed until a final administrative order is entered.

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

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

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

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

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

20 (205 ILCS 665/11) (from Ch. 17, par. 5311)

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

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

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

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

22 (205 ILCS 665/11.5)

23 Sec. 11.5. Examination of debt management service provider  
24 licensee. The Secretary Director at any time, either in person  
25 or through an appointed representative, may examine the

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

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

22 (205 ILCS 665/12) (from Ch. 17, par. 5312)

23 Sec. 12. Fees and charges of debt management service  
24 providers licensees. A debt management service provider  
25 licensee may not charge a debtor any fees or penalties except

1 the following:

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

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

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

10 (205 ILCS 665/12.1)

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

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

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

18 Sec. 13. Prohibitions.

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

23 (2) No licensee shall require as a part of the agreement  
24 between the licensee and any debtor, the purchase of any stock,

1 insurance, commodity, service or other property or any interest  
2 therein.

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

10 (4) No licensee shall make any loans.

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

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

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

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

19 (205 ILCS 665/14) (from Ch. 17, par. 5314)

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

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

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

17 (b) If a consumer's funds are kept in an interest earning  
18 trust account, then any interest earned on the consumer funds  
19 shall belong to the consumer. If multiple consumers funds are  
20 kept in a single interest earning trust account, then the  
21 interest earned shall belong to the consumers and shall be  
22 deposited pro rata among the consumers whose funds are in the  
23 account. Prior to separation and deposit by the licensee, such  
24 funds may be used by the licensee only for the making of change  
25 or the cashing of checks in the normal course of its business.  
26 Such funds are not subject to attachment, lien, levy of

1 execution, or sequestration by order of court except by a  
2 debtor for whom a licensee is acting as an agent in paying  
3 bills, invoices, or accounts.

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

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

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

20 (205 ILCS 665/15) (from Ch. 17, par. 5315)

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

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



1 (205 ILCS 665/16) (from Ch. 17, par. 5319)

2 Sec. 16. Penalties.

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

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

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

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

22 (2) any fact or condition exists which, if it had  
23 existed at the time of the original application for the  
24 license, clearly would have warranted the Secretary in  
25 refusing to issue the license. ~~—set by rule monetary~~

1 ~~penalties for violation of this Act.~~

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

3 (205 ILCS 665/16.5 new)

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

12 (205 ILCS 665/16.6 new)

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

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

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

1 for the purpose of providing restitution to consumers who have  
2 suffered monetary loss arising out of a transaction regulated  
3 by this Act.

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

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

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

1 depleted.

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

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

8 (205 ILCS 665/17) (from Ch. 17, par. 5320)

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

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

21 (205 ILCS 665/18) (from Ch. 17, par. 5321)

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

1 Law, and all amendments and modifications thereof and the rules  
2 adopted pursuant thereto.

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

4 (205 ILCS 665/20) (from Ch. 17, par. 5323)

5 Sec. 20. Cease and desist orders.

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

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

14 (c) The Secretary ~~Director~~ shall serve notice of his  
15 action, including a statement of the reasons for his action  
16 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 (d) Within 10 days after service of the cease and desist  
20 order, the licensee or other person may request, in writing, a  
21 hearing.

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

25 ~~(f) The Director shall have the authority to prescribe~~

1 ~~rules for the administration of this Section.~~

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

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

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

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

16 (205 ILCS 665/20.5)

17 Sec. 20.5. Receivership.

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

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

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

1 proven unless some interested party files an objection within  
2 the time fixed by the Secretary ~~Director~~ or court that has  
3 charge of the liquidation.

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

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

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

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

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

24 (D) reasonable expenses incurred by the Secretary  
25 ~~Director~~ as the result of business agreements or  
26 contractual arrangements necessary to insure that the



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

8 (1.5) Secured claims.

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

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

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

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

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

25 (7) After one year from the final dissolution of the  
26 licensee's business, all assets not used to satisfy allowed

1 claims shall be distributed pro rata to the owner, owners,  
2 members, or stockholders of the business.

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

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

25 (e) At the close of a receivership, the receiver shall turn  
26 over to the Secretary ~~Director~~ all books of account and ledgers

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

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

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

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

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

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

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

24 (815 ILCS 505/2III new)

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

5           (205 ILCS 665/13.5 rep.)

6           (205 ILCS 665/15.1 rep.)

7           (205 ILCS 665/15.2 rep.)

8           (205 ILCS 665/15.3 rep.)

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

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

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