

SENATE BILL No. 959

December 6, 2007, Introduced by Senators HUNTER, CLARKE, OLSHOVE, SCOTT, BRATER, BASHAM and CLARK-COLEMAN and referred to the Committee on Banking and Financial Institutions.

A bill to license and regulate debt settlement services providers; to prescribe the powers and duties of certain state governmental officers and entities; to provide penalties; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the "debt
2 settlement services act".

3 Sec. 2. As used in this act:

4 (a) "Administrator" means the commissioner of the department
5 or his or her authorized representative.

6 (b) "Affiliate" means 1 of the following:

7 (i) With respect to an individual, any of the following:

8 (A) The spouse of the individual, a sibling of the individual,
9 or the spouse of a sibling of the individual.

1 (B) An individual or the spouse of an individual who is a
2 lineal ancestor or lineal descendant of the individual or the
3 individual's spouse.

4 (C) An aunt, uncle, great-aunt, great-uncle, first cousin,
5 niece, nephew, grandniece, or grandnephew, whether related by the
6 whole or the half blood or adoption, or the spouse of any of them.

7 (D) Any other individual occupying the residence of the
8 individual.

9 (ii) With respect to an entity, any of the following:

10 (A) A person that directly or indirectly controls, is
11 controlled by, or is under common control with the entity.

12 (B) An officer of, or an individual performing similar
13 functions with respect to, the entity.

14 (C) A director of, or an individual performing similar
15 functions with respect to, the entity.

16 (D) A person that receives or received more than \$25,000.00
17 from the entity in either the current year or the preceding year or
18 a person that owns more than 10% of, or an individual who is
19 employed by or is a director of, a person that receives or received
20 more than \$25,000.00 from the entity in either the current year or
21 the preceding year.

22 (E) An officer or director of, or an individual performing
23 similar functions with respect to, a person described in sub-
24 subparagraph (A).

25 (F) The spouse of, or an individual occupying the residence
26 of, an individual described in sub-subparagraphs (A) to (E).

27 (G) An individual who has the relationship specified in

1 subparagraph (i) (D) to an individual or the spouse of an individual
2 described in sub-subparagraphs (A) to (E).

3 (c) "Agreement" means an agreement between a provider and an
4 individual for the performance of debt settlement services.

5 (d) "Bank" means a financial institution, including, but not
6 limited to, a commercial bank, savings bank, savings and loan
7 association, credit union, mortgage bank, or trust company, engaged
8 in the business of banking, chartered under federal or state law,
9 and regulated by a federal or state banking regulatory authority.

10 (e) "Business address" means the physical location of a
11 business, including the name and number of a street.

12 (f) "Certified debt specialist" means an individual certified
13 by a training program or certifying organization that authenticates
14 the competence of individuals providing assistance to other
15 individuals in connection with debt settlement services.

16 (g) "Concessions" means assent to repayment of a debt on terms
17 more favorable to an individual than the terms of the contract
18 between the individual and a creditor.

19 (h) "Control person" means a director, manager, or executive
20 officer of an applicant or licensee or any other individual who has
21 the authority to participate in the direction, directly or
22 indirectly through 1 or more other persons, of the management or
23 policies of an applicant or licensee.

24 (i) "Debt settlement services" means acting or offering to act
25 as an intermediary between an individual and 1 or more creditors of
26 the individual for the purpose of adjusting, settling, discharging,
27 reaching a compromise on, or otherwise altering the terms of

1 payment of the individual's obligations, without receiving or
2 exercising direct control over any money of the individual, for the
3 purpose of distributing that money to those creditors. The term
4 does not include any of the following:

5 (i) Legal services provided in an attorney-client relationship
6 by an attorney licensed or otherwise authorized to practice law in
7 this state.

8 (ii) Accounting services provided in an accountant-client
9 relationship by a certified public accountant licensed to provide
10 accounting services in this state.

11 (iii) Debt management services provided by a person licensed
12 under the debt management act, 1975 PA 148, MCL 451.411 to 451.437.

13 (j) "Department" means the office of financial and insurance
14 services.

15 (k) "Entity" means a person other than an individual.

16 (l) "Good faith" means honesty in fact and the observance of
17 reasonable standards of fair dealing.

18 (m) "License application" means an application for an initial
19 or renewal license as a provider under this act.

20 (n) "Person" means an individual, corporation, limited
21 liability company, business trust, estate, trust, partnership,
22 association, joint venture, or any other legal or commercial
23 entity. The term does not include a public corporation, government,
24 or governmental subdivision, agency, or instrumentality.

25 (o) "Principal amount of the debt" means the amount of a debt
26 at the time of the execution of the agreement.

27 (p) "Program" means a program or strategy in which a provider

1 furnishes debt settlement services, which contemplate that
2 creditors will settle debts for less than the full principal
3 amount of debt owed by an individual, to which the individual makes
4 payments directly to the creditors.

5 (q) "Provider" means a person required to be licensed under
6 this act that provides, offers to provide, or agrees to provide
7 debt settlement services directly or through others.

8 (r) "Record" means information that is inscribed on a tangible
9 medium or that is stored in an electronic or other medium and is
10 retrievable in perceivable form.

11 (s) "Settlement fee" means a charge imposed on or paid by an
12 individual in connection with a creditor's assent to accept in full
13 satisfaction of a debt an amount less than the principal amount of
14 the debt.

15 (t) "Sign" means any of the following with present intent to
16 authenticate or adopt a record:

17 (i) To execute or adopt a tangible symbol.

18 (ii) To attach to or logically associate with the record an
19 electronic sound, symbol, or process.

20 (u) "State" means a state of the United States, the District
21 of Columbia, Puerto Rico, the United States Virgin Islands, or any
22 territory or insular possession subject to the jurisdiction of the
23 United States.

24 Sec. 3. (1) This act does not apply to an agreement with an
25 individual who resides outside of this state at the time of the
26 agreement.

27 (2) This act does not apply to a provider to the extent that

1 the provider meets any of the following:

2 (a) Provides or agrees to provide debt settlement,
3 educational, or counseling services to an individual who the
4 provider has no reason to know resides in this state at the time
5 the provider agrees to provide the services.

6 (b) Receives no compensation for debt settlement services from
7 or on behalf of the individuals to whom it provides the services or
8 from their creditors.

9 (3) This act does not apply to any of the following persons or
10 their employees when the person or the employee is engaged in the
11 regular course of the person's business or profession:

12 (a) A judicial officer, a person acting under an order of a
13 court or an administrative agency, or an assignee for the benefit
14 of creditors.

15 (b) A bank.

16 (c) An affiliate of a bank if the affiliate is regulated by a
17 federal or state banking regulatory authority.

18 (d) A title insurer, escrow company, or other person that
19 provides bill-paying services if the provision of debt settlement
20 services is incidental to the bill-paying services.

21 Sec. 4. (1) Except as otherwise provided in this section,
22 beginning July 1, 2008, a provider may not provide debt settlement
23 services to an individual, who it reasonably should know resides in
24 this state at the time it agrees to provide the services, unless
25 the provider is licensed under this act.

26 (2) If a provider is licensed under this act, subsection (1)
27 does not apply to an employee or agent of the provider.

1 (3) The administrator shall maintain and publicize a list of
2 the names of all licensed providers.

3 (4) A person who is providing debt settlement services on or
4 before April 1, 2008 and intends to provide debt settlement
5 services as a licensee under this act shall file a license
6 application with the administrator by April 1, 2008.

7 Sec. 5. (1) A license application shall be in a form
8 prescribed by the administrator.

9 (2) A license application must be accompanied by all of the
10 following:

11 (a) The fee established by the administrator under section 22.

12 (b) Evidence of aggregate umbrella insurance that meets all of
13 the following:

14 (i) Is in the amount of at least \$250,000.00.

15 (ii) Insures against the risks of dishonesty, fraud, theft, and
16 other misconduct on the part of the applicant or a director,
17 employee, or agent of the applicant.

18 (iii) Is issued by an insurance company authorized to do
19 business in this state, is rated at least A by a nationally
20 recognized rating organization, and has a maximum deductible of
21 \$10,000.00.

22 (iv) Is payable to the applicant, the individuals who have
23 agreements with the applicant, and the commissioner, as their
24 interests may appear.

25 (v) Is not subject to cancellation by the applicant without an
26 effective policy in place to cover the canceled insurance.

27 (c) Proof of authority to do business in this state.

1 Sec. 6. (1) A license application must be signed under penalty
2 of false statement and include all of the following:

3 (a) The applicant's name, principal business address and
4 telephone number, and all other business addresses in this state.

5 (b) Electronic mail addresses and internet website addresses
6 of the applicant.

7 (c) All names under which the applicant conducts business.

8 (d) The address of each location in this state at which the
9 applicant will provide debt settlement services or a statement that
10 the applicant will not have a physical location in the state at
11 which it will provide debt settlement services.

12 (e) The name and home address of each officer and director of
13 the applicant and each person that owns at least 10% of the
14 applicant.

15 (f) A list of every state in which the applicant or any of its
16 officers or directors were licensed or registered to provide debt
17 settlement services in the 5-year period immediately preceding the
18 application.

19 (g) A list of every state in which any individuals who
20 received debt settlement services from the applicant in the 5-year
21 period immediately preceding the application resided.

22 (h) A statement describing, to the extent it is known or
23 should be known by the applicant, any material civil or criminal
24 judgment or litigation and any material administrative or
25 enforcement action by a governmental agency in any jurisdiction
26 against the applicant or any of its officers, directors, owners, or
27 agents.

1 (i) A description of the applicant's financial analysis and
2 initial budget program, including any form or electronic model,
3 used to evaluate the financial condition of individuals.

4 (j) A copy of each form of agreement that the applicant will
5 use with individuals who reside in this state.

6 (k) The schedule of fees and charges that the applicant will
7 use with individuals who reside in this state.

8 (l) A description of any ownership interest of at least 10% by
9 any director, owner, or employee of the applicant in any of the
10 following:

11 (i) An affiliate of the applicant.

12 (ii) An entity that provides products or services to the
13 applicant or any individual relating to the applicant's debt
14 settlement services.

15 (m) The identity of each director who is an affiliate of the
16 applicant.

17 (n) Any other information that the administrator reasonably
18 requires to perform his or her duties under this act.

19 (2) A license applicant or licensed provider shall notify the
20 administrator within 10 days after a change in the information
21 described in section 5(2)(b) or subsection (1)(a), (b), (d), (h),
22 (j), or (k).

23 (3) Except for the information required under subsection (1)(l)
24 and the addresses required under subsection (1)(e), the
25 administrator shall make the information in a license application
26 available to the public.

27 Sec. 7. (1) Subject to subsections (2) and (3), the

1 administrator shall issue a license as a provider to a person that
2 complies with sections 5 and 6.

3 (2) After reviewing an application, the commissioner may deny
4 a license under this act to an applicant if the commissioner
5 determines, based on the financial condition and responsibility,
6 financial business and experience, character, and general fitness
7 of the applicant and the experience, character, and general fitness
8 of each control person and any shareholders of the applicant, that
9 it is not in the public interest to permit the applicant to provide
10 debt settlement services in this state.

11 (3) The administrator shall deny a license as a provider to an
12 applicant if the application is not accompanied by the fee
13 established by the administrator under section 22.

14 Sec. 8. (1) When the commissioner determines that an
15 application for a license under this act is substantially complete,
16 the commissioner shall promptly notify the applicant in writing of
17 the date on which he or she determined that the application was
18 substantially complete and shall approve or deny the application
19 within 120 days after that date. If the commissioner does not
20 approve or deny an application within that 120-day period, the
21 commissioner shall issue the license.

22 (2) If the commissioner determines that an applicant is not
23 qualified to receive a license and denies the application, the
24 commissioner shall notify the applicant in writing that the
25 application has been denied, stating the basis for denial.

26 (3) If the commissioner denies an application for a license,
27 or fails or refuses to issue a license after the expiration of the

1 time period described in subsection (1), the applicant may appeal
2 and request a hearing pursuant to the administrative procedures act
3 of 1969, 1969 PA 306, MCL 24.201 to 24.328, and any rules of
4 procedure adopted by the administrator. If a hearing is held, the
5 commissioner shall reconsider the application and issue a written
6 order granting or denying the application after the hearing.

7 (4) Subject to sections 9(3) and 24, a license as a provider
8 is valid for 1 year.

9 Sec. 9. (1) A renewal license application must be in a form
10 prescribed by the administrator, signed under penalty of false
11 statement, and meet all of the following:

12 (a) Be filed at least 30 and not more than 60 days before the
13 license expires.

14 (b) Be accompanied by the fee established by the administrator
15 under section 22.

16 (c) Contain a financial statement, reviewed by a certified
17 accountant, for the applicant's fiscal year immediately preceding
18 the application.

19 (d) Disclose any changes in the information contained in the
20 applicant's initial license application or its immediately previous
21 renewal license application, as applicable.

22 (e) Include evidence of aggregate umbrella insurance that
23 meets the requirements of section 5(2)(b).

24 (f) Include any other information that the administrator
25 reasonably requires to perform his or her duties under this act.

26 (2) Except for the information required under section 6(1)(l)
27 and the addresses required under section 6(1)(e), the administrator

1 shall make the information in a renewal license application
2 available to the public.

3 (3) If a licensed provider files a timely and complete renewal
4 license application, the license remains effective until the
5 administrator, in a record, notifies the applicant of a denial and
6 states the reasons for the denial.

7 (4) If the administrator denies a renewal license application,
8 the applicant may appeal and request a hearing pursuant to the
9 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
10 24.328, and the rules of procedure adopted by the administrator.
11 While the appeal is pending, the applicant shall continue to
12 provide debt settlement services to individuals with whom it has
13 agreements. If the denial is affirmed, subject to the
14 administrator's order and section 23, the applicant shall continue
15 to provide debt settlement services to individuals with whom it has
16 agreements until, with the approval of the administrator, it
17 transfers the agreements to another licensed provider.

18 Sec. 10. (1) A provider shall act in good faith in all matters
19 under this act.

20 (2) A provider shall maintain a toll-free communication
21 system, staffed at a level that reasonably permits an individual to
22 speak to a certified debt specialist or customer-service
23 representative, as appropriate, during ordinary business hours.

24 Sec. 11. (1) Before providing debt settlement services, a
25 licensed provider shall give the individual an itemized list of
26 goods and services and the charges for each. The list must be clear
27 and conspicuous, be in a record the individual may keep whether or

1 not the individual assents to an agreement, and describe the goods
2 and services the provider offers, either free of additional charge
3 if the individual enters into an agreement or for a charge if the
4 individual does not enter into an agreement.

5 (2) A provider may not furnish debt settlement services unless
6 the provider does both of the following through the services of a
7 certified debt specialist:

8 (a) Provides the individual with reasonable education about
9 the management of personal finance.

10 (b) Has prepared a financial analysis for the individual.

11 (3) Before an individual assents to an agreement to engage in
12 a program, a provider shall do all of the following:

13 (a) Provide the individual with a copy of the analysis and
14 program required under subsection (2) in a record that identifies
15 the provider and that the individual may keep whether or not the
16 individual assents to the agreement.

17 (b) Inform the individual of the availability, at the
18 individual's option, of assistance by a toll-free communication
19 system or in person to discuss the financial analysis and
20 program required under subsection (2).

21 (4) Before an individual assents to an agreement to engage in
22 a program, the provider shall inform the individual of all of the
23 following:

24 (a) Programs are not suitable for all individuals, and the
25 individual may ask the provider about bankruptcy or other ways to
26 deal with indebtedness.

27 (b) Establishment of a program may adversely affect the

1 individual's credit rating or credit scores.

2 (c) Nonpayment of debt may lead creditors to increase finance
3 and other charges or undertake litigation or other collection
4 activity.

5 (d) Unless the individual is insolvent, if a creditor settles
6 for less than the full amount of the debt, the program may result
7 in the creation of taxable income to the individual, even
8 though the individual does not receive any money.

9 (e) Specific results cannot be predicted or guaranteed, and
10 the provider cannot force negotiations or settlements with
11 creditors but will advocate solely on behalf of the individual.

12 (f) Programs require that individuals meet a certain savings
13 goal in order to maximize settlement results.

14 (g) The provider does not provide accounting or legal advice
15 to individuals.

16 (h) The provider is the individual's advocate and does not
17 receive compensation from creditors, banks, or third party
18 collection agencies.

19 (i) The provider is not responsible for distribution of any
20 payments to the individual's creditors.

21 (j) The name and business address of the provider.

22 Sec. 12. (1) A provider may satisfy the requirements of
23 section 11, 13, or 17(3) by means of the internet or other
24 electronic means if the provider obtains an individual's consent in
25 the manner provided in section 101(c)(1) of the federal act, 15 USC
26 7001.

27 (2) A provider shall present the disclosures and materials

1 required under sections 11, 13, and 17(3) in a form that can be
2 accurately reproduced for later reference.

3 (3) If the disclosure of the information under section 11(4)
4 is made by means of an internet website, the disclosure of that
5 information must appear on 1 or more webpages that contain no other
6 information and that the individual must view before he or she has
7 an opportunity to assent to formation of a program.

8 (4) At the time it provides the materials and agreement
9 required under section 11(3) or (4), 13, or 17(3), a provider shall
10 inform the individual that if he or she makes an electronic,
11 telephonic, or written request, it will send the individual a
12 written copy of the materials and shall comply with a request as
13 provided in subsection (5).

14 (5) If a provider receives a request, at any time before the
15 expiration of 90 days after an individual's program is completed or
16 terminated, to send a written copy of the materials required under
17 section 11(3) or (4), 13, or 17(3), the provider shall send it at
18 no charge within 3 business days after the request. However, a
19 provider is not required to comply with a request more than once
20 per calendar month or if it reasonably believes that the request is
21 made for purposes of harassment. If a request under this subsection
22 is made more than 90 days after an individual's program is
23 completed or terminated, the provider shall send a written copy of
24 the materials requested within a reasonable time.

25 (6) A provider that maintains an internet website shall
26 disclose all of the following on the homepage of its website or on
27 a webpage that is clearly and conspicuously connected to the

1 homepage by a link that clearly reveals its contents:

2 (a) Its name and all names under which it does business.

3 (b) Its principal business address, telephone number, and
4 electronic mail address, if any.

5 (7) If a consumer who has consented to electronic
6 communication in the manner provided in section 101(c) of the
7 federal act, 15 USC 7001, withdraws his or her consent as provided
8 in the federal act, a provider may terminate its agreement with the
9 consumer. If the producer elects to terminate an agreement with a
10 consumer under this subsection, it shall notify the consumer that
11 it will terminate the agreement unless the consumer, within 30 days
12 after receiving the notification, consents to electronic
13 communication in the manner provided in section 101(c) of the
14 federal act, 15 USC 7001.

15 (8) As used in this section:

16 (a) "Consumer" means an individual who seeks or obtains goods
17 or services that are used primarily for personal, family, or
18 household purposes.

19 (b) "Federal act" means the federal electronic signatures in
20 global and national commerce act, 15 USC 7001 to 7031.

21 Sec. 13. (1) An agreement must meet all of the following:

22 (a) Be in a record.

23 (b) Be dated and signed by the individual.

24 (c) Include the name of the individual and the address where
25 the individual resides.

26 (d) Include the name, business address, and telephone number
27 of the provider.

1 (e) Be delivered to the individual immediately upon formation
2 of the agreement.

3 (f) Disclose all of the following:

4 (i) The services to be provided.

5 (ii) The amount, or method of determining the amount, of all
6 fees, individually itemized, to be paid by the individual.

7 (iii) How the provider will comply with its obligations under
8 section 18(1).

9 (iv) That the individual may cancel the agreement under section
10 14.

11 (v) That the individual may contact the administrator with any
12 questions or complaints regarding the provider.

13 (vi) The address, telephone number, and internet address or
14 website of the administrator.

15 (vii) An estimate of the duration of the program.

16 (g) A schedule of payments to be made by or on behalf of the
17 individual that includes the amount of each payment, the date on
18 which each payment is due, and an estimate of the date of the final
19 payment.

20 (2) For purposes of subsection (1)(e), delivery of an
21 electronic record occurs when it is made available in a format in
22 which the individual may retrieve, save, and print it and the
23 individual is notified that it is available.

24 (3) If the administrator supplies a provider with any
25 information required under subsection (1)(f)(vi), the provider may
26 comply with that requirement only by disclosing the information
27 supplied by the administrator.

1 (4) An agreement must provide all of the following:

2 (a) That the individual has a right to terminate the agreement
3 at any time, without penalty or obligation, by giving the provider
4 written or electronic notice, and that termination in this manner
5 revokes all powers of attorney granted by the individual to the
6 provider.

7 (b) That the provider will notify the individual within 5 days
8 after learning of a creditor's decision to cease negotiation with
9 the provider and that this notice will include both of the
10 following:

11 (i) The identity of the creditor.

12 (ii) The right of the individual to modify or terminate the
13 agreement.

14 (5) An agreement may confer on a provider a power of attorney
15 to settle the individual's debt for not more than 50% of the amount
16 of the debt. An agreement may not confer a power of attorney to
17 settle a debt for more than 50% of that amount, but may confer a
18 power of attorney to negotiate with creditors of the individual on
19 behalf of the individual. An agreement must provide that the
20 provider will obtain the assent of the individual after a creditor
21 has assented to a settlement for more than 50% of the amount of the
22 debt.

23 (6) An agreement may not do any of the following:

24 (a) Provide for application of the law of any jurisdiction
25 other than the United States and this state.

26 (b) Except as permitted under 9 USC 2, contain a provision
27 that modifies or limits otherwise available forums or procedural

1 rights, including the right to trial by jury, that are generally
2 available to the individual under law other than this act.

3 (c) Contain a provision that restricts the individual's
4 remedies under this act or law other than this act.

5 (d) Contain a provision that does either of the following:

6 (i) Limits or releases the liability of any person for not
7 performing the agreement or for violating this act.

8 (ii) Indemnifies any person for liability arising under the
9 agreement or this act.

10 (7) All rights and obligations described in subsection (4) and
11 section 15 exist even if not provided in the agreement. A provision
12 in an agreement that violates subsection (4), (5), or (6) is void.

13 Sec. 14. (1) An individual may cancel an agreement before
14 midnight of the third business day after the individual assents to
15 it. However, if the agreement does not comply with subsection (2)
16 or section 13 or 18, the individual may cancel the agreement within
17 30 days after the individual assents to it. To exercise the right
18 of cancellation under this subsection, the individual must give
19 notice in a record to the provider. Notice by mail is given when
20 mailed.

21 (2) An agreement must be accompanied by a form that contains
22 the following notice in boldfaced type, surrounded by bold black
23 lines:

24 "Notice of right of cancellation

25 You may cancel this agreement, without any penalty or
26 obligation, at any time before midnight of the third business day
27 that begins the day after you agree to it by electronic

1 communication or by signing it. To cancel this agreement during
 2 this period, send an email to [email address of provider] or mail
 3 or deliver a signed, dated copy of this notice or any other written
 4 notice to [name of provider] at [address of provider] before
 5 midnight on [date].

6 If you cancel this agreement within the 3-day period, we will
 7 refund all money you already have paid us.

8 I cancel this agreement,

9 _____ [print your name]

10 _____ [sign your name]

11 _____ [date]".

12 (3) If an individual terminates an agreement that is not
 13 otherwise subject to subsection (1), the provider shall immediately
 14 return to the individual 65% of the fees associated with that
 15 percentage of the principal amount remaining unsettled at the time
 16 of termination.

17 Sec. 15. Unless the administrator by rule provides otherwise,
 18 the disclosures and documents required under this act must be in
 19 English. If a provider communicates with an individual primarily in
 20 a language other than English, the provider must furnish a
 21 translation into the other language of the disclosures and
 22 documents required by this act.

23 Sec. 16. (1) A provider may not directly or indirectly impose
 24 a fee or other charge on an individual or receive money from or on
 25 behalf of an individual for debt settlement services except as
 26 permitted in this section.

27 (2) All of the following apply to the fees a provider may

1 charge an individual for debt settlement services:

2 (a) Subject to subdivision (c), the aggregate amount of fees
3 charged by the provider, including the fees described in
4 subdivision (b) and subsection (4), shall not exceed 18% of the
5 principal amount of the debt brought into the program.

6 (b) The total amount of fees charged by the provider for
7 consultation, obtaining a credit report, setting up an account, and
8 providing other similar services related to establishing the amount
9 of the individual's debt and developing the program shall not
10 exceed 4% of the principal amount of the debt brought into the
11 program.

12 (c) If the individual completes all of his or her obligations
13 under the agreement, the aggregate amount of the fees charged by
14 the provider shall not exceed an amount that, when added to the
15 aggregate amount of all of the offers of settlement obtained by the
16 provider for the debtor, exceeds the principal amount of the debt
17 brought into the program.

18 (d) A provider may require that the individual pay some or all
19 of the fees described in subdivision (b) at the time the agreement
20 is executed or at the inception of the plan. The remainder of the
21 aggregate amount of the fees charged under this subsection shall be
22 paid by the individual on a pro rata basis, in monthly
23 installments, over a period determined by the provider that is at
24 least equal to 1/2 of the estimate of the duration of the program
25 estimated under section 13(1)(f)(vii). However, the individual may
26 accelerate or prepay any unpaid installment payments of fees, and
27 the provider may require that the individual immediately pay the

1 remaining balance of the unpaid fees if the provider obtains offers
2 of settlement from creditors for at least 1/2 of the debts included
3 in the program.

4 (3) A provider may not impose charges or receive payment for
5 debt settlement services until the provider and the individual have
6 signed an agreement that complies with sections 13 and 18.

7 (4) If an individual assents to an agreement, a provider may
8 not impose a fee or other charge for educational or counseling
9 services, or similar services, except as provided in this
10 subsection. The administrator may authorize a provider to charge an
11 additional fee based on the nature and extent of the educational or
12 counseling services furnished by the provider, but the aggregate
13 fees may not exceed the amount specified in subsection (2)(a). If a
14 payment to a provider by an individual under this act is
15 dishonored, a provider may impose a reasonable charge to the
16 individual that does not exceed the amount permitted by law.

17 Sec. 17. (1) If a provider imposes a fee or other charge or
18 receives money or other payments not authorized in section 16, the
19 individual may void the agreement and recover as provided in
20 section 25.

21 (2) If a provider is not licensed under this act when an
22 individual assents to an agreement, the agreement is void and the
23 provider does not have a claim against the individual for breach of
24 contract or for restitution.

25 (3) If an individual who has entered into a fee agreement
26 fails for 60 days to make payments required by the agreement, the
27 provider may terminate the agreement.

1 Sec. 18. (1) A provider that has entered into an agreement
2 shall provide the individual with the accounting required under
3 subsection (2) at each of the following times:

4 (a) While the agreement is in effect, within 5 business days
5 after a request by the individual. However, the provider is not
6 required to comply with more than 1 request under this subdivision
7 in any calendar month.

8 (b) After each settlement of a debt with a creditor on behalf
9 of the individual.

10 (c) At the time the agreement is canceled or terminated.

11 (2) If a provider has established a program for an individual
12 and a creditor has agreed to accept as payment in full an amount
13 less than the principal amount of the debt owed by the individual,
14 the provider shall provide the individual with all of the following
15 in a record:

16 (a) The total amount and terms of the settlement.

17 (b) The amount of the debt when the individual assented to the
18 program.

19 (c) The amount of the debt when the creditor agreed to the
20 settlement.

21 (d) The calculation of a settlement fee.

22 (3) A provider shall maintain records for each individual for
23 whom it provides debt settlement services for at least 5 years
24 after the final payment made by the individual and produce a copy
25 of them to the individual within a reasonable time after a request
26 for them. A provider may use electronic or other means of storage
27 of the records.

1 Sec. 19. (1) A provider may not, directly or indirectly, do
2 any of the following:

3 (a) Settle a debt on behalf of an individual for more than 50%
4 of the amount of the debt owed a creditor, unless the individual
5 assents to the settlement after the creditor has assented.

6 (b) Take a power of attorney that authorizes it to settle a
7 debt, unless the power of attorney expressly limits the provider's
8 authority to settle debts for not more than 50% of the amount of
9 the debt owed a creditor.

10 (c) Exercise or attempt to exercise a power of attorney after
11 an individual has terminated an agreement.

12 (d) Initiate a transfer from an individual's account at a bank
13 or with another person unless the transfer is 1 of the following:

14 (i) A return of money to the individual.

15 (ii) Before termination of an agreement, properly authorized by
16 the agreement and this act, for payment of a fee.

17 (e) Offer a gift or bonus, premium, reward, or other
18 compensation to an individual for executing an agreement.

19 (f) Settle a debt or lead an individual to believe that a
20 payment to a creditor is in settlement of a debt to the creditor,
21 unless the individual at the time of settlement receives a
22 certification or confirmation by the creditor that the payment is
23 in full settlement of the debt.

24 (g) Make any of the following representations:

25 (i) That the provider will furnish money to pay bills or
26 prevent attachments.

27 (ii) That payment of a certain amount will permit satisfaction

1 of a certain amount or range of indebtedness.

2 (iii) That participation in a program will or may prevent
3 litigation, garnishment, attachment, repossession, foreclosure,
4 eviction, or loss of employment.

5 (h) Misrepresent that it is authorized or competent to furnish
6 legal advice or perform legal services.

7 (i) Represent that it is a nonprofit entity unless it is
8 organized and properly operating as a nonprofit entity under the
9 law of the state in which it was formed or represent that it is a
10 tax-exempt entity unless it has received certification of tax-
11 exempt status from the federal internal revenue service.

12 (j) Take a confession of judgment or power of attorney to
13 confess judgment against an individual.

14 (k) Employ an unfair, unconscionable, or deceptive act or
15 practice, including, but not limited to, the knowing omission of
16 any material information.

17 (2) If a provider furnishes debt settlement services to an
18 individual, the provider may not directly or indirectly do any of
19 the following:

20 (a) Purchase a debt or obligation of the individual.

21 (b) Receive any of the following from or on behalf of the
22 individual:

23 (i) A promissory note or other negotiable instrument other than
24 a check or a demand draft.

25 (ii) A postdated check or demand draft.

26 (c) Lend money or provide credit to the individual, except as
27 a deferral of a settlement fee at no additional expense to the

1 individual.

2 (d) Obtain a mortgage or other security interest from any
3 person in connection with the services provided to the individual.

4 (e) Except as permitted by federal law, disclose the identity
5 or identifying information of the individual or the identity of the
6 individual's creditors, unless 1 of the following applies:

7 (i) The disclosure is to the administrator, upon proper demand.

8 (ii) The disclosure is to a creditor of the individual, to the
9 extent necessary to secure the cooperation of the creditor in a
10 program.

11 (iii) The disclosure is necessary to administer the program.

12 (f) Except as otherwise provided in section 16, provide the
13 individual less than the full benefit of a compromise of a debt
14 arranged by the provider.

15 (g) Charge the individual for or provide credit or other
16 insurance, coupons for goods or services, membership in a club,
17 access to computers or the internet, or any other matter not
18 directly related to debt settlement services or educational
19 services concerning personal finance.

20 (h) Furnish legal advice or perform legal services, unless the
21 person furnishing that advice to or performing those services for
22 the individual is licensed to practice law.

23 (i) Advise individuals to stop payment on any of the accounts
24 being handled by the provider.

25 (3) This act does not authorize any person to engage in the
26 practice of law.

27 (4) A provider may not directly or indirectly receive a gift

1 or bonus, premium, reward, or other compensation for advising,
2 arranging, or assisting an individual in connection with obtaining
3 an extension of credit or other service from a lender or service
4 provider, except for educational or counseling services required in
5 connection with a government-sponsored program.

6 (5) A provider that advertises debt settlement services shall
7 not disclose information in conflict with the information specified
8 in section 11(4)(c) and (d).

9 Sec. 20. (1) Within 30 days after a provider is served with
10 notice of a civil action for violation of this act by or on behalf
11 of an individual who resides in this state at either the time of an
12 agreement or the time the notice is served, the provider shall
13 notify the administrator in a record that it has been sued.

14 (2) If a provider delegates any of its duties or obligations
15 under an agreement or this act to an independent contractor or any
16 other person, the provider is liable for conduct of the person that
17 would violate the agreement or this act if done by the provider.

18 Sec. 21. (1) The administrator may receive complaints, take
19 action to obtain voluntary compliance with this act, or seek or
20 provide remedies as provided in this act.

21 (2) The administrator may investigate and examine, in this
22 state or elsewhere, by subpoena or otherwise, the activities,
23 books, accounts, and records of a person that provides or offers to
24 provide debt settlement services, or a person to which a provider
25 has delegated its obligations under an agreement or this act, to
26 determine compliance with this act. The administrator or department
27 shall not disclose information that identifies individuals who have

1 agreements with a provider to the public. In connection with an
2 investigation of a person, the administrator may do any of the
3 following:

4 (a) Charge the person the reasonable expenses necessarily
5 incurred to conduct the examination.

6 (b) Require or permit a person to file a statement under oath
7 as to all the facts and circumstances of a matter to be
8 investigated.

9 (3) The administrator may promulgate rules under the
10 administrative procedures act of 1969, 1969 PA 306, MCL 24.201 to
11 24.328, to implement and enforce this act.

12 (4) The administrator may enter into cooperative arrangements
13 with any other federal or state agency that has authority over
14 providers and may exchange with any of those agencies information
15 about a provider, including information obtained during an
16 examination of the provider.

17 Sec. 22. (1) Within 30 days of the effective date of this act,
18 the administrator shall establish a schedule of fees to be paid by
19 applicants and licensees in that state fiscal year for the expense
20 of administering this act.

21 (2) By September 30 of each year, the administrator shall
22 establish a schedule of fees to be paid by applicants and licensees
23 in the next state fiscal year for the expense of administering this
24 act.

25 (3) In establishing initial and renewal license fees under
26 this section, the administrator shall consider each licensee's
27 business volume and number of locations and any other factors he or

1 she considers reasonable in order to generate money sufficient to
2 pay, but not to exceed, the department's reasonably anticipated
3 costs of administering this act.

4 (4) The department of treasury shall establish and administer
5 a restricted, interest-bearing account in the general fund known as
6 the debt settlement services act account. All money received or
7 collected for fees and charges under this act shall be paid into
8 the account to the credit of the department. Money in the account
9 and interest earned on the account shall only be used for the
10 implementation and operation of this act and the operation of the
11 department. Money in the account at the end of a fiscal year shall
12 not revert to the general fund but shall be carried over in the
13 account to the next fiscal year.

14 Sec. 23. (1) The administrator may enforce this act and rules
15 adopted under this act by taking 1 or more of the following
16 actions:

17 (a) Ordering a provider or a director, employee, or other
18 agent of a provider to cease and desist from any violations.

19 (b) Ordering a provider or a person that has caused a
20 violation to correct the violation, including, but not limited to,
21 making restitution of money or property to a person aggrieved by a
22 violation.

23 (c) Prosecuting a civil action to do 1 or more of the
24 following:

25 (i) Impose on a provider or a person that has caused a
26 violation a civil fine of not more than \$10,000.00 for each
27 violation.

1 (ii) Enforce an order of the administrator.

2 (iii) Obtain restitution or an injunction or other equitable
3 relief.

4 (d) Intervening in an action brought under section 25.

5 (2) If a person violates or knowingly authorizes, directs, or
6 aids in the violation of a final order issued under subsection
7 (1)(a) or (b), the person is subject to a civil fine of not more
8 than \$20,000.00 for each violation.

9 (3) The administrator may maintain an action to enforce this
10 act in any county.

11 (4) The administrator may recover the reasonable costs of
12 enforcing this act under this section, including reasonable
13 attorney fees.

14 Sec. 24. (1) The administrator may suspend, revoke, or deny
15 renewal of a provider's license if any of the following are met:

16 (a) A fact or condition exists that, if it had existed when
17 the licensee applied for license as a provider, would have been a
18 reason for denying a license.

19 (b) The provider has committed a material violation of this
20 act or a rule or order of the administrator under this act.

21 (c) The provider is insolvent. As used in this subdivision,
22 "insolvent" means any of the following:

23 (i) Has generally ceased to pay debts in the ordinary course of
24 business other than as a result of good-faith dispute.

25 (ii) Is unable to pay debts as they become due.

26 (iii) Is insolvent within the meaning of the bankruptcy code, 11
27 USC 101 to 1330.

1 (d) The provider or an employee or affiliate of the provider
2 refuses to permit the administrator to make an examination
3 authorized by this act, fails to comply with section 21(2)(b)
4 within 15 days after a request, or made a material
5 misrepresentation or omission in complying with section 21(2)(b).

6 (e) The provider did not respond within a reasonable time and
7 in an appropriate manner to communications from the administrator.

8 (2) If the administrator suspends or revokes a provider's
9 license, the provider may appeal and request a hearing pursuant to
10 the administrative procedures act of 1969, 1969 PA 306, MCL 24.201
11 to 24.328.

12 Sec. 25. (1) If an agreement is void under section 17(2), the
13 individual may recover in a civil action all money paid by or on
14 behalf of the individual under the agreement, in addition to the
15 recovery under subsection (3)(c) and (d).

16 (2) If an individual voids an agreement under section 17(1),
17 the individual may recover in a civil action 3 times the total
18 amount of the fees, charges, money, or payments made by the
19 individual to the provider, in addition to the recovery under
20 subsection (3)(d).

21 (3) Subject to subsection (4), an individual with respect to
22 whom a provider violates this act may recover any of the following
23 in a civil action from the provider and any person that caused the
24 violation:

25 (a) Compensatory damages for injury, including, but not
26 limited to, noneconomic injury, caused by the violation.

27 (b) Except as otherwise provided in subsection (4), for a

1 violation of section 11, 13, 14, 15, 16, 18, or 19(1) or (2), the
2 greater of the amount recoverable under subdivision (a) or
3 \$5,000.00.

4 (c) Punitive damages.

5 (d) Reasonable attorney fees and costs.

6 (4) In a class action, except for a violation of section
7 19(1)(e), the minimum damages provided in subsection (3)(b) do not
8 apply.

9 (5) In addition to the remedy available under subsection (3),
10 if a provider violates an individual's rights under section 14, the
11 individual may recover in a civil action all money paid or
12 deposited by or on behalf of the individual under the agreement,
13 except for amounts paid to creditors.

14 (6) A provider is not liable under this section for a
15 violation of this act if the provider proves that the violation was
16 not intentional and resulted from a good-faith error
17 notwithstanding the maintenance of procedures reasonably adapted to
18 avoid the error. An error of legal judgment with respect to a
19 provider's obligations under this act is not a good-faith error.
20 If, in connection with a violation, the provider has received more
21 money than authorized by an agreement or this act, the defense
22 provided by this subsection is not available unless the provider
23 refunds the excess within 2 business days after learning of the
24 violation.

25 Sec. 26. (1) If an act or practice of a provider violates both
26 this act and the Michigan consumer protection act, 1976 PA 331, MCL
27 445.901 to 445.922, an individual may not recover under both acts

1 for the same act or practice.

2 (2) An action or proceeding brought under section 23 must be
3 commenced within 4 years after the conduct that is the basis of the
4 administrator's complaint.

5 (3) An action brought under section 25 must be commenced
6 within 2 years after the latest of the following:

7 (a) The individual's last transmission of money to a provider.

8 (b) Subject to subsection (4), the date on which the
9 individual discovered or reasonably should have discovered the
10 facts giving rise to the individual's claim.

11 (c) Termination of actions or proceedings by the administrator
12 with respect to a violation of this act.

13 (4) The period prescribed in subsection (3)(b) is tolled
14 during any period during which the provider or, if different, the
15 defendant has materially and willfully misrepresented information
16 required by this act to be disclosed to the individual, if the
17 information misrepresented is material to the establishment of the
18 liability of the defendant under this act.

19 Enacting section 1. This act is repealed effective July 1,
20 2015.

21 Enacting section 2. This act does not take effect unless all
22 of the following bills of the 94th Legislature are enacted into
23 law:

24 (a) Senate Bill No. 65.

25 (b) Senate Bill No. 960.

26