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By: **Delegates McIntosh and Bobo**

Introduced and read first time: February 7, 2003

Assigned to: Economic Matters

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A BILL ENTITLED

AN ACT concerning

**Maryland Debt Management Services Act**

FOR the purpose of prohibiting a person from providing debt management services unless licensed by the Commissioner of Financial Regulation or exempt from licensing under this Act; authorizing the Commissioner to take certain actions to carry out this Act; authorizing the Commissioner by regulation to establish certain fees; establishing a certain Debt Management Services Fund; establishing certain qualifications for an applicant for a license; requiring an applicant to submit a certain application, pay certain fees, and file a certain surety bond; requiring an applicant and licensee to provide fingerprints under certain circumstances; requiring the Commissioner to investigate an applicant and approve or deny each application for a license within a certain period of time; requiring the Commissioner to include certain information on each license; requiring a licensee that offers or provides debt management services through the Internet to include a certain notice on its website; providing for the renewal of a license; establishing procedures for surrendering a license; specifying certain requirements for a surety bond required under this Act; requiring a licensee to give certain notices to and file certain reports with the Commissioner; establishing a certain penalty for failure to file certain reports; prohibiting a licensee from performing debt management services for a consumer unless certain actions have been taken; specifying the contents of a debt management services agreement; requiring a licensee to deposit, in a certain trust account, certain funds received by the licensee; prohibiting a licensee from imposing certain fees or other charges or receiving certain funds or payments except under certain circumstances; requiring a licensee to provide certain accountings to consumers at certain times; establishing certain prohibited acts; requiring a licensee to make and preserve certain books, accounts, and records for a certain period of time and in a certain location and form; requiring a licensee to include in any advertisement the licensee's debt management services license number; authorizing the Commissioner to investigate certain persons for certain purposes and to conduct certain on-site examinations of a licensee; authorizing the Commissioner to deny a license to an applicant, reprimand a licensee, or suspend or revoke the license of a licensee under certain circumstances; requiring the Commissioner to give an applicant or licensee an opportunity for a hearing under certain circumstances;

authorizing the Commissioner to issue certain orders, impose certain civil penalties, and file certain petitions to enforce this Act; providing certain criminal penalties for certain violations of this Act; establishing a certain short title; establishing the scope of this Act; defining certain terms; repealing certain provisions of law governing the business of debt adjusting; allowing certain organizations providing debt management services in the State on the effective date of this Act to continue to provide debt management services without being licensed until a certain time under certain circumstances; and generally relating to the Maryland Debt Management Services Act.

BY repealing

Article - Commercial Law  
Section 14-1316  
Annotated Code of Maryland  
(2000 Replacement Volume and 2002 Supplement)

BY adding to

Article - Financial Institutions  
Section 12-901 through 12-930, inclusive, to be under the new subtitle "Subtitle 9. Maryland Debt Management Services Act"  
Annotated Code of Maryland  
(1998 Replacement Volume and 2002 Supplement)

SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF MARYLAND, That the Laws of Maryland read as follows:

**Article - Commercial Law**

[14-1316.

(a) In this section, "debt adjusting" means the making of a contract, expressed or implied, with a debtor and another person engaged in the debt adjusting business by which the debtor agrees to pay a certain amount of money periodically to the other, who for consideration distributes the money among specified creditors in accordance with an agreed plan.

(b) A person may not engage in the business of debt adjusting.

(c) A person who violates this section is guilty of a misdemeanor and on conviction is subject to imprisonment not exceeding 6 months or a fine not exceeding \$500 or both.

(d) This section does not apply to the following when engaged in the regular course of their respective businesses and professions:

(1) A lawyer;

- (2) A bank or fiduciary, authorized to transact business in this State and perform credit and financial adjusting service in the regular course of its principal business;
- (3) A title insurer or abstract company, while doing an escrow business;
- (4) A judicial officer or a person acting under a court order;
- (5) A nonprofit, religious, fraternal, or cooperative organization that offers debt management service exclusively for members, if a charge is not made and a fee is not imposed;
- (6) A certified public accountant; and
- (7) A trade or mercantile association in the course of arranging the adjustment of debts with a business establishment.]

### **Article - Financial Institutions**

#### SUBTITLE 9. MARYLAND DEBT MANAGEMENT SERVICES ACT.

12-901.

(A) IN THIS SUBTITLE THE FOLLOWING WORDS HAVE THE MEANINGS INDICATED.

(B) "CONSUMER" MEANS AN INDIVIDUAL WHO IS SEEKING DEBT MANAGEMENT SERVICES OR HAS ENTERED INTO A DEBT MANAGEMENT SERVICES AGREEMENT.

(C) "CONSUMER EDUCATION PROGRAM" MEANS A PROGRAM OR PLAN THAT SEEKS TO IMPROVE THE FINANCIAL LITERACY OF CONSUMERS.

(D) "DEBT MANAGEMENT COUNSELOR" MEANS A PERMANENT, TEMPORARY, OR CONTRACTUAL EMPLOYEE OF A DEBT MANAGEMENT SERVICES PROVIDER WHO PROVIDES DEBT MANAGEMENT ADVICE ON BEHALF OF THE DEBT MANAGEMENT SERVICES PROVIDER.

(E) "DEBT MANAGEMENT SERVICES" MEANS:

(1) RECEIVING FUNDS FROM A CONSUMER FOR THE PURPOSE OF DISTRIBUTING THE FUNDS AMONG THE CONSUMER'S CREDITORS IN PAYMENT OR PARTIAL PAYMENT OF THE CONSUMER'S DEBTS; OR

(2) SETTling, ADJUSTING, PRORATING, POOLING, COMPROMISING, OR LIQUIDATING THE INDEBTEDNESS OF A CONSUMER.

(F) "DEBT MANAGEMENT SERVICES AGREEMENT" MEANS A WRITTEN CONTRACT, PLAN, OR AGREEMENT BETWEEN A DEBT MANAGEMENT SERVICES

PROVIDER AND A CONSUMER FOR THE PERFORMANCE OF DEBT MANAGEMENT SERVICES.

(G) "DEBT MANAGEMENT SERVICES PROVIDER" MEANS AN ORGANIZATION THAT PROVIDES OR OFFERS TO PROVIDE DEBT MANAGEMENT SERVICES TO A CONSUMER IN THE STATE.

(H) "FUND" MEANS THE DEBT MANAGEMENT SERVICES FUND ESTABLISHED UNDER § 12-905 OF THIS SUBTITLE.

(I) "LICENSEE" MEANS AN ORGANIZATION LICENSED UNDER THIS SUBTITLE TO PROVIDE DEBT MANAGEMENT SERVICES.

(J) "MAINTENANCE FEE" MEANS A FEE PAID BY A CONSUMER TO A DEBT MANAGEMENT SERVICES PROVIDER FOR THE MAINTENANCE OR SERVICING OF THE CONSUMER'S ACCOUNTS WITH THE CONSUMER'S CREDITORS IN ACCORDANCE WITH A DEBT MANAGEMENT SERVICES AGREEMENT.

(K) "ORGANIZATION" MEANS A NONPROFIT ORGANIZATION THAT IS EXEMPT FROM TAXATION UNDER § 501(C) OF THE INTERNAL REVENUE CODE.

(L) "RESIDENT AGENT" MEANS AN INDIVIDUAL RESIDING IN THE STATE OR A MARYLAND CORPORATION WHOSE NAME, ADDRESS, AND DESIGNATION AS A RESIDENT AGENT ARE FILED OR RECORDED WITH THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION IN ACCORDANCE WITH THE PROVISIONS OF THE CORPORATIONS AND ASSOCIATIONS ARTICLE.

(M) "SET-UP FEE" MEANS A FEE PAID BY A CONSUMER TO A DEBT MANAGEMENT SERVICES PROVIDER IN CONNECTION WITH THE PROCESSING OF THE CONSUMER'S APPLICATION FOR DEBT MANAGEMENT SERVICES.

(N) "TRUST ACCOUNT" MEANS AN ACCOUNT THAT IS:

- (1) ESTABLISHED IN A FINANCIAL INSTITUTION;
- (2) SEPARATE FROM THE DEBT MANAGEMENT SERVICES PROVIDER'S OPERATING ACCOUNT;
- (3) IMPRESSED WITH A TRUST THAT IS FREE FROM THE TRUSTEE PROCESS;
- (4) UNAVAILABLE TO CREDITORS OF THE DEBT MANAGEMENT SERVICES PROVIDER; AND
- (5) USED TO HOLD FUNDS PAID BY CONSUMERS TO A DEBT MANAGEMENT SERVICES PROVIDER FOR DISBURSEMENT TO CREDITORS OF THE CONSUMERS.

12-902.

THIS SUBTITLE DOES NOT APPLY TO:

(1) THE FOLLOWING PERSONS WHEN ENGAGED IN THE REGULAR COURSE OF THEIR RESPECTIVE BUSINESSES AND PROFESSIONS:

(I) AN ATTORNEY AT LAW;

(II) AN ESCROW AGENT;

(III) A CERTIFIED PUBLIC ACCOUNTANT;

(IV) A BANK, SAVINGS AND LOAN, CREDIT UNION, OR TRUST COMPANY;

(V) A TITLE INSURER OR ABSTRACT COMPANY; OR

(VI) A JUDICIAL OFFICER OR A PERSON ACTING UNDER A COURT ORDER;

(2) A PERSON WHILE PERFORMING SERVICES INCIDENTAL TO THE DISSOLUTION, WINDING UP, OR LIQUIDATION OF A PARTNERSHIP, CORPORATION, OR OTHER BUSINESS ENTERPRISE; OR

(3) A TRADE OR MERCANTILE ASSOCIATION ACTING IN THE COURSE OF ARRANGING THE ADJUSTMENT OF DEBTS WITH A BUSINESS ESTABLISHMENT.

12-903.

TO CARRY OUT THE PROVISIONS OF THIS SUBTITLE, THE COMMISSIONER MAY:

(1) ADOPT RULES AND REGULATIONS;

(2) ENTER INTO COOPERATIVE AND INFORMATION SHARING AGREEMENTS WITH ANY OTHER FEDERAL OR STATE AGENCIES HAVING SUPERVISORY RESPONSIBILITY OVER DEBT MANAGEMENT SERVICES BUSINESSES; AND

(3) PROVIDE ANY FEDERAL OR STATE AGENCY HAVING SUPERVISORY RESPONSIBILITY OVER DEBT MANAGEMENT SERVICES BUSINESSES WITH ANY DOCUMENTS OR OTHER INFORMATION.

12-904.

(A) THE COMMISSIONER BY REGULATION SHALL ESTABLISH:

(1) A FEE, NOT EXCEEDING \$1,000, FOR THE ISSUANCE OF A LICENSE UNDER THIS SUBTITLE;

(2) A FEE, NOT EXCEEDING \$1,000, FOR RENEWAL OF A LICENSE ISSUED UNDER THIS SUBTITLE;

(3) A FEE, NOT EXCEEDING \$100, FOR EACH LOCATION IN THE STATE AT WHICH A LICENSEE PROVIDES DEBT MANAGEMENT SERVICES UNDER THIS SUBTITLE, PAYABLE AT THE TIME OF ISSUANCE OF AN INITIAL LICENSE AND AT EACH RENEWAL OF A LICENSE; AND

(4) A FEE, NOT EXCEEDING \$1,000, FOR AN INVESTIGATION OF AN APPLICANT OR LICENSEE UNDER THIS SUBTITLE.

(B) ANY FEES CHARGED BY THE COMMISSIONER UNDER THIS SUBTITLE SHALL APPROXIMATE THE DIRECT AND INDIRECT COSTS OF ADMINISTERING AND ENFORCING THIS SUBTITLE.

12-905.

(A) THERE IS A DEBT MANAGEMENT SERVICES FUND THAT CONSISTS OF:

(1) ALL REVENUE RECEIVED FOR THE LICENSING OF ORGANIZATIONS THAT PROVIDE DEBT MANAGEMENT SERVICES UNDER THIS SUBTITLE;

(2) INCOME FROM INVESTMENTS THAT THE TREASURER MAKES FOR THE FUND; AND

(3) EXCEPT AS PROVIDED IN SUBSECTION (B) OF THIS SECTION, ANY OTHER FEE OR REVENUE RECEIVED BY THE COMMISSIONER UNDER THIS SUBTITLE.

(B) THE COMMISSIONER SHALL PAY ALL FINES AND PENALTIES COLLECTED BY THE COMMISSIONER UNDER THIS SUBTITLE INTO THE GENERAL FUND OF THE STATE.

(C) THE PURPOSE OF THE FUND IS TO PAY ALL THE COSTS AND EXPENSES INCURRED BY THE COMMISSIONER THAT ARE RELATED TO THE REGULATION OF THE DEBT MANAGEMENT SERVICES BUSINESS UNDER THIS SUBTITLE, INCLUDING:

(1) EXPENDITURES AUTHORIZED UNDER THIS SUBTITLE; AND

(2) ANY OTHER EXPENSE AUTHORIZED IN THE STATE BUDGET.

(D) (1) THE TREASURER IS THE CUSTODIAN OF THE FUND.

(2) THE TREASURER SHALL DEPOSIT PAYMENTS RECEIVED FROM THE COMMISSIONER INTO THE FUND.

(E) (1) THE FUND IS A CONTINUING, NONLAPSING FUND THAT IS NOT SUBJECT TO § 7-302 OF THE STATE FINANCE AND PROCUREMENT ARTICLE, AND MAY NOT BE DEEMED A PART OF THE GENERAL FUND OF THE STATE.

(2) UNLESS OTHERWISE PROVIDED BY LAW, NO PART OF THE FUND MAY REVERT OR BE CREDITED TO:

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(I) THE GENERAL FUND OF THE STATE; OR

(II) A SPECIAL FUND OF THE STATE.

(F) (1) ALL THE COSTS AND EXPENSES OF THE COMMISSIONER RELATING TO THE REGULATION OF THE DEBT MANAGEMENT SERVICES BUSINESS UNDER THIS SUBTITLE SHALL BE INCLUDED IN THE STATE BUDGET.

(2) ANY EXPENDITURES FROM THE FUND TO COVER COSTS AND EXPENSES OF THE COMMISSIONER MAY BE MADE ONLY:

(I) BY AN APPROPRIATION FROM THE FUND APPROVED BY THE GENERAL ASSEMBLY IN THE ANNUAL STATE BUDGET; OR

(II) BY THE BUDGET AMENDMENT PROCEDURE PROVIDED FOR IN § 7-209 OF THE STATE FINANCE AND PROCUREMENT ARTICLE.

(3) IF, IN ANY FISCAL YEAR, THE AMOUNT OF THE REVENUE COLLECTED BY THE COMMISSIONER AND DEPOSITED INTO THE FUND EXCEEDS THE ACTUAL APPROPRIATION FOR THE COMMISSIONER TO REGULATE THE DEBT MANAGEMENT SERVICES BUSINESS UNDER THIS SUBTITLE, THE EXCESS AMOUNT SHALL BE CARRIED FORWARD WITHIN THE FUND.

(G) THE OFFICE OF LEGISLATIVE AUDITS SHALL AUDIT THE ACCOUNTS AND TRANSACTIONS OF THE FUND UNDER § 2-1220 OF THE STATE GOVERNMENT ARTICLE.

12-906.

A PERSON MAY NOT PROVIDE DEBT MANAGEMENT SERVICES IF THAT PERSON, OR THE PERSON WITH WHOM THAT PERSON PROVIDES DEBT MANAGEMENT SERVICES, IS LOCATED IN THE STATE UNLESS THAT PERSON:

(1) IS LICENSED BY THE COMMISSIONER UNDER THIS SUBTITLE; OR

(2) IS EXEMPT FROM LICENSING UNDER THIS SUBTITLE.

12-907.

(A) TO QUALIFY FOR A LICENSE, AN APPLICANT SHALL SATISFY THE COMMISSIONER THAT:

(1) THE APPLICANT IS AN ORGANIZATION;

(2) EACH OF THE OWNERS, OFFICERS, DIRECTORS, AND PRINCIPALS OF THE APPLICANT HAS SUFFICIENT EXPERIENCE, CHARACTER, FINANCIAL RESPONSIBILITY, AND GENERAL FITNESS TO:

(I) ENGAGE IN THE BUSINESS OF PROVIDING DEBT MANAGEMENT SERVICES;

(II) WARRANT THE BELIEF THAT THE DEBT MANAGEMENT SERVICES BUSINESS WILL BE CONDUCTED LAWFULLY, HONESTLY, FAIRLY, AND EFFICIENTLY; AND

(III) COMMAND THE CONFIDENCE OF THE PUBLIC;

(3) EACH AGENT ACTING ON BEHALF OF THE APPLICANT TO MANAGE A TRUST ACCOUNT REQUIRED UNDER § 12-917 OF THIS SUBTITLE HAS SUFFICIENT EXPERIENCE, CHARACTER, FINANCIAL RESPONSIBILITY, AND GENERAL FITNESS TO:

(I) ENGAGE IN THE BUSINESS OF MANAGING A TRUST ACCOUNT;

(II) WARRANT THE BELIEF THAT THE MANAGEMENT OF THE TRUST ACCOUNT WILL BE CONDUCTED LAWFULLY, HONESTLY, FAIRLY, AND EFFICIENTLY; AND

(III) COMMAND THE CONFIDENCE OF THE PUBLIC; AND

(4) THE APPLICANT HAS A NET WORTH COMPUTED ACCORDING TO GENERALLY ACCEPTED ACCOUNTING PRINCIPLES OF AT LEAST \$50,000, PLUS AN ADDITIONAL NET WORTH OF \$10,000 FOR EACH LOCATION AT WHICH DEBT MANAGEMENT SERVICES WILL BE PROVIDED TO THE PUBLIC, UP TO A MAXIMUM OF \$500,000 AS PROVIDED IN SUBSECTION (B) OF THIS SECTION.

(B) THE COMMISSIONER MAY REQUIRE A NET WORTH OF UP TO \$500,000, SUBJECT TO A CONSIDERATION OF THE FOLLOWING:

(1) THE NATURE AND VOLUME OF THE BUSINESS OR PROPOSED BUSINESS OF THE APPLICANT;

(2) THE AMOUNT, NATURE, QUALITY, AND LIQUIDITY OF THE ASSETS OF THE APPLICANT;

(3) THE AMOUNT AND NATURE OF THE LIABILITIES, INCLUDING CONTINGENT LIABILITIES, OF THE APPLICANT;

(4) THE HISTORY OF AND PROSPECTS FOR THE APPLICANT TO EARN AND RETAIN INCOME;

(5) THE QUALITY OF THE OPERATIONS OF THE APPLICANT;

(6) THE QUALITY OF THE MANAGEMENT OF THE APPLICANT;

(7) THE NATURE AND QUALITY OF THE PERSON THAT HAS CONTROL OF THE APPLICANT; AND

(8) ANY OTHER FACTOR THAT THE COMMISSIONER CONSIDERS RELEVANT.



12-908.

(A) TO APPLY FOR A LICENSE, AN APPLICANT SHALL SUBMIT TO THE COMMISSIONER AN APPLICATION ON THE FORM THAT THE COMMISSIONER PROVIDES.

(B) THE APPLICATION SHALL INCLUDE:

(1) THE APPLICANT'S NAME, BUSINESS ADDRESS, TELEPHONE NUMBER, ELECTRONIC MAIL ADDRESS, IF ANY, AND WEBSITE ADDRESS, IF ANY;

(2) THE ADDRESS OF EACH LOCATION IN THE STATE AT WHICH THE APPLICANT WILL PROVIDE DEBT MANAGEMENT SERVICES;

(3) THE NAME AND ADDRESS OF EACH OWNER, OFFICER, DIRECTOR, AND PRINCIPAL OF THE APPLICANT;

(4) THE NAME, ADDRESS, AND TELEPHONE NUMBER OF THE APPLICANT'S RESIDENT AGENT IN THE STATE;

(5) A DESCRIPTION OF THE OWNERSHIP INTEREST OF ANY OFFICER, DIRECTOR, AGENT, OR EMPLOYEE OF THE APPLICANT IN ANY AFFILIATE OR SUBSIDIARY OF THE APPLICANT OR IN ANY OTHER BUSINESS ENTITY THAT PROVIDES ANY SERVICE TO THE APPLICANT RELATING TO THE APPLICANT'S DEBT MANAGEMENT SERVICES BUSINESS;

(6) THE NAME AND ADDRESS OF ANY AGENT ACTING ON BEHALF OF THE APPLICANT TO MANAGE A TRUST ACCOUNT REQUIRED UNDER § 12-917 OF THIS SUBTITLE;

(7) THE APPLICANT'S FEDERAL EMPLOYER IDENTIFICATION NUMBER;

(8) A LIST OF ANY STATE IN WHICH:

(I) THE APPLICANT ENGAGES IN THE BUSINESS OF PROVIDING DEBT MANAGEMENT SERVICES;

(II) THE APPLICANT IS REGISTERED OR LICENSED TO PROVIDE DEBT MANAGEMENT SERVICES; AND

(III) THE APPLICANT'S REGISTRATION OR LICENSE HAS BEEN SUSPENDED OR REVOKED;

(9) A STATEMENT OF WHETHER ANY PENDING JUDGMENT, TAX LIEN, MATERIAL LITIGATION, OR ADMINISTRATIVE ACTION BY ANY GOVERNMENT AGENCY EXISTS AGAINST THE APPLICANT;

(10) THE MOST RECENT, UNCONSOLIDATED FINANCIAL STATEMENT OF THE APPLICANT THAT:

(I) IS PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES APPLIED ON A CONSISTENT BASIS;

(II) INCLUDES A CERTIFIED OPINION AUDIT PREPARED BY AN INDEPENDENT CERTIFIED PUBLIC ACCOUNTANT; AND

(III) WAS PREPARED NO MORE THAN 12 MONTHS BEFORE THE DATE OF APPLICATION;

(11) EVIDENCE OF NONPROFIT STATUS UNDER § 501(C) OF THE INTERNAL REVENUE CODE;

(12) IF THE APPLICANT IS A CORPORATION, A DETAILED DESCRIPTION OF THE APPLICANT'S CORPORATE STRUCTURE, INCLUDING PARENT COMPANIES, SUBSIDIARIES, AND AFFILIATES;

(13) THE APPLICANT'S BUSINESS CREDIT REPORT;

(14) EVIDENCE OF GENERAL LIABILITY OR FIDELITY INSURANCE COVERAGE THAT RUNS TO THE STATE TO BE USED FOR THE BENEFIT OF ANY CONSUMER INJURED AS A RESULT OF THE DISHONESTY, FRAUD, THEFT, OR OTHER MALFEASANCE ON THE PART OF AN EMPLOYEE OF THE APPLICANT;

(15) A DESCRIPTION OF THE APPLICANT'S CONSUMER EDUCATION PROGRAM;

(16) A DESCRIPTION OF THE APPLICANT'S FINANCIAL ANALYSIS PLAN THAT IS USED TO EVALUATE THE FINANCIAL CONDITION OF CONSUMERS;

(17) A COPY OF THE DEBT MANAGEMENT SERVICES AGREEMENT THAT THE APPLICANT WILL USE IN ITS DEBT MANAGEMENT SERVICES BUSINESS;

(18) A COPY OF THE APPLICANT'S PLAN TO ENSURE THAT EACH DEBT MANAGEMENT COUNSELOR EMPLOYED BY THE APPLICANT IS CERTIFIED BY AN INDEPENDENT ORGANIZATION WITHIN 6 MONTHS AFTER THE DEBT MANAGEMENT COUNSELOR IS HIRED, AND THAT ANY EMPLOYEE WHO IS A SUPERVISOR OR MANAGER OF A DEBT MANAGEMENT COUNSELOR IS CERTIFIED BY AN INDEPENDENT ORGANIZATION WITHIN 3 MONTHS AFTER THE EMPLOYEE IS HIRED; AND

(19) ANY OTHER INFORMATION THAT THE COMMISSIONER REASONABLY REQUIRES.

(C) THE COMMISSIONER MAY REFUSE AN APPLICATION IF IT CONTAINS ERRONEOUS OR INCOMPLETE INFORMATION.

(D) WITH THE APPLICATION, THE APPLICANT SHALL PAY TO THE COMMISSIONER:

(1) A LICENSE FEE IN THE AMOUNT ESTABLISHED UNDER § 12-904 OF THIS SUBTITLE; AND

(2) A NONREFUNDABLE INVESTIGATION FEE IN THE AMOUNT ESTABLISHED UNDER § 12-904 OF THIS SUBTITLE.

(E) WITH THE APPLICATION, THE APPLICANT SHALL FILE A SURETY BOND WITH THE COMMISSIONER AS PROVIDED IN § 12-914 OF THIS SUBTITLE.

12-909.

(A) IN CONNECTION WITH AN INITIAL APPLICATION, A RENEWAL APPLICATION, AND AT ANY OTHER TIME THE COMMISSIONER REQUESTS, AN APPLICANT OR LICENSEE SHALL PROVIDE FINGERPRINTS FOR USE BY THE FEDERAL BUREAU OF INVESTIGATION AND THE MARYLAND CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES TO CONDUCT CRIMINAL HISTORY RECORDS CHECKS.

(B) AN APPLICANT OR LICENSEE REQUIRED TO PROVIDE FINGERPRINTS UNDER THIS SECTION SHALL PAY ANY PROCESSING OR OTHER REQUIRED FEE.

(C) IF THE APPLICANT OR LICENSEE IS A CORPORATION, THE FINGERPRINTING AND CRIMINAL HISTORY RECORDS CHECK REQUIREMENTS SHALL APPLY TO THE PRESIDENT AND ANY OTHER OFFICER, DIRECTOR, PRINCIPAL, OR OWNER OF THE CORPORATION AS REQUIRED BY THE COMMISSIONER.

(D) THE COMMISSIONER MAY REQUIRE ANY AGENT ACTING ON BEHALF OF A LICENSEE TO MANAGE A TRUST ACCOUNT REQUIRED UNDER § 12-917 OF THIS SUBTITLE TO PROVIDE FINGERPRINTS FOR USE BY THE FEDERAL BUREAU OF INVESTIGATION AND THE MARYLAND CRIMINAL JUSTICE INFORMATION SYSTEM CENTRAL REPOSITORY OF THE DEPARTMENT OF PUBLIC SAFETY AND CORRECTIONAL SERVICES TO CONDUCT CRIMINAL HISTORY RECORDS CHECKS.

12-910.

(A) AFTER AN APPLICANT FOR A LICENSE FILES A COMPLETE APPLICATION, FILES A SURETY BOND, AND PAYS THE LICENSE AND INVESTIGATION FEES REQUIRED UNDER THIS SUBTITLE, THE COMMISSIONER SHALL INVESTIGATE THE FACTS RELEVANT TO THE APPLICATION TO DETERMINE IF THE APPLICANT MEETS THE REQUIREMENTS OF THIS SUBTITLE.

(B) UNLESS THE COMMISSIONER NOTIFIES AN APPLICANT THAT A DIFFERENT TIME PERIOD IS NECESSARY, THE COMMISSIONER SHALL APPROVE OR DENY EACH APPLICATION FOR A LICENSE WITHIN 60 DAYS AFTER THE DATE ON WHICH THE COMPLETE APPLICATION IS FILED, THE SURETY BOND IS FILED, AND THE FEES ARE PAID.

(C) THE COMMISSIONER SHALL ISSUE A LICENSE TO ANY APPLICANT THAT MEETS THE REQUIREMENTS OF THIS SUBTITLE.

(D) (1) IF AN APPLICANT DOES NOT MEET THE REQUIREMENTS OF THIS SUBTITLE, THE COMMISSIONER:

(I) SUBJECT TO THE HEARING PROVISIONS OF § 12-927 OF THIS SUBTITLE, SHALL DENY THE APPLICATION;

(II) SHALL NOTIFY THE APPLICANT IMMEDIATELY OF THE DENIAL;

(III) SHALL REFUND THE LICENSE FEE; AND

(IV) SHALL KEEP THE INVESTIGATION FEE.

(2) WITHIN 30 DAYS AFTER THE COMMISSIONER DENIES AN APPLICATION, THE COMMISSIONER SHALL STATE THE REASONS FOR THE DENIAL IN WRITING AND MAIL THEM TO THE APPLICANT AT THE ADDRESS LISTED IN THE APPLICATION.

12-911.

(A) THE COMMISSIONER SHALL INCLUDE ON EACH LICENSE:

(1) THE NAME OF THE LICENSEE;

(2) THE ADDRESS AT WHICH THE BUSINESS IS TO BE CONDUCTED; AND

(3) THE DEBT MANAGEMENT SERVICES LICENSE NUMBER OF THE LICENSEE.

(B) A LICENSE AUTHORIZES THE LICENSEE TO PROVIDE DEBT MANAGEMENT SERVICES.

(C) A LICENSE MAY NOT BE TRANSFERRED, ASSIGNED, OR PLEDGED.

(D) (1) IF THE LICENSEE HAS AN OFFICE IN THE STATE, THE LICENSEE SHALL PROMINENTLY DISPLAY THE LICENSE IN A LOCATION THAT IS OPEN TO THE PUBLIC AND AT WHICH THE LICENSEE ENGAGES IN THE BUSINESS OF PROVIDING DEBT MANAGEMENT SERVICES.

(2) IF THE LICENSEE DOES NOT MAINTAIN AN OFFICE IN THE STATE, THE LICENSEE SHALL MAINTAIN THE LICENSE IN THE LICENSEE'S HEADQUARTERS.

(E) A LICENSEE THAT OFFERS OR PROVIDES DEBT MANAGEMENT SERVICES THROUGH THE INTERNET SHALL INCLUDE THE FOLLOWING NOTICE ON ITS WEBSITE:

"THE COMMISSIONER OF FINANCIAL REGULATION FOR THE STATE OF MARYLAND WILL ACCEPT ANY QUESTIONS AND COMPLAINTS FROM MARYLAND RESIDENTS REGARDING (NAME AND LICENSE NUMBER OF THE DEBT MANAGEMENT SERVICES PROVIDER) AT (ADDRESS OF COMMISSIONER), PHONE (TOLL-FREE NUMBER OF THE COMMISSIONER)".

12-912.

(A) A LICENSE ISSUED UNDER THIS SUBTITLE EXPIRES ON DECEMBER 31 OF EACH ODD-NUMBERED YEAR UNLESS IT IS RENEWED FOR A 2-YEAR TERM AS PROVIDED IN SUBSECTION (B) OF THIS SECTION.

(B) ON OR BEFORE DECEMBER 1 OF THE YEAR OF EXPIRATION, A LICENSE MAY BE RENEWED FOR A 2-YEAR TERM IF THE LICENSEE:

(1) OTHERWISE IS ENTITLED TO BE LICENSED;

(2) PAYS TO THE COMMISSIONER THE RENEWAL FEE ESTABLISHED UNDER § 12-904 OF THIS SUBTITLE;

(3) FILES WITH THE COMMISSIONER A SURETY BOND RENEWAL CERTIFICATE OR A NEW SURETY BOND REQUIRED UNDER § 12-914 OF THIS SUBTITLE; AND

(4) SUBMITS TO THE COMMISSIONER A RENEWAL APPLICATION ON THE FORM THAT THE COMMISSIONER REQUIRES.

(C) THE COMMISSIONER MAY DETERMINE THAT LICENSES ISSUED UNDER THIS SUBTITLE SHALL EXPIRE ON A STAGGERED BASIS.

12-913.

(A) (1) A LICENSEE MAY SURRENDER A LICENSE BY SENDING TO THE COMMISSIONER A WRITTEN STATEMENT THAT THE LICENSE IS SURRENDERED.

(2) THE STATEMENT SHALL PROVIDE:

(I) THE REASON FOR THE LICENSE SURRENDER;

(II) FOR EACH CONSUMER LOCATED IN THE STATE FOR WHOM THE LICENSEE IS PROVIDING DEBT MANAGEMENT SERVICES, THE FOLLOWING INFORMATION:

1. THE NAME OF THE CONSUMER;

2. THE TOTAL AMOUNT OF FUNDS HELD BY THE LICENSEE FOR DISTRIBUTION TO THE CONSUMER'S CREDITORS; AND

3. THE NAME OF EACH CREDITOR OF THE CONSUMER THAT IS RECEIVING PAYMENTS FROM THE LICENSEE FOR DEBTS OWED BY THE CONSUMER TO THE CREDITOR, AND THE OUTSTANDING BALANCE OWED TO EACH CREDITOR.

(B) THE SURRENDER OF A LICENSE DOES NOT:

(1) AFFECT ANY CIVIL OR CRIMINAL LIABILITY OF THE LICENSEE FOR ACTS COMMITTED BEFORE THE LICENSE IS SURRENDERED;

(2) AFFECT THE SURETY BOND REQUIRED UNDER § 12-914 OF THIS SUBTITLE; OR

(3) ENTITLE THE LICENSEE TO THE RETURN OF ANY FEE PAID TO THE COMMISSIONER UNDER § 12-904 OF THIS SUBTITLE.

12-914.

(A) WITH THE APPLICATION FOR A NEW OR RENEWAL LICENSE, THE APPLICANT OR LICENSEE SHALL FILE A SURETY BOND OR BOND RENEWAL CERTIFICATE WITH THE COMMISSIONER AS PROVIDED IN THIS SECTION.

(B) (1) A SURETY BOND FILED UNDER THIS SECTION SHALL RUN TO THE STATE FOR THE BENEFIT OF ANY INDIVIDUAL WHO RESIDES IN THE STATE AND WHO HAS BEEN INJURED BY A VIOLATION OF THIS SUBTITLE OR A REGULATION ADOPTED UNDER THIS SUBTITLE COMMITTED BY A LICENSEE.

(2) THE SURETY BOND SHALL PROVIDE THAT, IF THE LICENSEE FAILS TO DISTRIBUTE TO THE CREDITORS OF A CONSUMER THE AMOUNTS REQUIRED UNDER THE DEBT MANAGEMENT SERVICES AGREEMENT, THE COMMISSIONER SHALL HAVE, IN ADDITION TO ALL OTHER LEGAL REMEDIES, A RIGHT OF ACTION IN THE NAME OF THE CONSUMER TO RECOVER LOSSES SUSTAINED BY THE CONSUMER, NOT EXCEEDING THE FACE AMOUNT OF THE SURETY BOND, WITHOUT THE NECESSITY OF JOINING THE CONSUMER IN THE ACTION.

(3) THE SURETY BOND SHALL BE:

(I) IN AN AMOUNT NOT LESS THAN \$10,000 AND NOT MORE THAN \$1,000,000, AS SET BY THE COMMISSIONER;

(II) ISSUED BY A BONDING, SURETY, OR INSURANCE COMPANY THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE; AND

(III) CONDITIONED SO THAT THE LICENSEE SHALL COMPLY WITH ALL STATE AND FEDERAL LAWS AND REGULATIONS GOVERNING THE BUSINESS OF PROVIDING DEBT MANAGEMENT SERVICES.

(4) THE LIABILITY OF A SURETY:

(I) IS NOT AFFECTED BY THE INSOLVENCY OR BANKRUPTCY OF THE LICENSEE OR BY ANY MISREPRESENTATION, BREACH OF WARRANTY, FAILURE TO PAY A PREMIUM, OR OTHER ACT OR OMISSION OF THE LICENSEE; AND

(II) CONTINUES AS TO ALL TRANSACTIONS OF THE LICENSEE FOR NO LONGER THAN 2 YEARS AFTER THE LICENSEE CEASES, FOR ANY REASON, TO BE LICENSED.

(5) THE COMMISSIONER MAY ALLOW THE AMOUNT OF THE SURETY BOND TO BE REDUCED IF THE AMOUNT OF THE LICENSEE'S OUTSTANDING DEBT MANAGEMENT SERVICES LIABILITIES IN THE STATE IS REDUCED.

(6) IN SETTING THE AMOUNT OF THE SURETY BOND, THE COMMISSIONER SHALL CONSIDER:

(I) THE FINANCIAL CONDITION AND BUSINESS EXPERIENCE OF THE APPLICANT OR LICENSEE;

(II) FOR AN APPLICANT, THE PROJECTED MONTHLY AND ANNUAL VOLUME OF DEBT MANAGEMENT SERVICES TO BE PROVIDED IN THE STATE;

(III) FOR A LICENSEE, THE AVERAGE MONTHLY AND ANNUAL VOLUME OF DEBT MANAGEMENT SERVICES PROVIDED IN THE STATE DURING THE PREVIOUS 12-MONTH PERIOD;

(IV) THE POTENTIAL LOSS TO CONSUMERS WHO REMIT FUNDS TO THE APPLICANT OR LICENSEE IF THE APPLICANT OR LICENSEE BECOMES FINANCIALLY IMPAIRED; AND

(V) ANY OTHER FACTOR THE COMMISSIONER CONSIDERS APPROPRIATE.

(C) IF THE PRINCIPAL AMOUNT OF A SURETY BOND IS REDUCED BY PAYMENT OF A CLAIM OR JUDGMENT, THE LICENSEE SHALL FILE WITH THE COMMISSIONER ANY NEW OR ADDITIONAL SURETY BOND IN THE AMOUNT THAT THE COMMISSIONER SETS.

(D) THE COMMISSIONER MAY WAIVE THE SURETY BOND REQUIREMENT UNDER THIS SECTION IF THE COMMISSIONER DETERMINES THAT THE VOLUME OF DEBT MANAGEMENT SERVICES PROVIDED BY THE APPLICANT OR LICENSEE DOES NOT WARRANT THE NEED FOR A SURETY BOND.

(E) A PENALTY IMPOSED UNDER § 12-928 OR § 12-929 OF THIS SUBTITLE MAY BE PAID AND COLLECTED FROM THE PROCEEDS OF A SURETY BOND REQUIRED UNDER THIS SECTION.

12-915.

(A) A LICENSEE SHALL GIVE THE COMMISSIONER WRITTEN NOTICE OF ANY CHANGE IN THE INFORMATION REQUIRED TO BE INCLUDED IN THE LICENSEE'S APPLICATION UNDER § 12-908(B)(1) AND (2) OF THIS SUBTITLE WITHIN 10 DAYS AFTER THE CHANGE IS EFFECTIVE.

(B) UNLESS APPROVED BY THE COMMISSIONER, A LICENSEE MAY NOT CHANGE AN OWNER, OFFICER, DIRECTOR, OR PRINCIPAL OF THE LICENSEE, OR AN AGENT WHO IS ACTING ON BEHALF OF THE LICENSEE TO MANAGE A TRUST ACCOUNT, LISTED ON THE LICENSEE'S APPLICATION UNDER § 12-908(B)(3) AND (6) OF THIS SUBTITLE.

(C) (1) TO REQUEST APPROVAL OF A PROPOSED CHANGE DESCRIBED IN SUBSECTION (B) OF THIS SECTION, THE LICENSEE SHALL NOTIFY THE

COMMISSIONER IN WRITING OF THE PROPOSED CHANGE AND SUBMIT ANY INFORMATION THAT THE COMMISSIONER REQUIRES.

(2) FOR A PROPOSED CHANGE IN OWNER OR AGENT ACTING ON BEHALF OF THE LICENSEE TO MANAGE A TRUST ACCOUNT, THE COMMISSIONER MAY DETERMINE THAT THE FILING OF A NEW APPLICATION FOR THE ISSUANCE OF A LICENSE IS WARRANTED.

(3) UNLESS THE COMMISSIONER NOTIFIES THE LICENSEE THAT A DIFFERENT TIME PERIOD IS NECESSARY, THE COMMISSIONER SHALL APPROVE OR DENY A REQUEST FOR A CHANGE DESCRIBED IN SUBSECTION (B) OF THIS SECTION WITHIN 60 DAYS AFTER THE DATE THE COMMISSIONER RECEIVES ALL INFORMATION REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION.

12-916.

(A) A LICENSEE MAY NOT PERFORM DEBT MANAGEMENT SERVICES FOR A CONSUMER UNLESS:

(1) THE LICENSEE HAS PROVIDED THE CONSUMER WITH A CONSUMER EDUCATION PROGRAM;

(2) A DEBT MANAGEMENT SERVICES COUNSELOR CERTIFIED BY AN INDEPENDENT ORGANIZATION HAS:

(I) PREPARED A FINANCIAL ANALYSIS OF THE CONSUMER'S DEBT OBLIGATIONS; AND

(II) PROVIDED A COPY OF THE FINANCIAL ANALYSIS TO THE CONSUMER;

(3) THE LICENSEE AND THE CONSUMER HAVE EXECUTED A DEBT MANAGEMENT SERVICES AGREEMENT THAT DESCRIBES THE DEBT MANAGEMENT SERVICES TO BE PROVIDED BY THE LICENSEE TO THE CONSUMER;

(4) THE LICENSEE HAS ESTABLISHED AN AGREEMENT, WITH EACH CREDITOR OF THE CONSUMER THAT IS LISTED IN THE CONSUMER'S DEBT MANAGEMENT SERVICES AGREEMENT, FOR THE PAYMENT OF THE CONSUMER'S DEBTS OWED TO THE CREDITOR; AND

(5) A COPY OF THE COMPLETED DEBT MANAGEMENT SERVICES AGREEMENT HAS BEEN PROVIDED TO THE CONSUMER.

(B) EACH DEBT MANAGEMENT SERVICES AGREEMENT SHALL:

(1) BE SIGNED AND DATED BY THE LICENSEE AND THE CONSUMER; AND

(2) INCLUDE:

(I) THE NAME, ADDRESS, AND PHONE NUMBER OF THE CONSUMER;



(II) THE NAME, ADDRESS, PHONE NUMBER, AND LICENSE NUMBER OF THE LICENSEE;

(III) A DESCRIPTION OF THE DEBT MANAGEMENT SERVICES TO BE PROVIDED TO THE CONSUMER AND ANY FEES TO BE CHARGED TO THE CONSUMER FOR THE DEBT MANAGEMENT SERVICES;

(IV) A DISCLOSURE OF THE EXISTENCE OF THE SURETY BOND REQUIRED UNDER § 12-914 OF THIS SUBTITLE;

(V) THE NAME AND ADDRESS OF THE FINANCIAL INSTITUTION IN WHICH FUNDS, PAID BY THE CONSUMER TO THE LICENSEE FOR DISBURSEMENT TO THE CONSUMER'S CREDITORS, WILL BE HELD;

(VI) A NOTICE OF THE RIGHT OF A PARTY TO THE DEBT MANAGEMENT SERVICES AGREEMENT TO CANCEL THE DEBT MANAGEMENT SERVICES AGREEMENT BY GIVING WRITTEN NOTICE OF CANCELLATION TO THE OTHER PARTY;

(VII) A SCHEDULE OF PAYMENTS THAT THE CONSUMER MUST MAKE TO THE DEBT MANAGEMENT SERVICES PROVIDER, FOR DISBURSEMENT TO THE CONSUMER'S CREDITORS, INCLUDING THE AMOUNT AND DATE OF EACH PAYMENT;

(VIII) 1. A LIST OF EACH CREDITOR OF THE CONSUMER TO WHICH PAYMENTS WILL BE MADE UNDER THE DEBT MANAGEMENT SERVICES AGREEMENT;

2. THE AMOUNT OWED TO EACH CREDITOR; AND

3. A SCHEDULE OF PAYMENTS THAT THE DEBT MANAGEMENT SERVICES PROVIDER MUST MAKE TO EACH CREDITOR, INCLUDING THE AMOUNT AND DATE OF EACH PAYMENT;

(IX) A DISCLOSURE THAT THE LICENSEE ALSO MAY RECEIVE COMPENSATION FROM THE CONSUMER'S CREDITORS FOR PROVIDING DEBT MANAGEMENT SERVICES TO THE CONSUMER;

(X) A DISCLOSURE THAT, BY EXECUTING THE DEBT MANAGEMENT SERVICES AGREEMENT, THE CONSUMER AUTHORIZES ANY FINANCIAL INSTITUTION IN WHICH THE LICENSEE HAS ESTABLISHED A TRUST ACCOUNT FOR DEPOSIT OF THE CONSUMER'S FUNDS TO DISCLOSE TO THE COMMISSIONER ANY FINANCIAL RECORDS RELATING TO THE TRUST ACCOUNT DURING THE COURSE OF ANY INVESTIGATION OR EXAMINATION OF THE LICENSEE BY THE COMMISSIONER;

(XI) A DISCLOSURE THAT EXECUTION OF A DEBT MANAGEMENT SERVICES AGREEMENT MAY IMPACT THE CONSUMER'S CREDIT RATING AND CREDIT SCORES; AND

(XII) THE FOLLOWING NOTICE:

"THE COMMISSIONER OF FINANCIAL REGULATION FOR THE STATE OF MARYLAND WILL ACCEPT QUESTIONS AND COMPLAINTS FROM MARYLAND RESIDENTS REGARDING (NAME AND LICENSE NUMBER OF THE DEBT MANAGEMENT SERVICE PROVIDER) AT (ADDRESS OF THE COMMISSIONER) PHONE (TOLL-FREE NUMBER OF THE COMMISSIONER). DO NOT SIGN THIS AGREEMENT BEFORE YOU READ IT. YOU MUST BE GIVEN A COPY OF THIS AGREEMENT."

(C) A DEBT MANAGEMENT SERVICES AGREEMENT BETWEEN A CONSUMER AND A PERSON THAT IS NOT A LICENSEE UNDER THIS SUBTITLE SHALL BE NULL AND VOID, AND ALL FEES PAID TO THE PERSON UNDER THE DEBT MANAGEMENT SERVICES AGREEMENT SHALL BE RECOVERABLE BY THE CONSUMER, TOGETHER WITH REASONABLE ATTORNEY'S FEES.

12-917.

(A) WITHIN 2 BUSINESS DAYS AFTER RECEIPT, A LICENSEE SHALL DEPOSIT, IN A TRUST ACCOUNT ESTABLISHED FOR THE BENEFIT OF THE CONSUMER, ANY FUNDS PAID TO THE LICENSEE BY OR ON BEHALF OF A CONSUMER FOR DISBURSEMENT TO THE CONSUMER'S CREDITORS.

(B) A LICENSEE SHALL:

(1) MAINTAIN SEPARATE RECORDS OF ACCOUNT FOR EACH CONSUMER TO WHOM THE LICENSEE IS PROVIDING DEBT MANAGEMENT SERVICES;

(2) DISBURSE ANY FUNDS PAID BY OR ON BEHALF OF A CONSUMER TO THE CONSUMER'S CREDITORS WITHIN 5 BUSINESS DAYS AFTER RECEIPT OF THE FUNDS; AND

(3) (I) CORRECT ANY MISDIRECTED PAYMENTS RESULTING FROM AN ERROR BY THE LICENSEE; AND

(II) REIMBURSE THE CONSUMER FOR ANY ACTUAL FEES OR OTHER CHARGES IMPOSED BY A CREDITOR AS A RESULT OF THE MISDIRECTION.

(C) A LICENSEE MAY NOT COMMINGLE ANY TRUST ACCOUNT ESTABLISHED FOR THE BENEFIT OF CONSUMERS WITH ANY OPERATING ACCOUNTS OF THE LICENSEE.

12-918.

(A) A LICENSEE MAY NOT IMPOSE ANY FEES OR OTHER CHARGES ON A CONSUMER, OR RECEIVE ANY FUNDS OR OTHER PAYMENTS FROM A CONSUMER OR ANOTHER PERSON ON BEHALF OF A CONSUMER:

(1) UNTIL AFTER THE LICENSEE AND CONSUMER HAVE EXECUTED A DEBT MANAGEMENT SERVICES AGREEMENT; AND

(2) ONLY AS ALLOWED UNDER THIS SECTION.

(B) (1) A LICENSEE MAY CHARGE A SET-UP FEE NOT EXCEEDING \$50.

(2) THE COST OF A CREDIT REPORT ON A CONSUMER SHALL BE PAID FROM THE SET-UP FEE PAID BY THE CONSUMER.

(C) (1) SUBJECT TO PARAGRAPH (2) OF THIS SUBSECTION A LICENSEE MAY CHARGE A MONTHLY MAINTENANCE FEE NOT EXCEEDING \$5 FOR EACH CREDITOR OF A CONSUMER THAT IS LISTED IN THE DEBT MANAGEMENT SERVICES AGREEMENT BETWEEN THE LICENSEE AND THE CONSUMER.

(2) THE TOTAL FEES CHARGED TO A CONSUMER UNDER PARAGRAPH (1) OF THIS SUBSECTION MAY NOT EXCEED \$50 PER MONTH.

(D) A LICENSEE MAY COLLECT FROM OR ON BEHALF OF A CONSUMER THE FUNDS THE CONSUMER HAS AGREED TO PAY TO THE LICENSEE UNDER THE DEBT MANAGEMENT SERVICES AGREEMENT.

(E) A LICENSEE MAY NOT CHARGE A FEE TO:

(1) COUNSEL A CONSUMER ABOUT DEBT MANAGEMENT;

(2) PROVIDE A CONSUMER WITH A CONSUMER EDUCATION PROGRAM;

OR

(3) CANCEL A DEBT MANAGEMENT SERVICES AGREEMENT.

(F) IF A LICENSEE IMPOSES ANY FEE OR OTHER CHARGE OR RECEIVES ANY FUNDS OR OTHER PAYMENTS NOT AUTHORIZED UNDER THIS SECTION, EXCEPT AS A RESULT OF AN ACCIDENTAL AND BONA FIDE ERROR:

(1) THE DEBT MANAGEMENT SERVICES AGREEMENT SHALL BE VOID;

AND

(2) THE LICENSEE SHALL RETURN THE AMOUNT OF THE UNAUTHORIZED FEES, CHARGES, FUNDS, OR PAYMENTS TO THE CONSUMER.

12-919.

(A) A LICENSEE SHALL PROVIDE TO EACH CONSUMER WITH WHOM THE LICENSEE HAS A DEBT MANAGEMENT SERVICES AGREEMENT A WRITTEN ACCOUNTING OF:

(1) THE AMOUNT OF FUNDS RECEIVED FROM THE CONSUMER FOR PAYMENT TO THE CONSUMER'S CREDITORS SINCE THE LAST REPORT; AND

(2) THE AMOUNTS AND DATES OF DISBURSEMENTS MADE TO EACH CREDITOR OF THE CONSUMER SINCE THE LAST REPORT.

(B) A LICENSEE SHALL PROVIDE THE ACCOUNTING REQUIRED UNDER SUBSECTION (A) OF THIS SECTION:

- (1) AT LEAST ONCE DURING EACH CALENDAR QUARTER; AND
- (2) ON CANCELLATION OR TERMINATION OF THE DEBT MANAGEMENT SERVICES AGREEMENT.

12-920.

(A) A LICENSEE MAY NOT:

- (1) PURCHASE ANY DEBT OR OBLIGATION OF A CONSUMER;
- (2) LEND MONEY OR PROVIDE CREDIT TO A CONSUMER;
- (3) OBTAIN A MORTGAGE OR OTHER SECURITY INTEREST IN PROPERTY OWNED BY A CONSUMER;
- (4) OPERATE AS A COLLECTION AGENCY, AS DEFINED IN § 7-101 OF THE BUSINESS REGULATION ARTICLE;
- (5) STRUCTURE A DEBT MANAGEMENT SERVICES AGREEMENT IN A MANNER THAT WOULD RESULT IN A NEGATIVE AMORTIZATION OF ANY OF THE CONSUMER'S DEBTS;
- (6) ENGAGE IN FALSE, MISLEADING, OR DECEPTIVE ADVERTISING ABOUT THE TERMS AND CONDITIONS OF ANY SERVICE OR ASSISTANCE OFFERED TO CONSUMERS;
- (7) OFFER, PAY, OR GIVE A SUBSTANTIAL GIFT, BONUS, PREMIUM, REWARD, OR OTHER COMPENSATION TO A PERSON FOR REFERRING A PROSPECTIVE CUSTOMER TO THE LICENSEE;
- (8) OFFER AN INCENTIVE, INCLUDING A GIFT, BONUS, PREMIUM, REWARD, OR OTHER COMPENSATION, TO A CONSUMER FOR EXECUTING A DEBT MANAGEMENT SERVICES AGREEMENT WITH THE LICENSEE;
- (9) CHARGE FOR OR PROVIDE CREDIT INSURANCE; OR
- (10) COMPROMISE ANY DEBTS OF A CONSUMER UNLESS THE LICENSEE HAS OBTAINED THE PRIOR WRITTEN APPROVAL OF THE CONSUMER, AND THE COMPROMISE INURES SOLELY TO THE BENEFIT OF THE CONSUMER.

12-921.

- (A) (1) ON OR BEFORE APRIL 30 OF EACH YEAR, A LICENSEE SHALL REPORT TO THE COMMISSIONER ON THE DEBT MANAGEMENT SERVICES BUSINESS OF THE LICENSEE CONDUCTED DURING THE PRECEDING CALENDAR YEAR.
- (2) THE ANNUAL REPORT SHALL BE ON THE FORM THAT THE COMMISSIONER REQUIRES.
- (3) THE REPORT SHALL INCLUDE:

(I) AN AUDITED FINANCIAL STATEMENT THAT IS PREPARED IN ACCORDANCE WITH GENERALLY ACCEPTED ACCOUNTING PRINCIPLES AND INCLUDES A BALANCE SHEET, INCOME STATEMENT, STATEMENT OF CHANGES IN FUND BALANCES, AND STATEMENT OF CASH FLOW;

(II) AN ALPHABETICAL LIST OF ALL DEBT MANAGEMENT COUNSELORS EMPLOYED BY THE LICENSEE DURING THE PREVIOUS CALENDAR YEAR;

(III) THE NUMBER OF CONSUMERS IN THE STATE FOR WHOM THE LICENSEE PROVIDED DEBT MANAGEMENT SERVICES UNDER A DEBT MANAGEMENT SERVICES AGREEMENT DURING THE PRECEDING CALENDAR YEAR;

(IV) THE NUMBER OF CONSUMERS IN THE STATE WHO SIGNED NEW DEBT MANAGEMENT SERVICES AGREEMENTS WITH THE LICENSEE DURING THE PRECEDING CALENDAR YEAR;

(V) THE HIGHEST NUMBER OF CONSUMERS IN THE STATE FOR WHOM THE LICENSEE PROVIDED DEBT MANAGEMENT SERVICES UNDER A DEBT MANAGEMENT SERVICES AGREEMENT DURING ANY MONTH IN THE PRECEDING CALENDAR YEAR; AND

(VI) THE AMOUNTS PAID BY CONSUMERS IN THE STATE TO THE LICENSEE, BOTH IN TOTAL AND FOR EACH MONTH, DURING THE PRECEDING CALENDAR YEAR, BROKEN DOWN BY:

1. PAYMENTS TO BE DISBURSED TO CREDITORS; AND
2. PAYMENTS FOR THE LICENSEE'S SERVICES.

(B) (1) WITHIN 15 DAYS AFTER THE OCCURRENCE OF ANY OF THE FOLLOWING EVENTS, A LICENSEE SHALL FILE A WRITTEN REPORT WITH THE COMMISSIONER DESCRIBING THE EVENT AND ITS EXPECTED IMPACT ON THE LICENSEE'S ACTIVITIES IN THE STATE:

(I) THE FILING FOR BANKRUPTCY OR REORGANIZATION BY THE LICENSEE;

(II) THE INSTITUTION OF A REVOCATION OR SUSPENSION PROCEEDING AGAINST THE LICENSEE BY A GOVERNMENTAL AUTHORITY THAT IS RELATED TO THE LICENSEE'S DEBT MANAGEMENT SERVICES BUSINESS IN ANY STATE;

(III) A FELONY INDICTMENT OR CONVICTION OF THE LICENSEE, OR ANY OF ITS OFFICERS OR DIRECTORS, THAT IS RELATED TO THE LICENSEE'S DEBT MANAGEMENT SERVICES BUSINESS;

(IV) THE COMMENCEMENT OF A CIVIL ACTION BY A CONSUMER AGAINST THE LICENSEE, OR ITS OWNERS, OFFICERS, DIRECTORS, OR PRINCIPALS,

THAT IS RELATED TO THE LICENSEE'S DEBT MANAGEMENT SERVICES BUSINESS;  
AND

(V) THE FILING OF ANY MATERIAL LITIGATION AGAINST THE LICENSEE, OR ITS OWNERS, OFFICERS, DIRECTORS, OR PRINCIPALS, THAT IS RELATED TO THE LICENSEE'S DEBT MANAGEMENT SERVICES BUSINESS.

(2) THE WRITTEN REPORT REQUIRED UNDER PARAGRAPH (1) OF THIS SUBSECTION SHALL BE SENT TO THE COMMISSIONER BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND INCLUDE DETAILS SUFFICIENT TO IDENTIFY THE EVENT.

(C) THE COMMISSIONER MAY REQUIRE ANY OTHER REPORTS FROM A LICENSEE THAT THE COMMISSIONER CONSIDERS NECESSARY.

(D) IF A LICENSEE FAILS TO MAKE ANY REPORT REQUIRED BY THIS SUBTITLE, THE LICENSEE SHALL PAY TO THE COMMISSIONER \$25 FOR EACH DAY THAT THE REPORT IS OVERDUE.

12-922.

(A) TO ENABLE THE COMMISSIONER TO DETERMINE COMPLIANCE WITH THIS SUBTITLE, A LICENSEE SHALL MAKE AND PRESERVE THE FOLLOWING BOOKS, ACCOUNTS, AND RECORDS FOR A PERIOD OF AT LEAST 5 YEARS:

(1) A GENERAL LEDGER CONTAINING ALL ASSETS, LIABILITY, CAPITAL, INCOME, AND EXPENSE ACCOUNTS;

(2) EACH DEBT MANAGEMENT SERVICES AGREEMENT BETWEEN THE LICENSEE AND A CONSUMER;

(3) BOOKS AND RECORDS FOR EACH CONSUMER WITH WHOM THE LICENSEE HAS A DEBT MANAGEMENT SERVICES AGREEMENT; AND

(4) BANK STATEMENTS AND BANK RECONCILIATION RECORDS.

(B) A LICENSEE MAY RETAIN THE BOOKS, ACCOUNTS, AND RECORDS REQUIRED UNDER THIS SECTION AT ANY LOCATION, PROVIDED THAT THE LICENSEE:

(1) NOTIFIES THE COMMISSIONER IN WRITING OF THE LOCATION OF THE BOOKS, ACCOUNTS, AND RECORDS; AND

(2) MAKES THE BOOKS, ACCOUNTS, AND RECORDS AVAILABLE AT A LOCATION IN THE STATE, AS AGREED BY THE COMMISSIONER AND THE LICENSEE, WITHIN 7 DAYS AFTER A WRITTEN REQUEST FOR EXAMINATION BY THE COMMISSIONER.

(C) A LICENSEE SHALL RETAIN THE BOOKS, ACCOUNTS, AND RECORDS REQUIRED UNDER THIS SECTION IN:

(1) ORIGINAL FORM; OR

(2) PHOTOGRAPHIC, ELECTRONIC, OR OTHER SIMILAR FORM APPROVED BY THE COMMISSIONER.

(D) IF THE COMMISSIONER FINDS THAT THE BOOKS, ACCOUNTS, AND RECORDS OF THE LICENSEE ARE INSUFFICIENT TO DETERMINE COMPLIANCE WITH THIS SUBTITLE, THE COMMISSIONER MAY REQUIRE THE LICENSEE TO HAVE A CERTIFIED PUBLIC ACCOUNTANT AUDIT THE LICENSEE, AT THE LICENSEE'S EXPENSE, FOR ANY PERIOD OF TIME THAT THE COMMISSIONER CONSIDERS NECESSARY.

(E) A LICENSEE SHALL KEEP ALL BOOKS, ACCOUNTS, AND RECORDS RELATING TO A CONSUMER CONFIDENTIAL, AND MAY NOT DISCLOSE ANY INFORMATION ABOUT A CONSUMER EXCEPT TO A DULY AUTHORIZED GOVERNMENT OFFICIAL, THE CONSUMER, OR THE CONSUMER'S REPRESENTATIVE.

12-923.

(A) TO DISCOVER ANY VIOLATIONS OF THIS SUBTITLE OR TO OBTAIN ANY INFORMATION REQUIRED BY THIS SUBTITLE, THE COMMISSIONER AT ANY TIME MAY INVESTIGATE THE BUSINESS OF:

(1) A LICENSEE;

(2) A PERSON THAT IS ENGAGED OR PARTICIPATING IN THE BUSINESS OF PROVIDING DEBT MANAGEMENT SERVICES; AND

(3) ANY OTHER PERSON THAT THE COMMISSIONER HAS CAUSE TO BELIEVE IS VIOLATING THIS SUBTITLE OR ANY REGULATION ADOPTED UNDER THIS SUBTITLE, WHETHER THAT PERSON CLAIMS TO BE WITHIN OR BEYOND THE SCOPE OF THIS SUBTITLE.

(B) FOR THE PURPOSES OF THIS SECTION, THE COMMISSIONER:

(1) SHALL BE GIVEN ACCESS TO THE PLACE OF BUSINESS, BOOKS, PAPERS, RECORDS, SAFES, AND VAULTS OF THE PERSON UNDER INVESTIGATION; AND

(2) MAY SUMMON AND EXAMINE UNDER OATH ANY PERSON WHOSE TESTIMONY THE COMMISSIONER REQUIRES.

(C) THE PERSON BEING INVESTIGATED SHALL PAY ALL REASONABLY INCURRED COSTS OF AN INVESTIGATION CONDUCTED UNDER THIS SECTION.

(D) (1) IF A PERSON FAILS TO COMPLY WITH A SUBPOENA OR SUMMONS OF THE COMMISSIONER UNDER THIS SUBTITLE OR TO TESTIFY CONCERNING ANY MATTER ABOUT WHICH THE PERSON MAY BE INTERROGATED UNDER THIS SUBTITLE, THE COMMISSIONER MAY FILE A PETITION FOR ENFORCEMENT WITH THE CIRCUIT COURT FOR ANY COUNTY.

(2) ON PETITION BY THE COMMISSIONER, THE COURT MAY ORDER THE PERSON TO ATTEND AND TESTIFY OR PRODUCE EVIDENCE.

12-924.

(A) THE COMMISSIONER MAY CONDUCT AN ON-SITE EXAMINATION OF A LICENSEE WITH OR WITHOUT PRIOR NOTICE.

(B) THE LICENSEE SHALL PAY ALL REASONABLY INCURRED COSTS OF AN EXAMINATION CONDUCTED UNDER THIS SECTION.

(C) AN ON-SITE EXAMINATION MAY BE CONDUCTED IN CONJUNCTION WITH AN EXAMINATION PERFORMED BY A REPRESENTATIVE OF A RESPONSIBLE SUPERVISORY AGENCY OF ANOTHER STATE.

(D) (1) THE COMMISSIONER, IN LIEU OF AN ON-SITE EXAMINATION, MAY ACCEPT THE EXAMINATION REPORT OF A RESPONSIBLE SUPERVISORY AGENCY OF ANOTHER STATE.

(2) A REPORT ACCEPTED UNDER PARAGRAPH (1) OF THIS SUBSECTION IS CONSIDERED FOR ALL PURPOSES AS AN OFFICIAL REPORT OF THE COMMISSIONER.

(E) THE COMMISSIONER MAY:

(1) EXAMINE ALL BOOKS, ACCOUNTS, AND RECORDS THAT THE COMMISSIONER DETERMINES ARE NECESSARY TO CONDUCT A COMPLETE EXAMINATION; AND

(2) EXAMINE UNDER OATH ANY OWNER, OFFICER, DIRECTOR, PRINCIPAL, AND EMPLOYEE OF THE LICENSEE OR ANY OTHER INDIVIDUAL WHO MAY PROVIDE INFORMATION ON BEHALF OF THE LICENSEE.

12-925.

A LICENSEE SHALL INCLUDE IN ANY ADVERTISEMENT THE LICENSEE'S DEBT MANAGEMENT SERVICES LICENSE NUMBER.

12-926.

(A) SUBJECT TO THE HEARING PROVISIONS OF § 12-927 OF THIS SUBTITLE, THE COMMISSIONER MAY DENY A LICENSE TO AN APPLICANT, REPRIMAND A LICENSEE, OR SUSPEND OR REVOKE THE LICENSE OF A LICENSEE IF THE APPLICANT OR LICENSEE OR AN OWNER, OFFICER, DIRECTOR, OR PRINCIPAL OF THE APPLICANT OR LICENSEE:

(1) FRAUDULENTLY OR DECEPTIVELY OBTAINS OR ATTEMPTS TO OBTAIN A LICENSE;

(2) FRAUDULENTLY OR DECEPTIVELY USES A LICENSE OR DEBT MANAGEMENT SERVICES LICENSE NUMBER;



(3) PRESENTS OR ATTEMPTS TO PRESENT THE DEBT MANAGEMENT SERVICES LICENSE NUMBER OF ANOTHER LICENSEE AS THE APPLICANT'S OR LICENSEE'S DEBT MANAGEMENT SERVICES LICENSE NUMBER;

(4) VIOLATES ANY PROVISION OF THIS SUBTITLE OR ANY REGULATION ADOPTED UNDER THIS SUBTITLE;

(5) IS CONVICTED UNDER THE LAWS OF THE UNITED STATES OR OF ANY STATE OF:

(I) A FELONY; OR

(II) A MISDEMEANOR THAT IS DIRECTLY RELATED TO THE FITNESS AND QUALIFICATION OF THE APPLICANT OR LICENSEE TO ENGAGE IN THE BUSINESS OF PROVIDING DEBT MANAGEMENT SERVICES;

(6) IN CONNECTION WITH THE PROVISION OF DEBT MANAGEMENT SERVICES:

(I) COMMITS A FRAUD;

(II) ENGAGES IN AN ILLEGAL OR DISHONEST ACTIVITY;

(III) HAS ENGAGED OR PARTICIPATED IN AN UNSAFE OR UNSOUND ACT; OR

(IV) MISREPRESENTS OR FAILS TO DISCLOSE A MATERIAL FACT TO A PERSON ENTITLED TO THAT INFORMATION;

(7) ENGAGES IN FALSE, MISLEADING, OR DECEPTIVE ADVERTISING; OR

(8) OTHERWISE DEMONSTRATES UNWORTHINESS, BAD FAITH, DISHONESTY, OR ANY OTHER QUALITY THAT INDICATES THAT THE BUSINESS OF THE APPLICANT OR LICENSEE HAS NOT BEEN OR WILL NOT BE CONDUCTED HONESTLY, FAIRLY, AND EQUITABLY.

(B) IN DETERMINING WHETHER TO DENY A LICENSE TO AN APPLICANT, REPRIMAND A LICENSEE, OR SUSPEND OR REVOKE THE LICENSE OF A LICENSEE FOR A REASON LISTED IN SUBSECTION (A)(5) OF THIS SECTION, THE COMMISSIONER SHALL CONSIDER:

(1) THE NATURE OF THE CRIME;

(2) THE RELATIONSHIP OF THE CRIME TO THE ACTIVITIES AUTHORIZED BY THE LICENSE;

(3) WITH RESPECT TO A FELONY, THE RELEVANCE OF THE CONVICTION TO THE FITNESS AND QUALIFICATION OF THE APPLICANT OR LICENSEE TO PROVIDE DEBT MANAGEMENT SERVICES;

(4) THE LENGTH OF TIME SINCE THE CONVICTION; AND

(5) THE BEHAVIOR AND ACTIVITIES OF THE APPLICANT OR LICENSEE SINCE THE CONVICTION.

12-927.

(A) BEFORE THE COMMISSIONER DENIES AN APPLICATION FOR A LICENSE UNDER § 12-910 OF THIS SUBTITLE OR TAKES ANY ACTION UNDER § 12-926 OF THIS SUBTITLE, THE COMMISSIONER SHALL GIVE THE APPLICANT OR LICENSEE AN OPPORTUNITY FOR A HEARING.

(B) NOTICE OF THE HEARING SHALL BE GIVEN AND THE HEARING SHALL BE HELD IN ACCORDANCE WITH TITLE 10, SUBTITLE 2 OF THE STATE GOVERNMENT ARTICLE.

12-928.

(A) THE COMMISSIONER MAY ENFORCE THE PROVISIONS OF THIS SUBTITLE BY ISSUING AN ORDER REQUIRING THE VIOLATOR TO:

(1) CEASE AND DESIST FROM THE VIOLATION AND ANY FURTHER SIMILAR VIOLATIONS; AND

(2) TAKE AFFIRMATIVE ACTION TO CORRECT THE VIOLATION, INCLUDING THE RESTITUTION OF MONEY OR PROPERTY TO ANY PERSON AGGRIEVED BY THE VIOLATION.

(B) IF A VIOLATOR FAILS TO COMPLY WITH AN ORDER ISSUED UNDER SUBSECTION (A) OF THIS SECTION, THE COMMISSIONER MAY IMPOSE A CIVIL PENALTY NOT EXCEEDING \$1,000 FOR THE FIRST VIOLATION AND NOT EXCEEDING \$5,000 FOR EACH SUBSEQUENT VIOLATION FROM WHICH THE VIOLATOR FAILED TO CEASE AND DESIST OR FOR WHICH THE VIOLATOR FAILED TO TAKE AFFIRMATIVE ACTION.

(C) THE COMMISSIONER MAY FILE A PETITION IN THE CIRCUIT COURT FOR ANY COUNTY SEEKING ENFORCEMENT OF AN ORDER ISSUED UNDER THIS SECTION.

(D) IN DETERMINING THE AMOUNT OF FINANCIAL PENALTY TO BE IMPOSED UNDER SUBSECTION (A) OF THIS SECTION, THE COMMISSIONER SHALL CONSIDER THE FOLLOWING:

- (1) THE SERIOUSNESS OF THE VIOLATION;
- (2) THE GOOD FAITH OF THE VIOLATOR;
- (3) THE VIOLATOR'S HISTORY OF PREVIOUS VIOLATIONS;
- (4) THE DELETERIOUS EFFECT OF THE VIOLATION ON THE PUBLIC;
- (5) THE ASSETS OF THE VIOLATOR; AND

(6) ANY OTHER FACTORS RELEVANT TO THE DETERMINATION OF THE FINANCIAL PENALTY.

12-929.

A PERSON WHO KNOWINGLY AND WILLFULLY VIOLATES ANY PROVISION OF THIS SUBTITLE IS GUILTY OF A FELONY AND ON CONVICTION IS SUBJECT TO A FINE NOT EXCEEDING \$1,000 FOR THE FIRST VIOLATION AND NOT EXCEEDING \$5,000 FOR EACH SUBSEQUENT VIOLATION OR IMPRISONMENT NOT EXCEEDING 5 YEARS OR BOTH.

12-930.

THIS SUBTITLE MAY BE CITED AS THE MARYLAND DEBT MANAGEMENT SERVICES ACT.

SECTION 2. AND BE IT FURTHER ENACTED, That, in the absence of an order by the Commissioner of Financial Regulation to the contrary, an organization providing debt management services in the State on the effective date of this Act may continue to provide debt management services in the State without being licensed, as required under Section 1 of this Act, until the Commissioner approves or disapproves the organization's application for a license if:

(a) the organization applies for a license no later than 60 days after the date the Commissioner makes license applications available; and

(b) the organization complies with all other provisions of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2003.