

# HOUSE BILL 1223

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By: **Delegate Feldman**

Introduced and read first time: February 8, 2008

Assigned to: Economic Matters

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## A BILL ENTITLED

AN ACT concerning

### **Credit Regulation – Debt Settlement and Debt Management Services Providers**

FOR the purpose of prohibiting a person from providing debt settlement services to certain consumers unless the person is licensed by the Commissioner of Financial Regulation or exempt from licensing under the Maryland Debt Management and Debt Settlement Services Act; altering a certain exemption from certain provisions of law; applying certain provisions of law relating to debt management services, debt management services businesses, and debt management services providers, licensees, and agreements to debt settlement services, debt settlement services businesses, and debt settlement services providers, licensees, and agreements; altering the name, contents, and purpose of a certain fund; providing that a debt settlement services license authorizes the licensee to provide debt settlement services; requiring a person who provides both debt management services and debt settlement services to obtain both a debt management services license and a debt settlement services license; specifying the information a licensee who provides debt settlement services must provide to the Commissioner if the licensee surrenders its license; prohibiting a licensee from performing debt settlement services for a consumer unless certain conditions are met; establishing certain requirements for a debt settlement services agreement; requiring a debt settlement services licensee to maintain certain records; authorizing a debt settlement services licensee to allow a consumer to establish a certain account under certain circumstances; prohibiting a debt settlement services provider from paying any funds from certain accounts without the express written authorization of the consumer; prohibiting a debt settlement services licensee from imposing certain fees or other charges or receiving any funds, voluntary contributions, or other payments except under certain circumstances; requiring a debt settlement services licensee to disclose certain services and charges to a consumer; establishing the right of a consumer to modify or rescind a debt settlement services agreement under certain circumstances; providing that a debt

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EXPLANATION: CAPITALS INDICATE MATTER ADDED TO EXISTING LAW.

[Brackets] indicate matter deleted from existing law.



settlement services agreement shall be void and the debt settlement services licensee shall return certain fees, charges, funds, and payments to a consumer under certain circumstances; prohibiting a debt settlement services licensee from making a certain representation relating to a consumer's debt; prohibiting a debt settlement services licensee from requiring or advising a consumer to stop making certain payments; requiring a debt management services licensee and a debt settlement services licensee to file a certain report with the Commissioner if a certain legal proceeding is instituted against the licensee; requiring the Commissioner to examine the business of each debt management services licensee and each debt settlement services licensee in accordance with a certain schedule; altering a certain short title; altering certain definitions; defining certain terms; making certain stylistic, clarifying, and conforming changes; allowing certain persons providing debt settlement services in the State on the effective date of this Act to continue to provide debt settlement services without being licensed until a certain time under certain circumstances; and generally relating to the regulation of debt management services providers and debt settlement services providers.

BY repealing and reenacting, with amendments,

Article – Financial Institutions

Section 12–901 through 12–908, 12–911, 12–913, 12–914, 12–916(b) and (c), 12–917 through 12–921, 12–922(a) and (f), 12–923(a), 12–924 through 12–926, and 12–931 to be under the amended subtitle “Subtitle 9. Maryland Debt Management and Debt Settlement Services Act”

Annotated Code of Maryland

(2003 Replacement Volume and 2007 Supplement)

BY adding to

Article – Financial Institutions

Section 12–916.1 and 12–918.1

Annotated Code of Maryland

(2003 Replacement Volume and 2007 Supplement)

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

### **Article – Financial Institutions**

Subtitle 9. Maryland Debt Management **AND DEBT SETTLEMENT** Services Act.

12–901.

(a) In this subtitle the following words have the meanings indicated.

(b) “Annual gross revenue” means income or revenue from all sources, before any expenses or taxes, computed according to generally accepted accounting principles for the preceding fiscal year.

(c) “Consultation fee” means a fee paid by a consumer to:

(1) [a] A debt management services provider in connection with the processing of any application that the consumer makes for debt management services;  
**OR**

**(2) A DEBT SETTLEMENT SERVICES PROVIDER IN CONNECTION WITH THE PROCESSING OF ANY APPLICATION THAT THE CONSUMER MAKES FOR DEBT SETTLEMENT SERVICES.**

(d) “Consumer” means an individual who:

(1) Resides in the State; and

(2) **(I) Is seeking debt management services or has entered into a debt management services agreement; OR**

**(II) IS SEEKING DEBT SETTLEMENT SERVICES OR HAS ENTERED INTO A DEBT SETTLEMENT SERVICES AGREEMENT.**

(e) “Consumer education program” means a program or plan that seeks to improve the financial literacy of consumers.

(f) “Debt management counselor” means a permanent, temporary, or contractual employee of a debt management services provider or its agent who provides counseling to consumers on behalf of the debt management services provider.

(g) “Debt management services” means receiving funds periodically from a consumer under an agreement with the consumer for the purpose of distributing the funds among the consumer’s creditors in full or partial payment of the consumer’s debts.

(h) “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.

(i) “Debt management services provider” means an organization that provides or offers to provide debt management services to a consumer.

**(J) “DEBT SETTLEMENT COUNSELOR” MEANS A PERMANENT, TEMPORARY, OR CONTRACTUAL EMPLOYEE OF A DEBT SETTLEMENT SERVICES PROVIDER OR ITS AGENT WHO PROVIDES COUNSELING TO CONSUMERS ON BEHALF OF THE DEBT SETTLEMENT SERVICES PROVIDER.**

**(K) “DEBT SETTLEMENT SERVICES FEE” MEANS A FEE EARNED BY A DEBT SETTLEMENT SERVICES PROVIDER FOR PERFORMING DEBT SETTLEMENT SERVICES FOR A CONSUMER.**

**(L) (1) “DEBT SETTLEMENT SERVICES” MEANS ACTING OR OFFERING OR ATTEMPTING TO ACT FOR CONSIDERATION AS AN INTERMEDIARY BETWEEN A CONSUMER AND THE CONSUMER’S CREDITORS FOR THE PURPOSE OF SETTLING OR IN ANY WAY ALTERING THE TERMS OF PAYMENT OF ANY DEBT.**

**(2) “DEBT SETTLEMENT SERVICES” DOES NOT INCLUDE DEBT MANAGEMENT SERVICES.**

**(M) “DEBT SETTLEMENT SERVICES AGREEMENT” MEANS A WRITTEN CONTRACT, PLAN, OR AGREEMENT BETWEEN A DEBT SETTLEMENT SERVICES PROVIDER AND A CONSUMER FOR THE PERFORMANCE OF DEBT SETTLEMENT SERVICES.**

**(N) “DEBT SETTLEMENT SERVICES PROVIDER” MEANS A PERSON THAT PROVIDES OR OFFERS TO PROVIDE DEBT SETTLEMENT SERVICES TO A CONSUMER.**

**[(j)] (O) “Fund” means the Debt Management AND SETTLEMENT Services Fund established under § 12–905 of this subtitle.**

**[(k)] (P) “Licensee” means:**

**(1) [an] AN organization licensed under this subtitle to provide debt management services; OR**

**(2) A PERSON LICENSED UNDER THIS SUBTITLE TO PROVIDE DEBT SETTLEMENT SERVICES.**

**[(l)] (Q) “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.**

**[(m)] (R) “Organization” means a nonprofit organization that is exempt from taxation under § 501(c) of the Internal Revenue Code.**

**[(n)] (S) “Relative” means any of the following who are related to an individual by blood, marriage, or adoption:**

**(1) A spouse;**

- (2) A child;
- (3) A sibling;
- (4) A parent;
- (5) A grandparent;
- (6) A grandchild;
- (7) A stepparent;
- (8) A stepchild;
- (9) A stepsibling;
- (10) An aunt; or
- (11) An uncle.

[(o)] (T) “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.

[(p)] (U) “Trust account” means an account that is:

- (1) Established in a financial institution that is federally insured;
- (2) Separate from the debt management services provider’s **OR DEBT SETTLEMENT SERVICES PROVIDER’S** operating account;
- (3) Designated as a “trust account” or by another appropriate designation indicating that the funds in the account are not the funds of the licensee or its officers, employees, or agents;
- (4) Unavailable to creditors of the debt management services provider **OR THE DEBT SETTLEMENT SERVICES PROVIDER**; and
- (5) Used to hold funds paid by consumers:

(I) [to] **TO** a debt management services provider for disbursement to creditors of the consumers; **OR**

(II) **DIRECTLY INTO THE ACCOUNT IN ACCORDANCE WITH A DEBT SETTLEMENT SERVICES AGREEMENT.**

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 **WHO IS ADMITTED TO PRACTICE IN THE STATE AND IS NOT PRINCIPALLY ENGAGED AS A DEBT MANAGEMENT SERVICES PROVIDER OR A DEBT SETTLEMENT SERVICES PROVIDER;**

(ii) An escrow agent;

(iii) A certified public accountant;

(iv) A banking institution, other—state bank, national banking association, credit union, or savings and loan association;

(v) A person that:

1. Provides bill payer services, as defined in § 12-401 of this title;

2. Does not initiate any contract with individual creditors of the debtor to compromise a debt or arrange a new payment schedule; and

3. Does not provide any debt counseling services;

(vi) A person that provides accelerated mortgage payment services, as defined in § 12-401 of this title;

(vii) A title insurer, title insurance agency, or abstract company;  
or

(viii) 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;

(3) A trade or mercantile association acting in the course of arranging the adjustment of debts with a business establishment; or

(4) A mortgage lender, as defined in § 11-501 of this article, that:

(i) Is licensed by the Commissioner; and

(ii) Does not receive funds from a consumer for the purpose of distributing the funds among the consumer's creditors in full or partial payment of the consumer's debts.

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 **OR DEBT SETTLEMENT SERVICES BUSINESSES**; and

(3) Exchange information about a debt management services provider **OR A DEBT SETTLEMENT SERVICES PROVIDER**, including information obtained during an examination, with any State or federal agency having authority over the debt management services provider **OR DEBT SETTLEMENT SERVICES PROVIDER**.

12-904.

The Commissioner shall charge:

(1) (i) A fee for the issuance of an initial license under this subtitle in an even-numbered year as follows:

1. \$1,000, if the applicant's annual gross revenue is not more than \$3,000,000;

2. \$2,000, if the applicant's annual gross revenue is more than \$3,000,000 but not more than \$6,000,000;

3. \$4,000, if the applicant's annual gross revenue is more than \$6,000,000 but not more than \$15,000,000;

4. \$6,000, if the applicant's annual gross revenue is more than \$15,000,000 but not more than \$30,000,000; or

5. \$8,000, if the applicant's annual gross revenue is more than \$30,000,000; and

(ii) A fee for the issuance of an initial license under this subtitle in an odd-numbered year as follows:

1. \$500, if the applicant's annual gross revenue is not more than \$3,000,000;

2. \$1,000, if the applicant's annual gross revenue is more than \$3,000,000 but not more than \$6,000,000;

3. \$2,000, if the applicant's annual gross revenue is more than \$6,000,000 but not more than \$15,000,000;

4. \$3,000, if the applicant's annual gross revenue is more than \$15,000,000 but not more than \$30,000,000; or

5. \$4,000, if the applicant's annual gross revenue is more than \$30,000,000;

(2) A fee for renewal of a license issued under this subtitle as follows:

(i) \$1,000, if the applicant's annual gross revenue is not more than \$3,000,000;

(ii) \$2,000, if the applicant's annual gross revenue is more than \$3,000,000 but not more than \$6,000,000;

(iii) \$4,000, if the applicant's annual gross revenue is more than \$6,000,000 but not more than \$15,000,000;

(iv) \$6,000, if the applicant's annual gross revenue is more than \$15,000,000 but not more than \$30,000,000; or

(v) \$8,000, if the applicant's annual gross revenue is more than \$30,000,000;

(3) A fee of \$100, for each location in the State at which a licensee provides debt management services **OR DEBT SETTLEMENT SERVICES** under this subtitle, payable at the time of application for an initial license and at each renewal of a license; and

(4) A fee of \$1,000, for an investigation of an applicant under this subtitle, payable at the time of application for an initial license.

12-905.

(a) There is a Debt Management **AND SETTLEMENT** Services Fund that consists of:

(1) All revenue received for the licensing of organizations that provide debt management services **AND PERSONS THAT PROVIDE DEBT SETTLEMENT 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 **AND THE DEBT SETTLEMENT 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:

(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 **AND THE DEBT SETTLEMENT 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 **AND THE DEBT SETTLEMENT 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.

Whether or not the person maintains an office in this State, a person may not provide debt management services **OR DEBT SETTLEMENT SERVICES** to consumers unless the 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] **IF THE APPLICANT PROVIDES DEBT MANAGEMENT SERVICES, 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 **OR DEBT SETTLEMENT SERVICES**;

(ii) Warrant the belief that the debt management services business **OR THE DEBT SETTLEMENT 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 **OR DEBT SETTLEMENT SERVICES** will be provided to consumers, 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 **OR DEBT SETTLEMENT 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 or any consumer relating to the applicant's debt management services business **OR DEBT SETTLEMENT 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 **OR DEBT SETTLEMENT SERVICES**;

(ii) The applicant is registered or licensed to provide debt management services **OR DEBT SETTLEMENT 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] **IF THE APPLICANT PROVIDES DEBT MANAGEMENT SERVICE, 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 that insures against 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 that is provided to consumers;

(16) A description of the applicant's financial analysis and initial budget plan, including any form or electronic model, that are used to evaluate the financial condition of consumers;

(17) **(I)** A copy of the debt management services agreement that the applicant will use in its debt management services business; **OR**

**(II) A COPY OF THE DEBT SETTLEMENT SERVICES AGREEMENT THAT THE APPLICANT WILL USE IN ITS DEBT SETTLEMENT SERVICES BUSINESS;**

(18) A copy of the applicant's plan to ensure that each debt management counselor **OR DEBT SETTLEMENT COUNSELOR** is certified by an independent organization within 6 months after the debt management counselor **OR DEBT SETTLEMENT COUNSELOR** is hired, and that any employee who is a supervisor or manager of a debt management counselor **OR DEBT SETTLEMENT COUNSELOR** is certified by an independent organization within 3 months after the employee is hired;

(19) The most recent financial statement of each affiliate, subsidiary, or other person that provides services related to debt management services **OR DEBT SETTLEMENT SERVICES** for the applicant or for any consumer;

(20) A copy of each contract or fee-for-service arrangement between the applicant and any person that provides services related to the debt management services business **OR THE DEBT SETTLEMENT SERVICES BUSINESS**; and

(21) 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.

12-911.

(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 **OR DEBT SETTLEMENT SERVICES** license number of the licensee.

(b) (1) A **DEBT MANAGEMENT SERVICES** license authorizes the licensee to provide debt management services.

(2) **A DEBT SETTLEMENT SERVICES LICENSE AUTHORIZES THE LICENSEE TO PROVIDE DEBT SETTLEMENT SERVICES.**

(3) **A PERSON WHO PROVIDES BOTH DEBT MANAGEMENT SERVICES AND DEBT SETTLEMENT SERVICES SHALL OBTAIN BOTH A DEBT MANAGEMENT SERVICES LICENSE AND A DEBT SETTLEMENT SERVICES LICENSE.**

(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 **OR DEBT SETTLEMENT 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 **OR DEBT SETTLEMENT 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 **OR THE DEBT SETTLEMENT SERVICES PROVIDER**) at (address of Commissioner), phone (toll-free number of the Commissioner)".

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 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; **AND**

**(III) FOR EACH CONSUMER FOR WHOM THE LICENSEE IS PROVIDING DEBT SETTLEMENT SERVICES, THE FOLLOWING INFORMATION:**

**1. THE NAME OF THE CONSUMER;**

**2. THE TOTAL AMOUNT OF FUNDS HELD OR MAINTAINED IN A TRUST ACCOUNT ON BEHALF OF THE CONSUMER IN ACCORDANCE WITH THE DEBT SETTLEMENT SERVICES AGREEMENT FOR DISTRIBUTION TO THE CONSUMER'S CREDITORS; AND**

**3. THE NAME OF EACH CREDITOR OF THE CONSUMER FOR WHICH THE DEBT SETTLEMENT SERVICES AGREEMENT PROVIDES THAT THE DEBT OWED BY THE CONSUMER TO THE CREDITOR IS TO BE SETTLED BY THE LICENSEE, AND THE OUTSTANDING BALANCE OWED TO EACH CREDITOR.**

(b) The surrender of a license does not:

(1) Affect any administrative, 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 consumer who is injured by a violation of this subtitle or a regulation adopted under this subtitle committed by a licensee or an agent of a licensee, including an agent managing a trust account.

(2) 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 and its agent shall comply with all State and federal laws and regulations governing the business of providing debt management services **OR DEBT SETTLEMENT SERVICES**.

(3) The liability of a surety:

(i) Is not affected by the insolvency or bankruptcy of the licensee or its agent or by any misrepresentation, breach of warranty, failure to pay a premium, or other act or omission of the licensee or its agent; and

(ii) Continues as to all transactions of the licensee, and transactions of its agent on behalf of the licensee, for no longer than 2 years after the licensee ceases, for any reason, to be licensed.

(4) The Commissioner may allow the amount of the surety bond to be reduced if the amount of the licensee's outstanding debt management services **OR DEBT SETTLEMENT SERVICES** liabilities in the State is reduced.

(5) In setting the amount of the surety bond, the Commissioner shall consider:

(i) The financial condition and business experience of the applicant or licensee and the agent of the applicant or licensee;



(ii) For an applicant, the projected monthly and annual volume of debt management services **OR DEBT SETTLEMENT SERVICES** to be provided in the State;

(iii) For a licensee, the average monthly and annual volume of debt management services **OR DEBT SETTLEMENT 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 **OR DEBT SETTLEMENT 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.

12-916.

(b) Each debt management services agreement shall:

(1) Be signed and dated by the licensee and the consumer; and

(2) Include, in at least 12 point type:

(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, **SUBJECT TO § 12-918 OF THIS SUBTITLE**, 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 rescind the debt management services agreement by giving written notice of rescission to the other party;

(vii) A schedule of payments that the consumer must make to the debt management services provider, including:

1. The amount of each payment and the date on which each payment is due; and

2. An itemization of the maintenance fees that will be retained by the debt management services provider, and the amount of money that will be paid to the consumer's creditors, from each payment the consumer makes to the debt management services provider;

(viii) A list of:

1. A. Each participating creditor of the consumer to which payments will be made under the debt management services agreement;

B. The amount owed to each creditor; and

C. A schedule of payments that the debt management services provider will make to each participating creditor from the consumer's payments, including the amount of each payment and the date on which each payment will be made; and

2. Each creditor that the licensee reasonably expects not to participate in the management of the consumer's debt under the debt management services agreement;

(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 the licensee may not, as a condition of entering into a debt management services agreement, require a consumer to purchase for a fee a counseling session, an educational program, or materials and supplies;

(xi) A disclosure that the licensee may not require a voluntary contribution from a consumer for any service provided by the licensee to the consumer;

(xii) 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;

(xiii) A disclosure that execution of a debt management services agreement may impact the consumer's credit rating and credit scores; and

(xiv) 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] **SERVICES** 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 **DEBT MANAGEMENT SERVICES** 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.

## **12-916.1.**

**(A) (1) A LICENSEE MAY NOT PERFORM DEBT SETTLEMENT SERVICES FOR A CONSUMER UNLESS:**

**(I) THE LICENSEE PROVIDES THE CONSUMER WITH A CONSUMER EDUCATION PROGRAM;**

**(II) THE LICENSEE, THROUGH A DEBT SETTLEMENT COUNSELOR CERTIFIED BY AN INDEPENDENT ORGANIZATION, HAS:**

**1. PREPARED A FINANCIAL ANALYSIS OF AND AN INITIAL BUDGET PLAN FOR THE CONSUMER'S DEBT OBLIGATIONS;**

**2. PROVIDED A COPY OF THE FINANCIAL ANALYSIS AND THE INITIAL BUDGET PLAN TO THE CONSUMER; AND**

**3. PROVIDED TO THE CONSUMER, FOR ALL CREDITORS IDENTIFIED BY THE CONSUMER, A LIST OF:**

**A. THE CREDITORS THAT THE LICENSEE REASONABLY EXPECTS TO PARTICIPATE IN THE SETTLEMENT OF THE CONSUMER'S DEBT UNDER THE DEBT SETTLEMENT SERVICES AGREEMENT; AND**

**B. THE CREDITORS THAT THE LICENSEE REASONABLY EXPECTS NOT TO PARTICIPATE IN THE SETTLEMENT OF THE CONSUMER'S DEBT UNDER THE DEBT SETTLEMENT SERVICES AGREEMENT;**

**(III) THE LICENSEE AND THE CONSUMER HAVE EXECUTED A DEBT SETTLEMENT SERVICES AGREEMENT THAT DESCRIBES THE DEBT SETTLEMENT SERVICES TO BE PROVIDED BY THE LICENSEE TO THE CONSUMER;**

**(IV) THE LICENSEE HAS A REASONABLE EXPECTATION BASED ON THE LICENSEE'S PAST EXPERIENCE THAT EACH CREDITOR OF THE CONSUMER THAT IS LISTED AS A PARTICIPATING CREDITOR IN THE CONSUMER'S DEBT SETTLEMENT SERVICES AGREEMENT WILL ACCEPT A SETTLEMENT OF THE CONSUMER'S DEBTS OWED TO THE CREDITOR AS PROVIDED IN THE CONSUMER'S DEBT SETTLEMENT SERVICES AGREEMENT; AND**

**(V) A COPY OF THE COMPLETED DEBT SETTLEMENT SERVICES AGREEMENT HAS BEEN PROVIDED TO THE CONSUMER.**

**(2) (I) A LICENSEE MAY PROVIDE TO A CONSUMER THE MATERIALS REQUIRED UNDER PARAGRAPH (1)(II) OF THIS SUBSECTION USING THE INTERNET IF:**

**1. A DEBT SETTLEMENT COUNSELOR OF THE LICENSEE HAS REVIEWED AND APPROVED THE COMPUTER PROGRAM OR APPLICATION USED TO CREATE THE FINANCIAL ANALYSIS AND INITIAL BUDGET PLAN; AND**

**2. THE CONSUMER IS:**

**A. ADVISED OF THE AVAILABILITY OF COUNSELING;**  
**AND**

**B. AFFORDED THE OPPORTUNITY FOR COUNSELING AND FOR DISCUSSION OF THE FINANCIAL ANALYSIS AND INITIAL BUDGET PLAN WITH A DEBT SETTLEMENT COUNSELOR AT ANY TIME.**

**(II) TITLE 21 OF THE COMMERCIAL LAW ARTICLE APPLIES TO THE PROVISION OF MATERIALS AND ASSOCIATED TRANSACTIONS UNDER THIS PARAGRAPH.**

**(B) EACH DEBT SETTLEMENT SERVICES AGREEMENT SHALL:**

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

**(2) REQUIRE THE ESTABLISHMENT OF:**

**(I) A TRUST ACCOUNT OVER WHICH THE LICENSEE HAS NO CONTROL; OR**

**(II) AN ACCOUNT DESCRIBED IN § 12-917(C)(2) OF THIS SUBTITLE; AND**

**(3) INCLUDE, IN AT LEAST 12 POINT TYPE:**

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

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

**(III) A DESCRIPTION OF THE DEBT SETTLEMENT SERVICES TO BE PROVIDED TO THE CONSUMER AND, SUBJECT TO § 12-918.1 OF THIS SUBTITLE, ANY FEES TO BE CHARGED TO THE CONSUMER FOR THE DEBT SETTLEMENT 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, DEPOSITED BY OR ON BEHALF OF THE CONSUMER TO A TRUST ACCOUNT FOR DISBURSEMENT TO THE CONSUMER'S CREDITORS, WILL BE HELD;**

**(VI) A NOTICE OF THE RIGHT OF A PARTY TO THE DEBT SETTLEMENT SERVICES AGREEMENT TO RESCIND THE DEBT SETTLEMENT SERVICES AGREEMENT BY GIVING WRITTEN NOTICE OF RESCISSION TO THE OTHER PARTY;**

**(VII) A SCHEDULE OF PAYMENTS THAT THE CONSUMER MUST MAKE TO THE DEBT SETTLEMENT SERVICES PROVIDER, INCLUDING:**

**1. THE AMOUNT OF EACH PAYMENT AND THE DATE ON WHICH EACH PAYMENT IS DUE; AND**

**2. AN ITEMIZATION OF THE DEBT SETTLEMENT SERVICES FEES TO BE PAID TO THE DEBT SETTLEMENT SERVICES PROVIDER ON SETTLEMENT OF THE CONSUMER'S DEBTS;**

**(VIII) A LIST OF:**

**1. A. EACH PARTICIPATING CREDITOR OF THE CONSUMER FOR WHICH THE LICENSEE WILL PERFORM DEBT SETTLEMENT SERVICES ON BEHALF OF THE CONSUMER UNDER THE DEBT SETTLEMENT SERVICES AGREEMENT;**

**B. THE AMOUNT OWED TO EACH CREDITOR; AND**

**C. A SCHEDULE OF PAYMENTS THAT THE CONSUMER MUST MAKE TO THE TRUST ACCOUNT IN ORDER FOR THE DEBT SETTLEMENT SERVICES PROVIDER TO PERFORM DEBT SETTLEMENT SERVICES WITH RESPECT TO EACH CREDITOR, INCLUDING THE TOTAL AMOUNT OF PAYMENTS TO BE MADE, THE AMOUNT OF EACH PAYMENT, AND THE DATE ON WHICH EACH PAYMENT WILL BE MADE; AND**

**2. EACH CREDITOR THAT THE LICENSEE REASONABLY EXPECTS NOT TO PARTICIPATE IN THE SETTLEMENT OF THE CONSUMER'S DEBT UNDER THE DEBT SETTLEMENT SERVICES AGREEMENT;**

**(IX) A DISCLOSURE THAT ENTERING INTO A DEBT SETTLEMENT SERVICES AGREEMENT WILL NOT STOP COLLECTION EFFORTS BY THE CONSUMER'S CREDITORS;**

**(X) A DISCLOSURE THAT A DEBT SETTLEMENT SERVICES PROVIDER IS PROHIBITED BY LAW FROM REPRESENTING THAT IT CAN SETTLE A CONSUMER'S DEBT FOR A SPECIFIED AMOUNT OR REDUCE A CONSUMER'S DEBT BY A SPECIFIED PERCENTAGE;**

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

**(XII) A DISCLOSURE THAT THE LICENSEE MAY NOT, AS A CONDITION OF ENTERING INTO A DEBT SETTLEMENT SERVICES AGREEMENT, REQUIRE A CONSUMER TO PURCHASE FOR A FEE A COUNSELING SESSION, AN EDUCATIONAL PROGRAM, OR MATERIALS AND SUPPLIES;**

**(XIII) A DISCLOSURE THAT THE LICENSEE MAY NOT REQUIRE A VOLUNTARY CONTRIBUTION FROM A CONSUMER FOR ANY SERVICE PROVIDED BY THE LICENSEE TO THE CONSUMER;**

(XIV) A DISCLOSURE THAT, BY EXECUTING THE DEBT SETTLEMENT SERVICES AGREEMENT, THE CONSUMER AUTHORIZES ANY FINANCIAL INSTITUTION IN WHICH A TRUST ACCOUNT FOR THE DEPOSIT OF THE CONSUMER'S FUNDS HAS BEEN ESTABLISHED 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;

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

(XVI) A DISCLOSURE THAT THE LICENSEE MAY NOT REQUIRE OR ADVISE A CONSUMER TO STOP MAKING PAYMENTS TO ANY CREDITOR OF THE CONSUMER; AND

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

12-917.

(a) Within 2 business days after receipt, a **DEBT MANAGEMENT SERVICES** licensee shall deposit, in a trust account established for the benefit of consumers, any funds paid to the licensee by or on behalf of a consumer for disbursement to the consumer's creditors.

(b) A **DEBT MANAGEMENT SERVICES** 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 8 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) (1) A DEBT SETTLEMENT SERVICES LICENSEE SHALL MAINTAIN SEPARATE RECORDS OF ACCOUNT FOR EACH CONSUMER FOR WHOM THE LICENSEE IS PROVIDING DEBT SETTLEMENT SERVICES.**

**(2) IN LIEU OF A TRUST ACCOUNT, A DEBT SETTLEMENT SERVICES LICENSEE MAY ALLOW THE CONSUMER, AS PART OF THE DEBT SETTLEMENT SERVICES AGREEMENT, TO DEPOSIT ALL FUNDS INTO AN ACCOUNT WHOLLY CONTROLLED BY THE CONSUMER.**

**(3) A DEBT SETTLEMENT SERVICES LICENSEE MAY NOT PAY ANY FUNDS FROM A TRUST ACCOUNT ESTABLISHED IN ACCORDANCE WITH A DEBT SETTLEMENT SERVICES AGREEMENT OR AN ACCOUNT DESCRIBED UNDER PARAGRAPH (2) OF THIS SUBSECTION WITHOUT THE EXPRESS WRITTEN AUTHORIZATION OF THE CONSUMER.**

**[(c)] (D)** A licensee may not commingle any trust account established for the benefit of consumers with any operating accounts of the licensee.

12-918.

(a) With respect to the provision of debt management services, 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) Except as provided in subsections (g)(3) and (i) of this section, until after the licensee and **THE** consumer have executed a debt management services agreement; and

(2) Only as allowed under this section.

(b) (1) **A DEBT MANAGEMENT SERVICES** licensee may charge a consultation fee not exceeding \$50.

(2) The cost of a credit report on a consumer shall be paid from the consultation fee paid by the consumer.



(c) (1) Subject to paragraph (2) of this subsection, a **DEBT MANAGEMENT SERVICES** licensee may charge a monthly maintenance fee not exceeding \$8 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 \$40 per month.

(d) A **DEBT MANAGEMENT SERVICES** 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 **DEBT MANAGEMENT SERVICES** licensee may not charge a fee to:

(1) Prepare a financial analysis or an initial budget plan for the consumer;

(2) Counsel a consumer about debt management **OR DEBT SETTLEMENT**;

(3) Provide a consumer with the consumer education program described in the licensee's license application; or

(4) Rescind a debt management services agreement.

(f) (1) A **DEBT MANAGEMENT SERVICES** licensee may not require a voluntary contribution from a consumer for any service provided by the licensee to the consumer.

(2) A **DEBT MANAGEMENT SERVICES** licensee may accept a voluntary contribution from a consumer for a debt management service provided by the licensee to the consumer if the aggregate amount of the voluntary contribution and any other fees received by the licensee from the consumer for debt management services does not exceed the total amount the licensee is authorized to charge the consumer under subsections (b) and (c) of this section.

(g) (1) Before providing debt management services to a consumer, a **DEBT MANAGEMENT SERVICES** licensee shall provide the consumer a list of services and their charges describing:

(i) Those services that the licensee offers:

1. Free of charge if the consumer enters into a debt management services agreement with the licensee; and

2. For a charge if the consumer does not enter into a debt management services agreement with the licensee; and

(ii) Those services that the licensee offers for a charge that are not offered as a part of debt management services.

(2) A **DEBT MANAGEMENT SERVICES** licensee may not, as a condition of entering into a debt management services agreement, require a consumer to purchase for a fee a counseling session, an educational program, or materials and supplies.

(3) A **DEBT MANAGEMENT SERVICES** licensee may charge a consumer a fee for a counseling session, an educational program, or materials and supplies if the consumer does not enter into a debt management services agreement with the licensee.

(h) (1) In addition to any other right of rescission contained in the debt management services agreement, a consumer may modify or rescind a debt management services agreement if the consumer is notified of a creditor's nonparticipation under this subsection.

(2) If a creditor that is listed as participating in the debt management services agreement declines to participate in debt management services under the **DEBT MANAGEMENT SERVICES** agreement, the **DEBT MANAGEMENT SERVICES** licensee shall notify the consumer by certified mail, or other verifiable means approved by the consumer, at least 5 business days before the consumer's next scheduled payment under the **DEBT MANAGEMENT SERVICES** agreement.

(3) The notice shall include:

(i) The identity of the creditor; and

(ii) The right of the consumer to modify or rescind the **DEBT MANAGEMENT SERVICES** agreement.

(4) A consumer who rescinds a debt management services agreement under this subsection is entitled to a refund of all unexpended funds that the consumer has paid to the **DEBT MANAGEMENT SERVICES** licensee for the reduction of the consumer's debt.

(i) If a payment by a consumer under this section to a **DEBT MANAGEMENT SERVICES** licensee is dishonored, the licensee may charge the consumer the amount allowable for dishonored checks or other instruments under § 15-802 of the Commercial Law Article, whether or not the consumer has entered into a debt management services agreement with the licensee.

(j) With respect to the provision of debt management services, 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.

**12-918.1.**

**(A) WITH RESPECT TO THE PROVISION OF DEBT SETTLEMENT SERVICES, 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) EXCEPT AS PROVIDED IN SUBSECTIONS (B)(1) AND (F)(3) OF THIS SECTION, UNTIL AFTER:**

**(I) THE LICENSEE AND THE CONSUMER HAVE EXECUTED A DEBT SETTLEMENT SERVICES AGREEMENT; AND**

**(II) THE DEBT SETTLEMENT SERVICES HAVE BEEN COMPLETED; AND**

**(2) ONLY AS ALLOWED UNDER THIS SECTION.**

**(B) (1) A DEBT SETTLEMENT SERVICES LICENSEE MAY CHARGE A CONSULTATION FEE NOT EXCEEDING \$50.**

**(2) THE COST OF A CREDIT REPORT ON A CONSUMER SHALL BE PAID FROM THE CONSULTATION FEE PAID BY THE CONSUMER.**

**(C) ON COMPLETION OF THE DEBT SETTLEMENT SERVICES TO BE PROVIDED UNDER A DEBT SETTLEMENT SERVICES AGREEMENT, A DEBT SETTLEMENT SERVICES LICENSEE MAY CHARGE A DEBT SETTLEMENT SERVICES FEE NOT EXCEEDING 15% OF THE TOTAL AMOUNT BY WHICH THE CONSUMER'S DEBT TO THE CONSUMER'S CREDITORS WAS REDUCED DUE TO THE DEBT SETTLEMENT SERVICES PROVIDED BY THE LICENSEE UNDER THE DEBT SETTLEMENT SERVICES AGREEMENT.**

**(D) A DEBT SETTLEMENT SERVICES LICENSEE MAY NOT CHARGE A FEE TO:**

**(1) PREPARE A FINANCIAL ANALYSIS OR AN INITIAL BUDGET PLAN FOR THE CONSUMER;**

**(2) COUNSEL A CONSUMER ABOUT DEBT MANAGEMENT OR DEBT SETTLEMENT;**

**(3) PROVIDE A CONSUMER WITH THE CONSUMER EDUCATION PROGRAM DESCRIBED IN THE LICENSEE'S LICENSE APPLICATION; OR**

**(4) RESCIND A DEBT SETTLEMENT SERVICES AGREEMENT.**

**(E) (1) A DEBT SETTLEMENT SERVICES LICENSEE MAY NOT REQUIRE A VOLUNTARY CONTRIBUTION FROM A CONSUMER FOR ANY SERVICE PROVIDED BY THE LICENSEE TO THE CONSUMER.**

**(2) A DEBT SETTLEMENT SERVICES LICENSEE MAY ACCEPT A VOLUNTARY CONTRIBUTION FROM A CONSUMER FOR A DEBT SETTLEMENT SERVICE PROVIDED BY THE LICENSEE TO THE CONSUMER IF THE AGGREGATE AMOUNT OF THE VOLUNTARY CONTRIBUTION AND ANY OTHER FEES RECEIVED BY THE LICENSEE FROM THE CONSUMER FOR THE DEBT SETTLEMENT SERVICES DOES NOT EXCEED THE TOTAL AMOUNT THE LICENSEE IS AUTHORIZED TO CHARGE THE CONSUMER UNDER SUBSECTIONS (B) AND (C) OF THIS SECTION.**

**(F) (1) BEFORE PROVIDING DEBT SETTLEMENT SERVICES TO A CONSUMER, A DEBT SETTLEMENT SERVICES LICENSEE SHALL PROVIDE THE CONSUMER A LIST OF SERVICES AND THEIR CHARGES DESCRIBING:**

**(I) THOSE SERVICES THAT THE LICENSEE OFFERS:**

**1. FREE OF CHARGE IF THE CONSUMER ENTERS INTO A DEBT SETTLEMENT SERVICES AGREEMENT WITH THE LICENSEE; AND**

**2. FOR A CHARGE IF THE CONSUMER DOES NOT ENTER INTO A DEBT SETTLEMENT SERVICES AGREEMENT WITH THE LICENSEE; AND**

**(II) THOSE SERVICES THAT THE LICENSEE OFFERS FOR A CHARGE THAT ARE NOT OFFERED AS A PART OF DEBT SETTLEMENT SERVICES.**

**(2) A DEBT SETTLEMENT SERVICES LICENSEE MAY NOT, AS A CONDITION OF ENTERING INTO A DEBT SETTLEMENT SERVICES AGREEMENT, REQUIRE A CONSUMER TO PURCHASE FOR A FEE A COUNSELING SESSION, AN EDUCATIONAL PROGRAM, OR MATERIALS AND SUPPLIES.**

**(3) A DEBT SETTLEMENT SERVICES LICENSEE MAY CHARGE A CONSUMER A FEE NOT EXCEEDING \$50 FOR A COUNSELING SESSION, AN EDUCATIONAL PROGRAM, OR MATERIALS AND SUPPLIES IF THE CONSUMER**

**DOES NOT ENTER INTO A DEBT SETTLEMENT SERVICES AGREEMENT WITH THE LICENSEE.**

**(G) (1) IN ADDITION TO ANY OTHER RIGHT OF RESCISSION CONTAINED IN THE DEBT SETTLEMENT SERVICES AGREEMENT, A CONSUMER MAY MODIFY OR RESCIND A DEBT SETTLEMENT SERVICES AGREEMENT IF THE CONSUMER IS NOTIFIED OF A CREDITOR'S NONPARTICIPATION UNDER THIS SUBSECTION.**

**(2) IF A CREDITOR THAT IS LISTED AS PARTICIPATING IN THE DEBT SETTLEMENT SERVICES AGREEMENT DECLINES TO PARTICIPATE IN DEBT SETTLEMENT SERVICES UNDER THE DEBT SETTLEMENT SERVICES AGREEMENT, THE DEBT SETTLEMENT SERVICES LICENSEE SHALL NOTIFY THE CONSUMER BY CERTIFIED MAIL, OR OTHER VERIFIABLE MEANS APPROVED BY THE CONSUMER, AT LEAST 5 BUSINESS DAYS BEFORE THE CONSUMER'S NEXT SCHEDULED PAYMENT UNDER THE DEBT SETTLEMENT SERVICES AGREEMENT.**

**(3) THE NOTICE SHALL INCLUDE:**

**(I) THE IDENTITY OF THE CREDITOR; AND**

**(II) THE RIGHT OF THE CONSUMER TO MODIFY OR RESCIND THE DEBT SETTLEMENT SERVICES AGREEMENT.**

**(4) A CONSUMER WHO RESCINDS A DEBT SETTLEMENT SERVICES AGREEMENT UNDER THIS SUBSECTION IS ENTITLED TO A REFUND OF ALL UNEXPENDED FUNDS THAT THE CONSUMER HAS PAID TO THE DEBT SETTLEMENT SERVICES LICENSEE FOR THE SETTLEMENT OF THE CONSUMER'S DEBT.**

**(H) IF A PAYMENT BY A CONSUMER UNDER THIS SECTION TO A DEBT SETTLEMENT SERVICES LICENSEE IS DISHONORED, THE LICENSEE MAY CHARGE THE CONSUMER THE AMOUNT ALLOWABLE FOR DISHONORED CHECKS OR OTHER INSTRUMENTS UNDER § 15-802 OF THE COMMERCIAL LAW ARTICLE, WHETHER OR NOT THE CONSUMER HAS ENTERED INTO A DEBT SETTLEMENT SERVICES AGREEMENT WITH THE LICENSEE.**

**(I) WITH RESPECT TO THE PROVISION OF DEBT SETTLEMENT SERVICES, 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 SETTLEMENT 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 **OR A DEBT SETTLEMENT 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 **OR THE DEBT SETTLEMENT 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 **OR A DEBT SETTLEMENT SERVICES AGREEMENT** in a manner that would result in a negative amortization of any of the consumer's debts;

(6) Make any false, misleading, or deceptive representations or omissions of information in connection with the offer, sale, or performance of any service;

(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 **OR A DEBT SETTLEMENT SERVICES AGREEMENT** with the licensee;

(9) Charge for or provide credit insurance;

(10) Compromise any debts of a consumer unless the licensee has obtained the prior written approval of the consumer, and the compromise benefits the consumer;

(11) Enter into a contract or fee-for-service arrangement with a person owned, controlled by, or affiliated with an officer, a director, or an employee of the debt management [service] **SERVICES** provider, **THE DEBT SETTLEMENT SERVICES PROVIDER**, or with a relative of an officer, a director, or an employee, that benefits an officer, a director, or an employee of the debt management [service] **SERVICES** provider **OR THE DEBT SETTLEMENT SERVICES PROVIDER**;

(12) Advertise, display, distribute, broadcast, televise, or otherwise publish debt management service **OR DEBT SETTLEMENT SERVICE** rates, terms, or services in a false, misleading, or deceptive manner; or

(13) Pay an incentive to an employee for enrolling a consumer in a debt management services **OR DEBT SETTLEMENT SERVICES** plan or agreement.

**(B) IN ADDITION TO THE ACTIONS PROHIBITED UNDER SUBSECTION (A) OF THIS SECTION, A DEBT SETTLEMENT SERVICES LICENSEE MAY NOT:**

**(1) MAKE A REPRESENTATION THAT A CONSUMER'S DEBT WILL BE SETTLED FOR A SPECIFIC AMOUNT OR REDUCED BY A SPECIFIC PERCENTAGE; OR**

**(2) REQUIRE OR ADVISE A CONSUMER TO STOP MAKING PAYMENTS TO ANY CREDITOR OF THE CONSUMER.**

**[(b)] (C)** (1) Notwithstanding any other provision of State law, a licensee may not, directly or indirectly, collect any fee for referring, advising, procuring, arranging, or assisting a consumer in obtaining any extension of credit or other consumer service from a lender or service provider if the licensee, or any owner, officer, director, principal, or employee of the licensee, is an owner, partner, director, officer, or employee of the lender or service provider.

(2) This subsection does not prohibit a licensee from referring, advising, procuring, arranging, or assisting a consumer in obtaining any extension of

credit or other consumer service from a lender or service provider of which the licensee, or any owner, officer, director, principal, or employee of the licensee, is an owner, partner, director, officer, or employee, if:

- (i) The licensee does not directly or indirectly collect any fee;
- and
- (ii) The consumer is provided with a written disclosure of the relationship.

12-921.

(a) (1) On or before April 30 of each year, a licensee shall report to the Commissioner on the debt management services **OR DEBT SETTLEMENT 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 **AND DEBT SETTLEMENT COUNSELORS** who provided services for the licensee during the previous calendar year;

(iii) The number of consumers for whom the licensee provided debt management services under a debt management services agreement **OR DEBT SETTLEMENT SERVICES UNDER A DEBT SETTLEMENT SERVICES AGREEMENT** during the preceding calendar year;

(iv) The number of consumers who signed new debt management services agreements **OR NEW DEBT SETTLEMENT SERVICES AGREEMENTS** with the licensee during the preceding calendar year;

(v) The highest number of consumers for whom the licensee provided debt management services under a debt management services agreement **OR DEBT SETTLEMENT SERVICES UNDER A DEBT SETTLEMENT SERVICES AGREEMENT** during any month in the preceding calendar year; and

(vi) The amounts paid by consumers 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, **OR OTHER LEGAL** proceeding against the licensee by a governmental authority that is related to the licensee's debt management services **OR DEBT SETTLEMENT SERVICES** business in any state;
- (iii) A felony indictment or conviction of the licensee, or any of its officers, directors, [or] debt management counselors, **OR DEBT SETTLEMENT COUNSELORS**, that is related to the licensee's debt management services **OR DEBT SETTLEMENT SERVICES** business;
- (iv) The commencement of a civil action by a consumer against the licensee, or its owners, officers, directors, principals, [or] debt management counselors, **OR DEBT SETTLEMENT COUNSELORS**, that is related to the licensee's debt management services **OR DEBT SETTLEMENT SERVICES** business;
- (v) The filing of any material litigation against the licensee, or its owners, officers, directors, principals, [or] debt management counselors, **OR DEBT SETTLEMENT COUNSELORS**, that is related to the licensee's debt management services **OR DEBT SETTLEMENT SERVICES** business; and
- (vi) A list of all third-party vendors and other service providers that the licensee used in providing debt management services **OR DEBT SETTLEMENT SERVICES** at any time in the preceding calendar year.

(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 Commissioner may require the licensee to pay a surcharge not exceeding \$50 for each day that the report is overdue.

(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 7 years:

(1) A general ledger containing all assets, liability, capital, income, and expense accounts;

(2) Each debt management services agreement **OR DEBT SETTLEMENT 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 **OR A DEBT SETTLEMENT SERVICES AGREEMENT**; and

(4) Bank statements and bank reconciliation records.

(f) The requirements of this section also apply to books, accounts, and records in the possession of a subsidiary, affiliate, or other person that relate to the operation of and services provided by the licensee's debt management services **OR DEBT SETTLEMENT SERVICES** business.

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 **OR DEBT SETTLEMENT 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.

12-924.

(a) **(1)** The Commissioner may conduct an on-site examination of a licensee with or without prior notice.

**(2) THE COMMISSIONER SHALL EXAMINE THE BUSINESS OF EACH LICENSEE IN ACCORDANCE WITH A SCHEDULE ESTABLISHED BY THE COMMISSIONER.**

(b) The licensee shall pay all reasonably incurred costs directly related to an examination conducted under this section, including the travel expenses, lodging expenses, and a per diem for examiners.

(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, including the books, accounts, and records in the possession of a subsidiary, affiliate, or other person that relate to the operation of and services provided by the licensee's debt management services **OR DEBT SETTLEMENT SERVICES** business; 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 **OR DEBT SETTLEMENT SERVICES** license number.

12-926.

(a) Except as provided in subsection (c) of this section, and 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 **OR DEBT SETTLEMENT SERVICES** license number;

(3) Presents or attempts to present the debt management services **OR DEBT SETTLEMENT SERVICES** license number of another licensee as the applicant's

or licensee's debt management services **OR DEBT SETTLEMENT 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 **OR DEBT SETTLEMENT SERVICES**;

(6) In connection with the provision of debt management services **OR DEBT SETTLEMENT 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 **OR DEBT SETTLEMENT SERVICES**;

(4) The length of time since the conviction; and

(5) The behavior and activities of the applicant or licensee since the conviction.

(c) Subject to the hearing provisions of § 12-927 of this subtitle, the Commissioner shall deny a license to an applicant and 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 has:

(1) Committed a violation of subsection (a) of this section that directly results in property damage or monetary loss by any other person; and

(2) Has not restored the property or money to the person or paid the value of the property to the person.

12-931.

This subtitle may be cited as the Maryland Debt Management **AND DEBT SETTLEMENT** 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, a person providing debt settlement services to Maryland consumers on the effective date of this Act may continue to provide debt settlement services to Maryland consumers without being licensed, as required under Section 1 of this Act, until the Commissioner approves or disapproves the person's application for a license if:

(a) the person applies for a license no later than 30 days after the date the Commissioner makes license applications available; and

(b) the person complies with all other provisions of the Maryland Debt Management and Debt Settlement Services Act, as enacted by Section 1 of this Act.

SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect October 1, 2008.