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By: **Senator Astle**

Introduced and read first time: February 21, 2005

Assigned to: Rules

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A BILL ENTITLED

1 AN ACT concerning

2 **Financial Regulation - Debt Management Services**

3 FOR the purpose of authorizing a person that is not a nonprofit organization to  
4 provide debt management services in the State; clarifying that a person who  
5 provides debt management services is subject to licensure whether or not the  
6 person maintains an office in the State; requiring an applicant for licensure as a  
7 debt management services provider to provide certain information to the  
8 Commissioner of Financial Regulation and to satisfy the Commissioner as to  
9 certain matters; prohibiting certain contracts or agreements between certain  
10 persons, prohibiting certain advertising and related acts, and prohibiting  
11 certain incentives relating to debt management services, subject to certain  
12 penalties; altering certain licensing fees for debt management services  
13 providers; altering the maximum amount of a certain surety bond filed by a debt  
14 management services provider; defining certain terms; including a crime under  
15 the Maryland Debt Management Services Act in certain definitions for certain  
16 purposes; and generally relating to debt management services.

17 BY renumbering

18 Article - Courts and Judicial Proceedings  
19 Section 7-409(a)(2)(ix) through (xix), respectively  
20 to be Section 7-409(a)(2)(x) through (xx), respectively  
21 Annotated Code of Maryland  
22 (2002 Replacement Volume and 2004 Supplement)

23 BY repealing and reenacting, with amendments,

24 Article - Financial Institutions  
25 Section 12-901, 12-904, 12-905(a), 12-906, 12-907(a), 12-908, 12-914, and  
26 12-920  
27 Annotated Code of Maryland  
28 (2003 Replacement Volume and 2004 Supplement)

29 BY repealing and reenacting, without amendments,

30 Article - Financial Institutions  
31 Section 12-929

1 Annotated Code of Maryland  
2 (2003 Replacement Volume and 2004 Supplement)

3 BY adding to  
4 Article - Courts and Judicial Proceedings  
5 Section 7-409(a)(2)(ix)  
6 Annotated Code of Maryland  
7 (2002 Replacement Volume and 2004 Supplement)

8 BY repealing and reenacting, with amendments,  
9 Article - Insurance  
10 Section 2-401(c)(4)  
11 Annotated Code of Maryland  
12 (2003 Replacement Volume and 2004 Supplement)

13 BY repealing and reenacting, with amendments,  
14 Article - Insurance  
15 Section 27-801(c)(3)  
16 Annotated Code of Maryland  
17 (2002 Replacement Volume and 2004 Supplement)

18 SECTION 1. BE IT ENACTED BY THE GENERAL ASSEMBLY OF  
19 MARYLAND, That Section(s) 7-409(a)(2)(ix) through (xix), respectively, of Article -  
20 Courts and Judicial Proceedings of the Annotated Code of Maryland be renumbered to  
21 be Section(s) 7-409(a)(2)(x) through (xx), respectively.

22 SECTION 2. AND BE IT FURTHER ENACTED, That the Laws of Maryland  
23 read as follows:

24 **Article - Financial Institutions**

25 12-901.

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

27 (B) "ANNUAL GROSS REVENUE" MEANS INCOME OR REVENUE FROM ALL  
28 SOURCES, BEFORE ANY EXPENSES OR TAXES, COMPUTED ACCORDING TO  
29 GENERALLY ACCEPTED ACCOUNTING PRINCIPLES FOR THE PRECEDING FISCAL  
30 YEAR.

31 [(b)] (C) "Consultation fee" means a fee paid by a consumer to a debt  
32 management services provider in connection with the processing of any application  
33 that the consumer makes for debt management services.

34 [(c)] (D) "Consumer" means an individual who:

35 (1) Resides in the State; and

1 (2) Is seeking debt management services or has entered into a debt  
2 management services agreement.

3 [(d)] (E) "Consumer education program" means a program or plan that seeks  
4 to improve the financial literacy of consumers.

5 [(e)] (F) "Debt management counselor" means a permanent, temporary, or  
6 contractual employee of a debt management services provider or its agent who  
7 provides counseling to consumers on behalf of the debt management services provider.

8 [(f)] (G) "Debt management services" means receiving funds periodically from  
9 a consumer under an agreement with the consumer for the purpose of distributing the  
10 funds among the consumer's creditors in full or partial payment of the consumer's  
11 debts.

12 [(g)] (H) "Debt management services agreement" means a written contract,  
13 plan, or agreement between a debt management services provider and a consumer for  
14 the performance of debt management services.

15 [(h)] (I) "Debt management services provider" means [an organization] A  
16 PERSON that provides or offers to provide debt management services to a consumer.

17 [(i)] (J) "Fund" means the Debt Management Services Fund established  
18 under § 12-905 of this subtitle.

19 [(j)] (K) "Licensee" means [an organization] A PERSON licensed under this  
20 subtitle to provide debt management services.

21 [(k)] (L) "Maintenance fee" means a fee paid by a consumer to a debt  
22 management services provider for the maintenance or servicing of the consumer's  
23 accounts with the consumer's creditors in accordance with a debt management  
24 services agreement.

25 [(l)] (M) "Organization" means a nonprofit organization that is exempt from  
26 taxation under § 501(c) of the Internal Revenue Code.]

27 (M) "RELATIVE" MEANS ANY OF THE FOLLOWING WHO ARE RELATED TO AN  
28 INDIVIDUAL BY BLOOD, MARRIAGE, OR ADOPTION:

29 (1) A SPOUSE;

30 (2) A CHILD;

31 (3) A SIBLING;

32 (4) A PARENT;

33 (5) A GRANDPARENT;

34 (6) A GRANDCHILD;

1 (7) A STEPPARENT;

2 (8) A STEPCHILD;

3 (9) A STEPSIBLING;

4 (10) AN AUNT; OR

5 (11) AN UNCLE.

6 [(m)] (N) "Resident agent" means an individual residing in the State or a  
7 Maryland corporation whose name, address, and designation as a resident agent are  
8 filed or recorded with the State Department of Assessments and Taxation in  
9 accordance with the provisions of the Corporations and Associations Article.

10 [(n)] (O) "Trust account" means an account that is:

11 (1) Established in a financial institution that is federally insured;

12 (2) Separate from the debt management services provider's operating  
13 account;

14 (3) Designated as a "trust account" or by another appropriate  
15 designation indicating that the funds in the account are not the funds of the licensee  
16 or its officers, employees, or agents;

17 (4) Unavailable to creditors of the debt management services provider;  
18 and

19 (5) Used to hold funds paid by consumers to a debt management services  
20 provider for disbursement to creditors of the consumers.

21 12-904.

22 (a) The Commissioner [by regulation] shall [establish] CHARGE:

23 (1) (i) A fee[, not exceeding \$2,000,] for the issuance of [a] AN  
24 INITIAL license under this subtitle in an even-numbered year AS FOLLOWS:

25 1. \$1,000, IF THE APPLICANT'S ANNUAL GROSS REVENUE IS  
26 NOT MORE THAN \$3,000,000;

27 2. \$2,000, IF THE APPLICANT'S ANNUAL GROSS REVENUE IS  
28 MORE THAN \$3,000,000 BUT NOT MORE THAN \$6,000,000;

29 3. \$4,000, IF THE APPLICANT'S ANNUAL GROSS REVENUE IS  
30 MORE THAN \$6,000,000 BUT NOT MORE THAN \$15,000,000;

31 4. \$6,000, IF THE APPLICANT'S ANNUAL GROSS REVENUE IS  
32 MORE THAN \$15,000,000 BUT NOT MORE THAN \$30,000,000; OR

1 5. \$8,000, IF THE APPLICANT'S ANNUAL GROSS REVENUE IS  
2 MORE THAN \$30,000,000; and

3 (ii) A fee[, not exceeding \$1,000,] for the issuance of [a] AN  
4 INITIAL license under this subtitle in an odd-numbered year AS FOLLOWS:

5 1. \$500, IF THE APPLICANT'S ANNUAL GROSS REVENUE IS  
6 NOT MORE THAN \$3,000,000;

7 2. \$1,000, IF THE APPLICANT'S ANNUAL GROSS REVENUE IS  
8 MORE THAN \$3,000,000 BUT NOT MORE THAN \$6,000,000;

9 3. \$2,000, IF THE APPLICANT'S ANNUAL GROSS REVENUE IS  
10 MORE THAN \$6,000,000 BUT NOT MORE THAN \$15,000,000;

11 4. \$3,000, IF THE APPLICANT'S ANNUAL GROSS REVENUE IS  
12 MORE THAN \$15,000,000 BUT NOT MORE THAN \$30,000,000; OR

13 5. \$4,000, IF THE APPLICANT'S ANNUAL GROSS REVENUE IS  
14 MORE THAN \$30,000,000;

15 (2) A fee[, not exceeding \$2,000,] for renewal of a license issued under  
16 this subtitle AS FOLLOWS:

17 (I) \$1,000, IF THE APPLICANT'S ANNUAL GROSS REVENUE IS NOT  
18 MORE THAN \$3,000,000;

19 (II) \$2,000, IF THE APPLICANT'S ANNUAL GROSS REVENUE IS MORE  
20 THAN \$3,000,000 BUT NOT MORE THAN \$6,000,000;

21 (III) \$4,000, IF THE APPLICANT'S ANNUAL GROSS REVENUE IS MORE  
22 THAN \$6,000,000 BUT NOT MORE THAN \$15,000,000;

23 (IV) \$6,000, IF THE APPLICANT'S ANNUAL GROSS REVENUE IS MORE  
24 THAN \$15,000,000 BUT NOT MORE THAN \$30,000,000; OR

25 (V) \$8,000, IF THE APPLICANT'S ANNUAL GROSS REVENUE IS MORE  
26 THAN \$30,000,000;

27 (3) A fee, not exceeding \$100, for each location in the State at which a  
28 licensee provides debt management services under this subtitle, payable at the time  
29 of issuance of an initial license and at each renewal of a license; and

30 (4) A fee, not exceeding \$1,000, for an investigation of an applicant or  
31 licensee under this subtitle.

32 (b) Any fees charged by the Commissioner under this subtitle shall  
33 approximate, IN THE AGGREGATE, the direct and indirect costs of administering and  
34 enforcing this subtitle.

1 12-905.

2 (a) There is a Debt Management Services Fund that consists of:

3 (1) All revenue received for the licensing of [organizations that provide]  
4 debt management services PROVIDERS under this subtitle;

5 (2) Income from investments that the Treasurer makes for the Fund;  
6 and

7 (3) Except as provided in subsection (b) of this section, any other fee or  
8 revenue received by the Commissioner under this subtitle.

9 12-906.

10 [A] WHETHER OR NOT THE PERSON MAINTAINS AN OFFICE IN THIS STATE, A  
11 person may not provide debt management services to consumers unless the person:

12 (1) Is licensed by the Commissioner under this subtitle; or

13 (2) Is exempt from licensing under this subtitle.

14 12-907.

15 (a) To qualify for a license, an applicant shall satisfy the Commissioner that:

16 (1) [The applicant is an organization;

17 (2) Each] THE APPLICANT AND EACH of the owners, officers, directors,  
18 and principals of the applicant has sufficient experience, character, financial  
19 responsibility, and general fitness to:

20 (i) Engage in the business of providing debt management services;

21 (ii) Warrant the belief that the debt management services business  
22 will be conducted lawfully, honestly, fairly, and efficiently; and

23 (iii) Command the confidence of the public;

24 [(3)] (2) Each agent acting on behalf of the applicant to manage a trust  
25 account required under § 12-917 of this subtitle has sufficient experience, character,  
26 financial responsibility, and general fitness to:

27 (i) Engage in the business of managing a trust account;

28 (ii) Warrant the belief that the management of the trust account  
29 will be conducted lawfully, honestly, fairly, and efficiently; and

30 (iii) Command the confidence of the public; and

1            [(4)]    (3)    The applicant has a net worth computed according to generally  
2 accepted accounting principles of at least \$50,000, plus an additional net worth of  
3 \$10,000 for each location at which debt management services will be provided to  
4 consumers, up to a maximum of \$500,000 as provided in subsection (b) of this section.  
5 12-908.

6            (a)    To apply for a license, an applicant shall submit to the Commissioner an  
7 application on the form that the Commissioner provides.

8            (b)    The application shall include:

9            (1)    The applicant's name, business address, telephone number, electronic  
10 mail address, if any, and website address, if any;

11            (2)    The address of each location in the State at which the applicant will  
12 provide debt management services;

13            (3)    The name and address of each owner, officer, director, and principal  
14 of the applicant;

15            (4)    The name, address, and telephone number of the applicant's resident  
16 agent in the State;

17            (5)    A description of the ownership interest of any officer, director, agent,  
18 or employee of the applicant in any affiliate or subsidiary of the applicant or in any  
19 other business entity that provides any service to the applicant or any consumer  
20 relating to the applicant's debt management services business;

21            (6)    The name and address of any agent acting on behalf of the applicant  
22 to manage a trust account required under § 12-917 of this subtitle;

23            (7)    The applicant's federal employer identification number;

24            (8)    A list of any state in which:

25                    (i)    The applicant engages in the business of providing debt  
26 management services;

27                    (ii)    The applicant is registered or licensed to provide debt  
28 management services; and

29                    (iii)    The applicant's registration or license has been suspended or  
30 revoked;

31            (9)    A statement of whether any pending judgment, tax lien, material  
32 litigation, or administrative action by any government agency exists against the  
33 applicant;

34            (10)    The most recent, unconsolidated financial statement of the applicant  
35 that:

- 1 (i) Is prepared in accordance with generally accepted accounting  
2 principles applied on a consistent basis;
- 3 (ii) Includes a certified opinion audit prepared by an independent  
4 certified public accountant; and
- 5 (iii) Was prepared no more than 12 months before the date of  
6 application;
- 7 (11) [Evidence] IF APPLICABLE, EVIDENCE of nonprofit status under §  
8 501(c) of the Internal Revenue Code;
- 9 (12) If the applicant is a corporation, a detailed description of the  
10 applicant's corporate structure, including parent companies, subsidiaries, and  
11 affiliates;
- 12 (13) The applicant's business credit report;
- 13 (14) Evidence of general liability or fidelity insurance that insures against  
14 dishonesty, fraud, theft, or other malfeasance on the part of an employee of the  
15 applicant;
- 16 (15) A description of the applicant's consumer education program that is  
17 provided to consumers;
- 18 (16) A description of the applicant's financial analysis and initial budget  
19 plan, including any form or electronic model, that are used to evaluate the financial  
20 condition of consumers;
- 21 (17) A copy of the debt management services agreement that the applicant  
22 will use in its debt management services business;
- 23 (18) A copy of the applicant's plan to ensure that each debt management  
24 counselor is certified by an independent organization within 6 months after the debt  
25 management counselor is hired, and that any employee who is a supervisor or  
26 manager of a debt management counselor is certified by an independent organization  
27 within 3 months after the employee is hired; [and]
- 28 (19) THE MOST RECENT FINANCIAL STATEMENT OF EACH AFFILIATE,  
29 SUBSIDIARY, OR OTHER PERSON THAT PROVIDES SERVICES RELATED TO DEBT  
30 MANAGEMENT SERVICES FOR THE APPLICANT OR FOR ANY CONSUMER;
- 31 (20) A COPY OF EACH CONTRACT OR FEE-FOR-SERVICE ARRANGEMENT  
32 BETWEEN THE APPLICANT AND ANY PERSON THAT PROVIDES SERVICES RELATED TO  
33 THE DEBT MANAGEMENT SERVICES BUSINESS; AND
- 34 [(19)] (21) Any other information that the Commissioner reasonably  
35 requires.



1 (c) The Commissioner may refuse an application if it contains erroneous or  
2 incomplete information.

3 (d) With the application, the applicant shall pay to the Commissioner:

4 (1) A license fee in the amount established under § 12-904 of this  
5 subtitle; and

6 (2) A nonrefundable investigation fee in the amount established under §  
7 12-904 of this subtitle.

8 (e) With the application, the applicant shall file a surety bond with the  
9 Commissioner as provided in § 12-914 of this subtitle.

10 12-914.

11 (a) With the application for a new or renewal license, the applicant or licensee  
12 shall file a surety bond or bond renewal certificate with the Commissioner as  
13 provided in this section.

14 (b) (1) A surety bond filed under this section shall run to the State for the  
15 benefit of any consumer who is injured by a violation of this subtitle or a regulation  
16 adopted under this subtitle committed by a licensee or an agent of a licensee,  
17 including an agent managing a trust account.

18 (2) The surety bond shall be:

19 (i) In an amount not less than \$10,000 and not more than  
20 [\$350,000] \$1,000,000, as set by the Commissioner;

21 (ii) Issued by a bonding, surety, or insurance company that is  
22 authorized to do business in the State; and

23 (iii) Conditioned so that the licensee and its agent shall comply with  
24 all State and federal laws and regulations governing the business of providing debt  
25 management services.

26 (3) The liability of a surety:

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

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

33 (4) The Commissioner may allow the amount of the surety bond to be  
34 reduced if the amount of the licensee's outstanding debt management services  
35 liabilities in the State is reduced.

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

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

5 (ii) For an applicant, the projected monthly and annual volume of  
6 debt management services to be provided in the State;

7 (iii) For a licensee, the average monthly and annual volume of debt  
8 management services provided in the State during the previous 12-month period;

9 (iv) The potential loss to consumers who remit funds to the  
10 applicant or licensee if the applicant or licensee becomes financially impaired; and

11 (v) Any other factor the Commissioner considers appropriate.

12 (c) If the principal amount of a surety bond is reduced by payment of a claim  
13 or judgment, the licensee shall file with the Commissioner any new or additional  
14 surety bond in the amount that the Commissioner sets.

15 (d) The Commissioner may waive the surety bond requirement under this  
16 section if the Commissioner determines that the volume of debt management services  
17 provided by the applicant or licensee does not warrant the need for a surety bond.

18 (e) A penalty imposed under § 12-928 or § 12-929 of this subtitle may be paid  
19 and collected from the proceeds of a surety bond required under this section.

20 12-920.

21 (a) A licensee may not:

22 (1) Purchase any debt or obligation of a consumer;

23 (2) Lend money or provide credit to a consumer;

24 (3) Obtain a mortgage or other security interest in property owned by a  
25 consumer;

26 (4) Operate as a collection agency, as defined in § 7-101 of the Business  
27 Regulation Article;

28 (5) Structure a debt management services agreement in a manner that  
29 would result in a negative amortization of any of the consumer's debts;

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

33 (7) Offer, pay, or give a substantial gift, bonus, premium, reward, or  
34 other compensation to a person for referring a prospective customer to the licensee;

1 (8) Offer an incentive, including a gift, bonus, premium, reward, or other  
2 compensation, to a consumer for executing a debt management services agreement  
3 with the licensee;

4 (9) Charge for or provide credit insurance; [or]

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

8 (11) ENTER INTO A CONTRACT OR FEE-FOR-SERVICE ARRANGEMENT  
9 WITH A PERSON OWNED, CONTROLLED BY, OR AFFILIATED WITH AN OFFICER, A  
10 DIRECTOR, OR AN EMPLOYEE OF THE DEBT MANAGEMENT SERVICE PROVIDER, OR  
11 WITH A RELATIVE OF AN OFFICER, A DIRECTOR, OR AN EMPLOYEE, THAT BENEFITS  
12 AN OFFICER, A DIRECTOR, OR AN EMPLOYEE OF THE DEBT MANAGEMENT SERVICE  
13 PROVIDER;

14 (12) ADVERTISE, DISPLAY, DISTRIBUTE, BROADCAST, TELEVISION, OR  
15 OTHERWISE PUBLISH DEBT MANAGEMENT SERVICE RATES, TERMS, OR SERVICES IN  
16 A FALSE, MISLEADING, OR DECEPTIVE MANNER; OR

17 (13) PAY AN INCENTIVE TO AN EMPLOYEE FOR ENROLLING A CONSUMER  
18 IN A DEBT MANAGEMENT SERVICES PLAN OR AGREEMENT.

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

25 (2) This subsection does not prohibit a licensee from referring, advising,  
26 procuring, arranging, or assisting a consumer in obtaining any extension of credit or  
27 other consumer service from a lender or service provider of which the licensee, or any  
28 owner, officer, director, principal, or employee of the licensee, is an owner, partner,  
29 director, officer, or employee, if:

30 (i) The licensee does not directly or indirectly collect any fee; and

31 (ii) The consumer is provided with a written disclosure of the  
32 relationship.

33 12-929.

34 A person who knowingly and willfully violates any provision of this subtitle is  
35 guilty of a felony and on conviction is subject to a fine not exceeding \$1,000 for the  
36 first violation and not exceeding \$5,000 for each subsequent violation or  
37 imprisonment not exceeding 5 years or both.

1

**Article - Courts and Judicial Proceedings**

2 7-409.

3 (a) (2) "Crime" means an act committed by a person in the State that is:

4 (IX) A CRIME UNDER TITLE 12, SUBTITLE 9 OF THE FINANCIAL  
5 INSTITUTIONS ARTICLE;

6

**Article - Insurance**

7 2-401.

8 (c) "Insurance fraud" means:

9 (4) any other fraudulent activity that is committed by or against a  
10 person regulated under this article and is a violation of:

11 (i) Title 1, Subtitle 3 of the Agriculture Article;

12 (ii) Title 19, Subtitle 2 or Subtitle 3 of the Business Regulation  
13 Article;

14 (iii) Title 14, Subtitle 29, § 11-810, or § 14-1317 of the Commercial  
15 Law Article;

16 (iv) the Criminal Law Article other than Title 8, Subtitle 2, Part II  
17 or § 10-614;

18 (V) TITLE 12, SUBTITLE 9 OF THE FINANCIAL INSTITUTIONS  
19 ARTICLE;

20 [(v)] (VI) § 14-127 of the Real Property Article;

21 [(vi)] (VII) Article 2B, Title 22 of the Code;

22 [(vii)] (VIII) § 109 of the Code of Public Local Laws of Caroline  
23 County;

24 [(viii)] (IX) § 4-103 of the Code of Public Local Laws of Carroll  
25 County; or

26 [(ix)] (X) § 8A-1 of the Code of Public Local Laws of Talbot County.  
27 27-801.

28 (c) "Insurance fraud" means:

29 (3) any other fraudulent activity that is committed by or against a  
30 person regulated under this article and is a violation of:

- 1 (i) Title 1, Subtitle 3 of the Agriculture Article;
- 2 (ii) Title 19, Subtitle 2 or Subtitle 3 of the Business Regulation
- 3 Article;
- 4 (iii) Title 14, Subtitle 29, § 11-810 or § 14-1317 of the Commercial
- 5 Law Article;
- 6 (iv) the Criminal Law Article other than Title 8, Subtitle 2, Part II
- 7 or § 10-614;
- 8 (V) TITLE 12, SUBTITLE 9 OF THE FINANCIAL INSTITUTIONS
- 9 ARTICLE;
- 10 [(v)] (VI) § 14-127 of the Real Property Article;
- 11 [(vi)] (VII) Article 2B, Title 22 of the Code;
- 12 [(vii)] (VIII) § 109 of the Code of Public Local Laws of Caroline
- 13 County;
- 14 [(viii)] (IX) § 4-103 of the Code of Public Local Laws of Carroll
- 15 County; or
- 16 [(ix)] (X) § 8A-1 of the Code of Public Local Laws of Talbot County.

17 SECTION 3. AND BE IT FURTHER ENACTED, That this Act shall take effect  
 18 October 1, 2005.