



SPONSOR: Rep. Keeley & Rep. Stone, & Rep. Ennis, & Sen. DeLuca

HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE BILL NO. 430
AS AMENDED BY
HOUSE AMENDMENT NOS. 3,4,5 & 6

AN ACT TO AMEND TITLES 6 AND 11 OF THE DELAWARE CODE RELATING TO THE REGULATION OF DEBT-MANAGEMENT SERVICES.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF DELAWARE (Three-fifths of all members elected to each house thereof concurring therein):

Section 1. Amend Title 6 of the Delaware Code by adding a new Chapter 24A to read as follows:

“CHAPTER 24A. DEBT-MANAGEMENT SERVICES

Section 2401A. SHORT TITLE.

This chapter may be cited as the Delaware Uniform Debt-Management Services Act.

Section 2402A. DEFINITIONS.

In this chapter:

(1) “Affiliate”:

(A) with respect to an individual, means:

- (i) the spouse of the individual;
- (ii) a sibling of the individual or the spouse of a sibling;
- (iii) an individual or the spouse of an individual who is a lineal ancestor or lineal descendant of the individual or the individual’s spouse;
- (iv) an aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew, whether related by the whole or the half blood or adoption, or the spouse of any of them; or
- (v) any other individual occupying the residence of the individual; and

(B) with respect to an entity, means:

- (i) a person that directly or indirectly controls, is controlled by, or is under common control with the entity;
- (ii) an officer of, or an individual performing similar functions with respect to, the entity;
- (iii) a director of, or an individual performing similar functions with respect to, the entity;
- (iv) subject to adjustment of the dollar amount pursuant to Section 2432A(f), a person that receives or received more than \$25,000 from the entity in either the current year or the preceding year or a person that owns more than 10 percent of, or an individual who is employed by or is a director of, a person that receives or received more than \$25,000 from the entity in either the current year or the preceding year;
- (v) an officer or director of, or an individual performing similar functions with respect to, a person described in sub-subparagraph (i);
- (vi) the spouse of, or an individual occupying the residence of, an individual described in sub-subparagraphs (i) through (v); or
- (vii) an individual who has the relationship specified in subparagraph (A)(iv) to an individual or the spouse of an individual described in sub-subparagraphs (i) through (v).

(2) “Agreement” means an agreement between a provider and an individual for the performance of debt-management services.

(3) “Bank” means a financial institution, including a commercial bank, savings bank, savings and loan association, credit union mortgage bank, and trust company, engaged in the business of banking, chartered under federal or state law, and regulated by a federal or state banking regulatory authority.

(4) “Business address” means the physical location of a business, including the name and number of a street.

(5) “Certified counselor” means an individual certified by a training program or certifying organization, approved by the Attorney General, that authenticates the competence of individuals providing education and assistance to other individuals in connection with debt-management services.

(6) “Attorney General” means the Attorney General of the State of Delaware or the Attorney General’s designee.

(7) “Concessions” means assent to repayment of a debt on terms more favorable to an individual than the terms of the contract between the individual and a creditor.

(8) “Day” means calendar day.

(9) “Debt-management services” means services as an intermediary between an individual and one or more creditors of the individual for the purpose of obtaining concessions, but does not include:

(A) legal services provided in an attorney-client relationship by an attorney licensed or otherwise authorized to practice law in this state;

(B) accounting services provided in an accountant-client relationship by a certified public accountant licensed to provide accounting services in this state; or

(C) financial-planning services provided in a financial planner-client relationship by a member of a financial-planning profession whose members the Attorney General, by rule, determines are

(i) licensed by this state;

(ii) subject to a disciplinary mechanism;

(iii) subject to a code of professional responsibility; and

(iv) subject to a continuing-education requirement.

(10) “Entity” means a person other than an individual.

(11) “Good faith” means honesty in fact and the observance of reasonable standards of fair dealing.

(12) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a public corporation, government, or governmental subdivision, agency, or instrumentality.

(13) “Plan” means a program or strategy in which a provider furnishes debt-management services to an individual and which includes a schedule of payments to be made by or on behalf of the individual and used to pay debts owed by the individual.

(14) “Principal amount of the debt” means the amount of a debt at the time of an agreement.

(15) “Provider” means a person that provides, offers to provide, or agrees to provide debt-management services directly or through others.

(16) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(17) “Settlement fee” means a charge imposed on or paid by an individual in connection with a creditor’s assent to accept in full satisfaction of a debt an amount less than the principal amount of the debt.

(18) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic sound, symbol, or process.

(19) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(20) “Trust account” means an account held by a provider that is:

(A) established in an insured bank;

(B) separate from other accounts of the provider or its designee;

(C) designated as a trust account or other account designated to indicate that the money in the account is not the money of the provider or its designee; and

(D) used to hold money of one or more individuals for disbursement to creditors of the individuals.

Section 2403A. EXEMPT AGREEMENTS AND PERSONS.

(a) This chapter does not apply to an agreement with an individual who the provider has no reason to know resides in this state at the time of the agreement.

(b) This chapter does not apply to a provider to the extent that the provider:

(1) provides or agrees to provide debt-management, educational, or counseling services to an individual who the provider has no reason to know resides in this state at the time the provider agrees to provide the services; or

(2) receives no compensation for debt-management services from or on behalf of the individuals to whom it provides the services or from their creditors.

(c) This chapter does not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person’s business or profession:

(1) a judicial officer, a person acting under an order of a court or an administrative agency, or an assignee for the benefit of creditors;

(2) a bank;

(3) an affiliate, as defined in Section 2402A(1)(B)(i), of a bank if the affiliate is regulated by a federal or state banking regulatory authority; or

(4) a title insurer, escrow company, or other person that provides bill-paying services if the provision of debt-management services is incidental to the bill-paying services.

Section 2404A. License Required.

(a) Except as otherwise provided in subsection (b), a provider may not provide debt-management services to an individual who it reasonably should know resides in this state at the time it agrees to provide the services, unless the provider is licensed under this chapter.

(b) If a provider is licensed under this chapter, subsection (a) does not apply to an employee or agent of the provider.

(c) The Attorney General shall maintain and publicize a list of the names of all licensed providers.

Section 2405A. APPLICATION FOR LICENSE: FORM, FEE, AND ACCOMPANYING DOCUMENTS.

(a) An application for license as a provider must be in a form prescribed by the Attorney General.

(b) An application for a license as a provider must be accompanied by:

(1) a nonrefundable fee of \$2,000.00, which shall be deposited in the State Treasury to the credit of the State Consumer Protection Fund created under Section 2527 of this title.;

(2) the bond required by Section 2413A;

(3) identification of all trust accounts required by Section 2422A, an irrevocable consent authorizing the Attorney General to review and examine the trust accounts, and the overdraft notification agreement required by Section 2422A;

(4) evidence of insurance in the amount of \$500,000:

(A) against the risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant;

(B) issued by an insurance company authorized to do business in this state and rated at least A by a nationally recognized rating organization;

(C) with no greater than a five thousand dollar (\$5,000) deductible;

(D) payable to the applicant, the individuals who have agreements with the applicant, and this state, as their interests may appear; and

(E) not subject to cancellation by the applicant without the approval of the Attorney

General; and

Section 2406A. APPLICATION FOR LICENSE: REQUIRED INFORMATION.

An application for a license must be signed under oath and include:

(1) the applicant's name, principal business address and telephone number, and all other business addresses in this state, electronic-mail addresses, and Internet website addresses;

- (2) the name and address of the applicant's registered agent in this state;
- (3) all names under which the applicant conducts business;
- (4) the address of each location in this state at which the applicant will provide debt-management services or a statement that the applicant will have no such location;
- (5) the name and home address of each officer and director of the applicant and each person that owns at least 10 percent of the applicant;
- (6) identification of every jurisdiction in which, during the five years immediately preceding the application:
 - (A) the applicant or any of its officers or directors has been licensed or registered to provide debt-management services; or
 - (B) individuals have resided when they received debt-management services from the applicant;
- (7) a statement describing, to the extent it is known or should be known by the applicant, any material civil or criminal judgment or litigation and any material administrative or enforcement action by a governmental agency in any jurisdiction against the applicant, any of its officers, directors, owners, or agents, or any person who is authorized to have access to the trust account required by Section 2422A;
- (8) at a minimum, an audited review by a certified accountant of the applicant's financial statements, for each of the two years immediately preceding the application or, if it has not been in operation for the two years preceding the application, for the period of its existence;
- (9) evidence of accreditation by an independent accrediting organization approved by the Attorney General;
- (10) evidence that, within 12 months after initial employment, each of the applicant's counselors becomes certified as a certified counselor;
- (11) a description of the three most commonly used educational programs that the applicant provides or intends to provide to individuals who reside in this state and a copy of any materials used or to be used in those programs;
- (12) a description of the applicant's financial analysis and initial budget plan, including any form or electronic model, used to evaluate the financial condition of individuals;
- (13) a copy of each form of agreement that the applicant will use with individuals who reside in this state;
- (14) the schedule of fees and charges that the applicant will use with individuals who reside in this state;

- (15) at the applicant's expense, the results of a criminal-records check, including fingerprints, conducted within the immediately preceding 12 months, covering every officer of the applicant and every employee or agent of the applicant who is authorized to have access to the trust account required by Section 2422A;
- (16) the names and addresses of all employers of each director during the 5 years immediately preceding the application;
- (17) a description of any ownership interest of at least 10 percent by a director, owner, or employee of the applicant in:
- (A) any affiliate of the applicant; or
 - (B) any entity that provides products or services to the applicant or any individual relating to the applicant's debt-management services;
- (18) If a provider has organized as a not for profit entity or has obtained tax exempt status under the Federal Internal Revenue Code, 26 U.S.C. Sec. 501 as amended a statement of the amount of compensation of the applicant's five most highly compensated employees for each of the three years immediately preceding the application or, if it has not been in operation for the three years preceding the application, for the period of its existence; and
- (19) the identity of each director who is an affiliate, as defined in Section 2402A(1)(A) or (B)(i), (ii), (iv), (v), (vi), or (vii), of the applicant; and
- (20) any other information that the Attorney General reasonably requires to perform the Attorney General's duties under this chapter.

Section 2407A. APPLICATION FOR LICENSE: OBLIGATION TO UPDATE INFORMATION.

An applicant or licensed provider shall notify the Attorney General within 10 days after a change in the information specified in Section 2405A or 2406A.

Section 2408A. APPLICATION FOR LICENSE: PUBLIC INFORMATION.

Except for the information required by Section 2406A (8), (15), and (18) and the addresses required by Section 2406A(5), the Attorney General shall make the information in an application for a provider license available to the public.

Section 2409A. LICENSE: ISSUANCE OR DENIAL.

- (a) Except as otherwise provided in subsections (b) and (c), the Attorney General shall issue a provider license to a person that complies with Sections 2405A and 2406A.
- (b) The Attorney General may deny a license if:

- (1) the application contains information that is materially erroneous or incomplete;
- (2) an officer, director, or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving dishonesty or the violation of state or federal securities laws;
- (3) the applicant or any of its officers, directors, or owners has defaulted in the payment of money collected for others; or
- (4) the Attorney General finds that the financial responsibility, experience, character, or general fitness of the applicant or its owners, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this chapter.

(c) The Attorney General shall deny a license if:

- (1) the application is not accompanied by the fee established pursuant to this chapter; or
- (2) with respect to an applicant that has organized as a not-for-profit entity or has obtained tax-exempt

status under the Federal Internal Revenue Code, 26 U.S.C. Sec. 501 as amended, the applicant's board of directors is not independent of the applicant's employees and agents.

(d) Subject to adjustment of the dollar amount pursuant to Section 2432A(f), a board of directors is not independent for purposes of subsection (c) if more than one-fourth of its members:

- (1) are affiliates of the applicant, as defined in Section 2402A(1)(A) or (B)(i), (ii), (iv), (v), (vi), or (vii); or
- (2) after the date 10 years before first becoming a director of the applicant, were employed by or directors of a person that received from the applicant more than \$25,000 in either the current year or the preceding year.

Section 2410A. LICENSE: TIMING.

(a) The Attorney General shall approve or make a preliminary determination to deny an initial license as a provider within 120 days from the date that the Attorney General determines that the application as filed is complete. In connection with a request pursuant to Section 2406A(20) for additional information, the Attorney General may extend the 120-day period for not more than 60 days. Within seven days after making a preliminary determination to deny an application, the Attorney General, in a record, shall inform the applicant of the reasons for the proposed denial.

(b) If the Attorney General makes a preliminary determination to deny an application for an initial license as a provider, the applicant may file a request for a hearing with the Attorney General pursuant to Subchapter IV of the Delaware

Administrative Procedures Act, Chapter 101 of Title 29. The Attorney General's preliminary determination may become a final decision if such a request is not timely filed.

(c) Subject to Sections 2411A(d) and 2434A, a provider license is valid for one year after the date of issuance.

Section 2411A. RENEWAL OF LICENSES.

(a) A provider must obtain a renewal of its license annually.

(b) An application for renewal of a provider license must be in a form prescribed by the Attorney General signed under oath, and:

(1) be filed no fewer than 30 and no more than 60 days before the license expires;

(2) be accompanied by (i) a nonrefundable fee of \$1,000.00, which shall be deposited in the State Treasury to the credit of the State Consumer Protection Fund created under Section 2527 of this title, and (ii); the bond required by Section 2413A;

(3) contain the matter required for initial licensing as a provider by Section 2406A(8) and (9) and a financial statement, audited by an accountant licensed to conduct audits, for the applicant's fiscal year immediately preceding the application;

(4) disclose any changes in the information contained in the applicant's application for licensing or its immediately previous application for renewal, as applicable;

(5) supply evidence of insurance in an amount equal to the larger of \$250,000 or the highest daily balance in the trust account required by Section 2422A during the six-month period immediately preceding the application;

(A) against risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant;

(B) issued by an insurance company authorized to do business in this state and rated at least A by a nationally recognized rating organization;

(C) with no greater than a five thousand dollar (\$5,000) deductible;

(D) payable to the applicant, the individuals who have agreements with the applicant, and this state, as their interests may appear; and

(E) not subject to cancellation by the applicant without the approval of the Attorney

General;

(6) If a provider holds money on behalf of a debtor to pay creditors, the provider shall disclose the total amount of money received by the applicant pursuant to plans during the preceding 12 months from or on behalf of individuals who reside in this state and the total amount of money distributed to creditors of those individuals during that period;

(7) disclose, to the best of the applicant's knowledge, the gross amount of money accumulated during the preceding 12 months pursuant to plans by or on behalf of individuals who reside in this state and with whom the applicant has agreements; and

(8) provide any other information that the Attorney General reasonably requires to perform the Attorney General's duties under this chapter.

(c) Except for the information required by Section 2406A(8), (15), and (18) and the addresses required by Section 2406A(5), the Attorney General shall make the information in an application for renewal of a provider license available to the public.

(d) If a licensed provider files a timely and complete application for renewal of its license, the license remains effective until the Attorney General, in a record, notifies the applicant of a denial and states the reasons for the denial.

(e) If the Attorney General makes a preliminary determination to deny an application for the renewal of a provider license, the applicant may file a request for a hearing with the Attorney General pursuant to Subchapter IV of the Delaware Administrative Procedures Act, Chapter 101 of Title 29. The Attorney General's preliminary determination may become a final decision if such a request is not timely filed.

(f) Subject to Section 2434A, while the final decision is pending, the applicant shall continue to provide debt-management services to individuals with whom it has agreements. If the Attorney General's final decision is to deny the application, subject to the Attorney General's order and Section 2434A, the applicant shall continue to provide debt-management services to individuals with whom it has agreements until, with the Attorney General's approval, it transfers the agreements to another licensed provider or returns to the individuals all unexpended money that is under the applicant's control.

Section 2412A. LICENSE IN ANOTHER STATE.

If a provider holds a license or certificate of registration in another state authorizing it to provide debt-management services, and the Attorney General has approved the application forms of that state for use under this chapter, the provider may submit a copy of that license or certificate and the application for it in lieu of an application in the form prescribed by Sections 2405A(a), 2406A, or 2411A(b).

Section 2413A. BOND REQUIRED.

(a) Except as otherwise provided in Section 2414A, every licensed provider shall file with the Attorney General, in a form satisfactory to the Attorney General, an original corporate surety bond, with surety provided by a corporation authorized to transact business in this state, in the principal sum to be determined by the Attorney General, except that the bond amount shall not be less than \$50,000. In determining the amount of the bond required for a licensed provider, the Attorney General shall consider, among other things:

- (1) the dollar value of the licensed provider's Delaware business;
- (2) the dollar value of all trusts accounts; and
- (3) such other and further criteria as the Attorney General may deem necessary and appropriate.

(b) No bond shall be accepted unless the following requirements are satisfied:

- (1) the aggregate value of the bond shall be equal to or greater than the amount determined in accordance with subsection (a) of this section;
- (2) the term of the bond shall be commensurate with the license period or continuous;
- (3) the expiration date of the bond shall not be earlier than midnight of the date on which the license expires; and

(4) the bond shall run to the state for the benefit of the Attorney General and for the benefit of all consumers injured by any wrongful act, omission, default, fraud or misrepresentation by a licensed provider in the course of its activity as a licensed provider. Compensation under the bond shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the licensed provider. Surety claims shall be paid to the Attorney General, for the credit of the State Consumer Protection Fund created under Section 2527 of this title, by the insurer not later than 90 days after receipt of a claim. Claims paid after 90 days shall be subject to daily interest at the legal rate. The aggregate liability of the surety on the bond, exclusive of any interest which accrues for payments made after 90 days, shall in no event exceed the amount of such bond.

(c) If the licensed provider changes its surety company or the bond is otherwise amended, the licensed provider shall immediately provide the Attorney General with the amended original copy of the surety bond. No cancellation of any existing bond by a surety shall be effective unless written notice of its intention to cancel is filed with the Attorney General at least 30 days before the date upon which cancellation shall take effect.

(d) The Attorney General may require potential claimants to provide such documentation and affirmations as the Attorney General may determine to be necessary and appropriate. In the event the Attorney General determines that

multiple consumers have been injured by a licensed provider, the Attorney General shall cause a notice to be published for the purpose of identifying all relevant claims.

(e) When a surety company receives a claim against the bond of a licensed provider, it shall immediately notify the Attorney General and shall not pay any claim unless and until it receives notice to do so from the Attorney General.

(f) The Attorney General shall have a period of two calendar years after the effective date of cancellation or termination of the surety bond by the insurer to submit claims to the insurer.

Section 2414A. BOND REQUIRED: SUBSTITUTE.

(a) In lieu of requiring the filing of a surety bond, the Attorney General may, at the Attorney General's discretion, accept from a licensed provider an irrevocable letter of credit. Such irrevocable letters of credit shall be provided by an insured depository institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. Section 1813(c)) acceptable to the Attorney General, in a form satisfactory to the Attorney General in the principal sum to be determined by the Attorney General, except that the irrevocable letter of credit amount shall not be less than \$50,000. In determining the amount of the irrevocable letter of credit required for a licensed provider, the Attorney General shall consider, among other things:

- (1) the dollar value of the licensed provider's Delaware business;
- (2) the dollar value of all trust accounts; and
- (3) such other and further criteria as the Attorney General may deem necessary and appropriate.

(b) No irrevocable letter of credit shall be accepted unless the following requirements are satisfied:

- (1) the aggregate value of the irrevocable letter of credit shall be equal to or greater than the amount determined by subsection (a) of this section;
- (2) the irrevocable letter of credit shall run to the state for the benefit of Attorney General, for the credit of the State Consumer Protection Fund created under Section 2527 of this title, and for the benefit of all consumers injured by the wrongful act, omission, default, fraud or misrepresentation by a licensed provider in the course of its activity as a licensed provider. Compensation under the irrevocable letter of credit shall be for amounts which represent actual losses and shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ of the licensed provider. The aggregate liability of the insured depository institution issuing the irrevocable letter of credit shall in no event exceed the amount of such irrevocable letter of credit; and

(3) draws upon such irrevocable letters of credit shall be available by sight drafts thereunder, in amounts determined by the Attorney General, up to the aggregate amount of the irrevocable letter of credit.

(c) The Attorney General may require potential claimants to provide such documentation and affirmations as the Attorney General may determine to be necessary and appropriate. In the event the Attorney General determines that multiple consumers have been injured by a licensed provider, the Attorney General shall cause a notice to be published for the purpose of identifying all relevant claims.

(d) The Attorney General may refuse release of an irrevocable letter of credit, following the surrender of a license, up to two years after the effective date of such termination of licensure.

Section 2415A. REQUIREMENT OF GOOD FAITH.

A provider shall act in good faith in all matters under this chapter.

Section 2416A. CUSTOMER SERVICE.

A provider that is required to be licensed under this chapter shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a certified counselor or customer-service representative, as appropriate, during ordinary business hours.

Section 2417A. PREREQUISITES FOR PROVIDING DEBT-MANAGEMENT SERVICES.

(a) Before providing debt-management services, a licensed provider shall give the individual an itemized list of goods and services and the charges for each. The list must be clear and conspicuous, be in a record the individual may keep whether or not the individual assents to an agreement, and describe the goods and services the provider offers:

(1) free of additional charge if the individual enters into an agreement;

(2) for a charge if the individual does not enter into an agreement; and

(3) for a charge if the individual enters into an agreement with a provider that holds money on behalf of an individual to pay creditors, using the following terminology, as applicable, and format:

Set-up fee _____
dollar amount of fee

Monthly service fee _____
dollar amount of fee or method of determining amount

Settlement fee _____
dollar amount of fee or method of determining amount

Goods and services in addition to those provided in connection with a plan:

(item) _____
dollar amount or method of determining amount

(item) _____
dollar amount or method of determining amount.

(4) For a charge if the individual enters into an agreement with a provider who does not hold money on behalf of a debt to pay creditors, using the following terminology, as applicable, and format:

Non Refundable Set-Up fee _____
Dollar amount of fee

Monthly service fee _____
Dollar amount of monthly service fee or the aggregate amount for the term of the plan or method of determining amount

Settlement fee _____
Dollar amount of fee or method of determining amount

Goods and services in addition to those provided in connection with a plan:

(item) _____
Dollar amount or method of determining amount

(item) _____
Dollar amount or method of determining amount

The maximum fee that you may be required to pay is 18% of the principal amount of the debt, and includes the set-up fee, monthly fee, settlement fee, or other service charges.

(b) A provider may not furnish debt-management services unless the provider, through the services of a certified counselor:

(1) provides the individual with reasonable education about the management of personal finance;

(2) has prepared a financial analysis; and

(3) if the individual is to make regular, periodic payments:

(A) has prepared a plan for the individual;

(B) has made a determination, based on the provider's analysis of the information provided by the individual and otherwise available to it, that the plan is suitable for the individual and the individual will be able to meet the payment obligations under the plan or that the creditor will likely engage in negotiations with the provider; and

(C) believes that each creditor of the individual listed as a participating creditor in the plan will accept likely payment of the individual's debts as provided in the plan.

(c) Before an individual assents to an agreement to engage in a plan, a provider shall:

(1) provide the individual with a copy of the analysis and plan required by subsection (b) in a record that identifies the provider and that the individual may keep whether or not the individual assents to the agreement;

(2) inform the individual of the availability, at the individual's option, of assistance by a toll-free communication system or in person to discuss the financial analysis and plan required by subsection (b); and

(3) with respect to all creditors identified by the individual or otherwise known by the provider to be creditors of the individual, inform the individual that some creditors may be unwilling to negotiate with the provider.

(d) Before an individual assents to an agreement to engage in a plan, the provider shall inform the individual, in a record that contains nothing else, that is given separately, and that the individual may keep whether or not the individual assents to the agreement:

(1) of the name and business address of the provider;

(2) that plans are not suitable for all individuals and the individual may ask the provider about other ways, including bankruptcy, to deal with indebtedness;

(3) that establishment of a plan may adversely affect the individual's credit rating or credit scores;

(4) that nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including litigation;

(5) unless it is not true, that the provider may receive compensation from the creditors of the individual; and

(6) that, unless the individual is insolvent, if a creditor settles for less than the full amount of the debt, the plan may result in the creation of taxable income to the individual, even though the individual does not receive any money.

(e) If a provider may receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may comply with subsection (d) by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

- (1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.
- (2) Using a debt-management plan may hurt your credit rating or credit scores.
- (3) We may receive compensation for our services from your creditors.

Name and business address of provider

(f) If a provider will not receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, a provider may comply with subsection (d) by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

- (1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.
- (2) Using a debt-management plan may hurt your credit rating or credit scores.

Name and business address of provider

(g) If a plan contemplates that creditors will settle debts for less than the full principal amount of debt owed, a provider may comply with subsection (d) by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

- (1) Our program is not right for all individuals, and you may ask us to provide information about bankruptcy and other ways to deal with your debts.
- (2) Nonpayment of your debts under our program may
 - hurt your credit rating or credit scores;
 - lead your creditors to increase finance and other charges; and
 - lead your creditors to undertake activity, including lawsuits, to collect the debts.
- (3) Reduction of debt under our program may result in taxable income to you, even though you will not actually receive any money.

Name and business address of provider

Section 2418A. COMMUNICATION BY ELECTRONIC OR OTHER MEANS.

(a) In this section:

(1) “Federal act” means the Electronic Signatures in Global and National Commerce Act, 15 U.S.C.

Section 7001 et seq., as amended;

(2) “Consumer” means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.

(b) A provider may satisfy the requirements of Section 2417A, 2419A, or 2427A by means of the Internet or other electronic means if the provider obtains a consumer’s consent in the manner provided by Section 101(c)(1) of the federal act.

(c) The disclosures and materials required by Sections 2417A, 2419A, and 2427A shall be presented in a form that is capable of being accurately reproduced for later reference.

(d) With respect to disclosure by means of an Internet website, the disclosure of the information required by Section 2417A(d) must appear on one or more screens that:

(1) contain no other information; and

(2) the individual must see before proceeding to assent to formation of a plan.

(e) At the time of providing the materials and agreement required by Sections 2417A(c) and (d), 2419A, and 2427A, a provider shall inform the individual that upon electronic, telephonic, or written request, it will send the individual a written copy of the materials and shall comply with a request as provided in subsection (f).

(f) If a provider is requested, before the expiration of 90 days after a plan is completed or terminated, to send a written copy of the materials required by Section 2417A(c) and (d), 2419A or 2427A, the provider shall send them at no charge within three business days after the request, but the provider need not comply with a request more than once per calendar month or if it reasonably believes the request is made for purposes of harassment. If a request is made more than 90 days after a plan is completed or terminated, the provider shall send within a reasonable time a written copy of the materials requested.

(g) A provider that maintains an Internet website shall disclose on the home page of its website or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals its contents:

- (1) its name and all names under which it does business;
- (2) its principal business address, telephone number, and electronic-mail address, if any; and
- (3) the names of its principal officers.

(h) Subject to subsection (i), if a consumer who has consented to electronic communication in the manner provided by Section 101 of the federal act withdraws consent as provided in the federal act, a provider may terminate its agreement with the consumer.

(i) If a provider wishes to terminate an agreement with a consumer pursuant to subsection (h), it shall notify the consumer that it will terminate the agreement unless the consumer, within 30 days after receiving the notification, consents to electronic communication in the manner provided in Section 101(c) of the federal act. If the consumer consents, the provider may terminate the agreement only as permitted by Section 2419A(a)(6)(G).

Section 2419A. FORM AND CONTENTS OF AGREEMENT.

(a) An agreement must:

- (1) be in a record;
- (2) be dated and signed by the provider and the individual;
- (3) include the name of the individual and the address where the individual resides;
- (4) include the name, business address, and telephone number of the provider;
- (5) be delivered to the individual immediately upon formation of the agreement; and
- (6) disclose:
 - (A) the services to be provided;
 - (B) the amount or method of determining the amount of all fees, individually itemized, to be paid by the individual;
 - (C) the schedule of payments to be made by or on behalf of the individual, including the amount of each payment, the date on which each payment is due, and an estimate of the date of the final payment;
 - (D) if a plan provides for regular periodic payments to creditors:
 - (i) each creditor of the individual to which payment will be made, the amount owed to each creditor, and any concessions the provider reasonably believes each creditor will offer; and

(ii) the schedule of expected payments to each creditor, including the amount of each payment and the date on which it will be made;

(E) each creditor that the provider believes will not participate in the plan and to which the provider will not direct payment;

(F) how the provider will comply with its obligations under Section 2427A(a);

(G) that the provider may terminate the agreement for good cause, upon return of unexpended money of the individual;

(H) that the individual may cancel the agreement as provided in Section 2420A;

(I) that the individual may contact the Attorney General with any questions or complaints regarding the provider; and

(J) the address, telephone number, and Internet address or website of the Attorney General.

(b) For purposes of subsection (a)(5), delivery of an electronic record occurs when it is made available in a format in which the individual may retrieve, save, and print it and the individual is notified that it is available.

(c) If the Attorney General supplies the provider with any information required under subsection (a)(6)(J), the provider may comply with that requirement only by disclosing the information supplied by the Attorney General.

(d) An agreement must provide that:

(1) the individual has a right to terminate the agreement at any time, without penalty or obligation, by giving the provider written or electronic notice, in which event:

(A) the provider will refund all unexpended money that the provider or its agent has received from or on behalf of the individual for the reduction or satisfaction of the individual's debt;

(B) with respect to an agreement that contemplates that creditors will settle debts for less than the principal amount of debt, the provider will refund 65 percent of fees associated with that percentage of the principal amount remaining unsettled at the time of the termination; and

(C) all powers of attorney granted by the individual to the provider are revoked and ineffective;

(2) the individual authorizes any bank in which the provider or its agent has established a trust account to disclose to the Attorney General any financial records relating to the trust account; and

(3) the provider will notify the individual within five days after learning of a creditor's decision to reject or withdraw from a plan and that this notice will include:

(A) the identity of the creditor; and

(B) the right of the individual to modify or terminate the agreement.

(e) An agreement may confer on a provider a power of attorney to settle the individual's debt for no more than 50 percent of the amount of the debt. An agreement may not confer a power of attorney to settle a debt for more than 50 percent of that amount, but may confer a power of attorney to negotiate with creditors of the individual on behalf of the individual. An agreement must provide that the provider will obtain the assent of the individual after a creditor has assented to a settlement for more than 50 percent of the amount of the debt.

(f) An agreement may not:

(1) provide for application of the law of any jurisdiction other than the United States and this state;

(2) except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. Section 2, as amended, or the Delaware Uniform Arbitration Act, Chapter 57 of Title 10 of the Delaware Code, contain a provision that modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are generally available to the individual under law other than this chapter;

(3) contain a provision that restricts the individual's remedies under this chapter or law other than this chapter; or

(4) contain a provision that:

(A) limits or releases the liability of any person for not performing the agreement or for violating this chapter; or

(B) indemnifies any person for liability arising under the agreement or this chapter.

(g) All rights and obligations specified in subsection (d) and Section 2420A exist even if not provided in the agreement. A provision in an agreement which violates subsection (d), (e), or (f) is void.

Section 2420A. CANCELLATION OF AGREEMENT; WAIVER

(a) An individual may cancel an agreement before midnight of the third business day after the individual assents to it, unless the agreement does not comply with subsection (b) or Section 2419A or 2428A, in which event the individual may cancel the agreement within 30 days after the individual assents to it. To exercise the right to cancel, the individual must give notice in a record to the provider. Notice by mail is given when mailed.

(b) An agreement must be accompanied by a form that contains in bold-face type surrounded by bold black lines:

Notice of Right to Cancel

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

To cancel this agreement during this period, send an e-mail to _____ or mail or deliver a signed, dated copy
E-mail address of provider
of this notice, or any other written notice to _____
Name of provider
at _____ before midnight on _____.
Address of Provider *Date*

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

You also may terminate this agreement at any later time, but we are not required to refund fees you have paid us.

I cancel this agreement,

Print your name

Signature

Date

(c) If a personal financial emergency necessitates the disbursement of an individual's money to one or more of the individual's creditors before the expiration of three days after an agreement is signed, an individual may waive the right to cancel. To waive the right, the individual must send or deliver a signed, dated statement in the individual's own words describing the circumstances that necessitate a waiver. The waiver must explicitly waive the right to cancel. A waiver by means of a standard-form record is void.

Section 2421A. REQUIRED LANGUAGE.

Unless the Attorney General, by rule, provides otherwise, the disclosures and documents required by this chapter must be in English. If a provider communicates with an individual primarily in a language other than English, the provider must furnish a translation into the other language of the disclosures and documents required by this chapter.

Section 2422A. TRUST ACCOUNT.

(a) All money paid to a provider by or on behalf of an individual pursuant to a plan for distribution to creditors is held in trust. Within two business days after receipt, the provider shall deposit the money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services.

(b) Money held in trust by a provider is not property of the provider or its designee. The money is not available to creditors of the provider or designee, except an individual from whom or on whose behalf the provider received money, to the extent that the money has not been disbursed to creditors of the individual.

(c) A provider shall:

(1) maintain separate records of account for each individual to whom the provider is furnishing debt-management services;

(2) disburse money paid by or on behalf of the individual to creditors of the individual as disclosed in the agreement, except that:

(A) the provider may delay payment to the extent that a payment by the individual is not final;

and

(B) if a plan provides for regular periodic payments to creditors, the disbursement must comply with the due dates established by each creditor; and

(3) promptly correct any payments that are not made or that are misdirected as a result of an error by the provider or other person in control of the trust account and reimburse the individual for any costs or fees imposed by a creditor as a result of the failure to pay or misdirection.

(d) A provider may not commingle money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services with money of other persons.

(e) A trust account must at all times have a cash balance equal to the sum of the balances of each individual's account.

(f) If a provider has established a trust account pursuant to subsection (a), the provider shall reconcile the trust account at least once a month. The reconciliation must compare the cash balance in the trust account with the

sum of the balances in each individual's account. If the provider or its designee has more than one trust account, each trust account must be individually reconciled.

- (g) If a provider discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the provider immediately shall notify the Attorney General by a method approved by the Attorney General. Unless the Attorney General by rule provides otherwise, within five days thereafter, the provider shall give notice to the Attorney General describing the remedial action taken or to be taken.
- (h) If an individual terminates an agreement or it becomes reasonably apparent to a provider that a plan has failed, the provider shall promptly refund to the individual all money paid by or on behalf of the individual which has not been paid to creditors, less fees that are payable to the provider under Section 2423A.
- (i) Before relocating a trust account from one bank to another, a provider shall inform the Attorney General of the name, business address, and telephone number of the new bank. As soon as practicable, the provider shall inform the Attorney General of the account number of the trust account at the new bank.
- (j) All providers shall maintain an overdraft notification agreement with every bank at which they have established the trust accounts required by this section.

(1) An overdraft notification agreement shall require the bank to notify the Attorney General in the event that any instrument in properly payable form is presented against a provider's trust account containing insufficient funds, irrespective of whether or not the instrument is honored.

(2) In the case of dishonored instruments, the notice shall be identical to the overdraft notice customarily sent to the depositor, and a copy of the dishonored instrument shall be sent to the Attorney General no later than seven days following the Attorney General's request for such a copy.

(3) In the case of instruments that are presented against insufficient funds, but which instruments are honored, the notice shall identify the provider, the bank, the account number, the amount of the overdraft, the date of presentation for payment, and the date paid.

(4) Reports shall be made simultaneously with, and within the time provided for, notice of dishonor. If an instrument presented against insufficient funds is honored, the notice shall be made within seven days of the date of presentation for payment against insufficient funds.

(k) Every provider shall be deemed as a condition of licensure to have consented to the reporting and production requirements mandated by this section, and banks may charge providers for the reasonable costs of providing those notices and records.

(l) A provider shall be deemed not to hold a trust account for disbursement to creditors if such client funds are either

(1) Retained by the client in a bank of their choosing at all times prior to their disbursement to the clients' creditors; or

(2) Deposited by the client in a bank or with a third party designated by the provider, in an account having the following characteristics:

(A) It is in the name of the client;

(B) It is not subject to claims of the creditors of any party other than the client; or

(C) The client exercises full control over all aspects of the account.

Section 2423A. FEES AND OTHER CHARGES.

(a) A provider may not impose directly or indirectly a fee or other charge on an individual or receive money from or on behalf of an individual for debt-management services except as permitted by this section.

(b) A provider may not impose charges or receive payment for debt-management services until the provider and the individual have signed an agreement that complies with Sections 2419A and 2428A.

(c) If an individual assents to an agreement, a provider may not impose a fee or other charge for educational or counseling services, or the like, except as otherwise provided in this subsection and Section 2428A(d). The Attorney General may authorize a provider to charge a fee based on the nature and extent of the educational or counseling services furnished by the provider.

(d) Subject to adjustment of dollar amounts pursuant to Section 2432A(f), the following rules apply:

(1) If an individual assents to a plan that contemplates that creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may charge:

(A) a fee not exceeding \$50 for consultation, obtaining a credit report, setting up an account, and the like; and

(B) a monthly service fee, not to exceed \$10 times the number of creditors remaining in a plan at the time the fee is assessed, but not more than \$50 in any month.

(2) If an individual assents to a plan that contemplates that creditors will settle debts for less than the principal amount of the debt, a provider may charge:

- (A) subject to Section 2419A(d), a nonrefundable fee for consultation, obtaining a credit report,
- (B) a monthly service fee,
- (C) a settlement fee. In no case shall aggregate fees exceed 18 percent of the total principal amount of the debt.

(3) A provider may not impose or receive fees under both paragraphs (1) and (2).

(4) Except as otherwise provided in Section 2428A(d), if an individual does not assent to an agreement, a provider may receive for educational and counseling services it provides to the individual a fee not exceeding \$100 or, with the approval of the Attorney General, a larger fee. The Attorney General may approve a fee larger than \$100 if the nature and extent of the educational and counseling services warrant the larger fee.

(e) If, before the expiration of 90 days after the completion or termination of educational or counseling services, an individual assents to an agreement, the provider shall refund to the individual any fee paid pursuant to subsection (d)(4).

(f) Except as otherwise provided in subsections (c) and (d), if a plan contemplates that creditors will settle an individual's debts for less than the principal amount of the debt, compensation for services in connection with settling a debt may not exceed, with respect to each debt:

(1) 18 percent of the principal amount; less

(2) to the extent it has not been credited against an earlier settlement fee:

(A) the fee charged pursuant to subsection (d)(2)(A); and

(B) the aggregate of fees charged pursuant to subsection (d)(2)(B).

(g) Subject to adjustment of the dollar amount pursuant to Section 2432A(f), if a payment to a provider by an individual under this chapter is dishonored, a provider may impose a reasonable charge on the individual, not to exceed the lesser of \$25 and the amount permitted by law other than this chapter.

Section 2424A. VOLUNTARY CONTRIBUTIONS.

A provider may not solicit a voluntary contribution from an individual or an affiliate of the individual for any service provided to the individual. A provider may accept voluntary contributions from an individual but, until 30 days after

completion or termination of a plan, the aggregate amount of money received from or on behalf of the individual may not exceed the total amount the provider may charge the individual under Section 2423A.

Section 2425A. VOIDABLE AGREEMENTS.

(a) If a provider imposes a fee or other charge or receives money or other payments not authorized by Section 2423A or 2424A, the individual may void the agreement and recover as provided in Section 2435A.

(b) If a provider is not licensed as required by this chapter when an individual assents to an agreement, the agreement is voidable by the individual.

(c) If an individual voids an agreement under subsection (b), the provider does not have a claim against the individual for breach of contract or for restitution.

Section 2426A. TERMINATION OF AGREEMENTS.

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

(b) If a provider holds money on behalf of a debtor to pay creditors and a provider or an individual terminates an agreement, the provider shall immediately return to the individual:

(1) any money of the individual held in trust for the benefit of the individual; and

(2) 65 percent of any portion of the set-up fee received pursuant to Section 2423A(d)(2) which has not been credited against settlement fees.

(c) If a provider does not hold money on behalf of a debtor to pay creditors and if a provider or an individual terminates an agreement, the provider shall immediately return to the individual 65 percent of fees associated with that percentage of the principal amount remaining unsettled at the time of termination.

Section 2427A. PERIODIC REPORTS AND RETENTION OF RECORDS.

(a) A provider shall provide the accounting required by subsection (b):

(1) upon cancellation or termination of an agreement; and

(2) before cancellation or termination of any agreement:

(A) at least once each month; and

(B) within five business days after a request by an individual, but the provider need not comply with more than one request in any calendar month.

(b) A provider, in a record, shall provide each individual for whom it has established a plan an accounting of the following information:

- (1) the amount of money received from the individual since the last report;
- (2) the amounts and dates of disbursement made on the individual's behalf, or by the individual upon the direction of the provider, since the last report to each creditor listed in the plan;
- (3) the amounts deducted from the amount received from the individual;
- (4) the amount held in reserve; and
- (5) if, since the last report, a creditor has agreed to accept as payment in full an amount less than the principal amount of the debt owed by the individual:

- (A) the total amount and terms of the settlement;
- (B) the amount of the debt when the individual assented to the plan;
- (C) the amount of the debt when the creditor agreed to the settlement; and
- (D) the calculation of a settlement fee.

(c) A provider shall maintain records for each individual for whom it provides debt-management services for a minimum of five years after the final payment made by the individual and produce a copy of them to the individual within a reasonable time after a request for them.

- (d)
- (1) Every provider shall maintain such books, accounts and records relating to all transactions within this chapter as will enable the Attorney General to enforce full compliance with this chapter;
 - (2) All books, accounts and records of the provider shall be preserved and kept available as provided in this chapter or for such longer period of time as the Attorney General may by regulation require; and
 - (3) The Attorney General may prescribe the minimum information to be shown in such books, accounts and records of the provider so that such records will enable the Attorney General to determine compliance with this chapter.

(e) The provider may use electronic or other means of storage of all books, accounts and records that it is required to maintain.

Section 2428A. PROHIBITED ACTS AND PRACTICES.

(a) A provider may not, directly or indirectly:

- (1) misappropriate or misapply money held in trust;
- (2) settle a debt on behalf of an individual for more than 50 percent of the amount of the debt owed a creditor, unless the individual assents to the settlement after the creditor has assented;
- (3) take a power of attorney that authorizes it to settle a debt, unless the power of attorney expressly limits the provider's authority to settle debts for not more than 50 percent of the amount of the debt owed a creditor;
- (4) exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;
- (5) initiate a transfer from an individual's account at a bank or with another person unless the transfer is:

- (A) a return of money to the individual; or

- (B) before termination of an agreement, properly authorized by the agreement and this chapter, and for:

- (i) payment to one or more creditors pursuant to a plan; or

- (ii) payment of a fee;

- (6) offer a gift or bonus, premium, reward, or other compensation to an individual for executing an agreement;
- (7) offer, pay, or give a gift or bonus, premium, reward, or other compensation to a person for referring a prospective customer, if the person making the referral has a financial interest in the outcome of debt-management services provided to the customer, unless neither the provider nor the person making the referral communicates to the prospective customer the identity of the source of the referral;
- (8) receive a bonus, commission, or other benefit for referring an individual to a person;
- (9) structure a plan in a manner that would result in a negative amortization of any of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt;
- (10) compensate its employees on the basis of a formula that incorporates the number of individuals the employee induces to enter into agreements;

(11) settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification by the creditor that the payment is in full settlement of the debt;

(12) make a representation that:

(A) the provider will furnish money to pay bills or prevent attachments;

(B) payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or

(C) participation in a plan will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment;

(13) misrepresent that it is authorized or competent to furnish legal advice or perform legal services;

(14) represent that it is a not-for-profit entity unless it is organized and properly operating as a not-for-profit under the law of the state in which it was formed or that it is a tax-exempt entity unless it has received certification of tax-exempt status from the United States Internal Revenue Service;

(15) take a confession of judgment or power of attorney to confess judgment against an individual; or

(16) employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information.

(b) If a provider furnishes debt-management services to an individual, the provider may not, directly or indirectly:

(1) purchase a debt or obligation of the individual;

(2) receive from or on behalf of the individual:

(A) a promissory note or other negotiable instrument other than a check or a demand draft; or

(B) a post-dated check or demand draft;

(3) lend money or provide credit to the individual, except as a deferral of a settlement fee at no additional expense to the individual;

(4) obtain a mortgage or other security interest from any person in connection with the services provided to the individual;

(5) except as permitted by federal law, disclose the identity or identifying information of the individual or the identity of the individual's creditors, except to:

(A) the Attorney General, upon proper demand;

(B) a creditor of the individual, to the extent necessary to secure the cooperation of the creditor in a plan; or

(C) the extent necessary to administer the plan;

(6) except as otherwise provided in Section 2423A(f), provide the individual less than the full benefit of a compromise of a debt arranged by the provider;

(7) charge the individual for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt-management services or educational services concerning personal finance;

(8) furnish legal advice or perform legal services, unless the person furnishing that advice to or performing those services for the individual is licensed to practice law; or

(9) advise, encourage, or suggest to the individual not to make payment to creditors while under the plan.

(c) This chapter does not authorize any person to engage in the practice of law.

(d) A provider may not receive a gift or bonus, premium, reward or other compensation, directly or indirectly, for advising, arranging, or assisting an individual in connection with obtaining an extension of credit or other service from a lender or service provider, except for educational or counseling services required in connection with a government-sponsored program.

(e) Unless a person supplies goods, services, or facilities generally and supplies them to the provider at a cost no greater than the cost the person generally charges to others, a provider may not purchase goods, services, or facilities from the person if an employee or a person that the provider should reasonably know is an affiliate of the provider:

(1) owns more than 10 percent of the person; or

(2) is an employee or affiliate of the person.

Section 2429A. NOTICE OF LITIGATION.

No later than 30 days after a provider has been served with notice of a civil action for violation of this chapter by or on behalf of an individual who resides in this state at either the time of an agreement or the time the notice is served, the provider shall notify the Attorney General in a record that it has been sued.

Section 2430A. ADVERTISING.

A provider that advertises debt-management services shall disclose in an easily comprehensible manner the information specified in Section 2417A(d)(3) and (4).

Section 2431A. LIABILITY FOR THE CONDUCT OF OTHER PERSONS.

If a provider delegates any of its duties or obligations under an agreement or this chapter to another person, including an independent contractor, the provider is liable for conduct of the person which, if done by the provider, would violate the agreement or this chapter.

Section 2432A. POWERS OF ATTORNEY GENERAL.

(a) The Attorney General may act on the Attorney General's own initiative or in response to complaints, and may receive complaints, take action to obtain voluntary compliance with this chapter, and seek or provide remedies as provided in this chapter.

(b) Every provider licensed under this chapter, or other person to whom a provider has delegated its obligations under an agreement or this chapter, shall be subject to the supervision and examination of the Attorney General and shall be examined by the Attorney General or the Attorney General's authorized representative annually or at such intervals as the Attorney General deems necessary.

(1) On the occasion of every examination, the Attorney General or the Attorney General's authorized representative shall be given access to every part of the office or place of business visited and to the assets, securities, books, records and papers of the business;

(2) The examination made by the Attorney General or the Attorney General's authorized representative shall be a thorough examination into the affairs of the business visited, the resources and liabilities, the investment of the funds, the mode of conducting the business and the compliance or noncompliance with this Code and any other statutes of the state; and in connection with such examination, the Attorney General or the Attorney General's authorized representative may examine, under oath or affirmation, any and all persons connected with or associated with the licensed provider.

(3) If, in the Attorney General's opinion, it is necessary for a thorough examination of a licensed provider, the Attorney General may retain one or more accountants, attorneys, appraisers or other third parties to assist the Attorney General in such examination. Within 10 days after receipt of a statement from the Attorney General, such licensed provider shall pay or reimburse the fees, costs and expenses of any third parties retained by the Attorney General under this subsection.

(c) The Attorney General may seek a court order authorizing seizure from a bank at which the person maintains a trust account required by Section 2422A, any or all money, books, records, accounts, and other property of the provider that is in the control of the bank and relates to individuals who reside in this state.

(d) The Attorney General may enter into cooperative arrangements with any other federal or state agency having authority over providers and may exchange with any of those agencies information about a provider, including information obtained during an examination of the provider.

(e) The Attorney General shall assess fees to be paid by providers for the expense of administering this chapter, including examination, application and renewal fees, in accordance with this chapter. All fees shall be paid to the State Consumer Protection Fund created under Section 2527 of this title.

(f) The Attorney General may adopt dollar amounts instead of those specified in Sections 2402A, 2409A, and 2423A to reflect inflation, as measured by the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers or, if that index is not available, another index adopted by rule by the Attorney General. The Attorney General shall adopt a base year and adjust the dollar amounts, effective on July 1 of each year, if the change in the index from the base year, as of December 31 of the preceding year, is at least 10 percent. The dollar amount must be rounded to the nearest \$100, except that the amounts in Section 2423A must be rounded to the nearest dollar.

(g) The Attorney General shall notify licensed providers of any change in dollar amounts made pursuant to subsection (f) and make that information available to the public.

(h) The Attorney General may adopt such regulations, not inconsistent herewith, as the Attorney General may deem necessary or appropriate in the administration, interpretation and enforcement of this chapter. Subchapter II of the Delaware Administrative Procedures Act, Ch. 101 of Title 29 shall apply to the procedures for adopting such regulations.

Section 2433A. ADMINISTRATIVE REMEDIES.

(a) In addition to any other enforcement method specified in this Code, the Attorney General may enforce this chapter and the rules adopted under this chapter by taking one or more of the following actions:

- (1) ordering a provider or a director, employee, or other agent of a provider to cease and desist from any violations;
- (2) ordering a provider or a person that has caused a violation to correct the violation, including making restitution of money or property to a person aggrieved by a violation;

(3) imposing on a provider or a person that has caused a violation a civil penalty not exceeding \$50,000 for each violation;

(4) prosecuting a civil action to:

(A) enforce an order; or

(B) obtain restitution or an injunction or other equitable relief, or both;

(5) intervening in an action brought under Section 2435A.

(b) If a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under subsection (a)(1) or (2), the Attorney General may impose a civil penalty not exceeding \$75,000 for each violation.

(c) In determining the amount of a civil penalty to impose under subsection (a) or (b), the Attorney General shall consider the seriousness of the violation, the good faith of the violator, any previous violations by the violator, the deleterious effect of the violation on the public, the net worth of the violator, and any other factor the Attorney General considers relevant to the determination of the civil penalty.

(d) Any civil penalty imposed under subsections (a) or (b) shall be paid to the State Treasurer for deposit in the General Fund.

(e) Service of any notice or order issued pursuant to subsections (a)(1), (2), (3) or (b) may be effected in any manner that is allowed for service of a complaint in the Superior Court of this state.

(f) The Attorney General may recover from the violator all reasonable costs of enforcing this chapter under subsections (a) and (b), including attorney's fees based on the hours reasonably expended and the hourly rates for attorneys of comparable experience in the community, and also including the compensation of all employees of the Attorney General's office based on the time they reasonably expended on the matter.

(g) (1) Except as provided in paragraph (2) of this subsection, an order issued under subsections (a)(1), (2), (3), or (b) shall not become effective less than 10 days after the order is served. After an order is served, but before its effective date, any interested party may petition the Attorney General for a hearing. At the conclusion of such hearing, the Attorney General may affirm the order as originally issued, or modify, amend or rescind the order.

(2) Whenever in the opinion of the Attorney General, the violation that is the subject of an order under subsection (a)(1) or (2) represents an immediate danger or substantial harm to the interests of any person aggrieved by a violation or the public, or where such violation or its continuance is likely to cause insolvency or substantial dissipation of the assets of a provider, the Attorney General may issue an order which shall become effective immediately upon service,

without prior notice or hearing. Upon application of any interested party, the Attorney General shall afford an opportunity for a hearing to consider rescission of that order or any action taken promptly thereafter.

(3) Upon receipt of a hearing request, the Attorney General shall conduct a proceeding pursuant to Subchapter III of the Delaware Administrative Procedures Act, Chapter 101 of Title 29. Notwithstanding any other provision of this Code, any final order under this section will be a public record.

Section 2434A. SUSPENSION, REVOCATION, OR NONRENEWAL OF LICENSE.

(a) In this section “insolvent” means:

- (1) having generally ceased to pay debts in the ordinary course of business other than as a result of good-faith dispute;
- (2) being unable to pay debts as they become due; or
- (3) being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C. Section 101 et seq., as amended.

(b) The Attorney General may suspend, revoke, or deny renewal of a provider’s license if:

- (1) a fact or condition exists that, if it had existed when the licensed provider applied for its provider license, would have been a reason for denying the license;
- (2) the provider has committed a material violation of this chapter or a rule or order of the Attorney General under this chapter;
- (3) the provider is insolvent;
- (4) the provider or an employee or affiliate of the provider has refused to permit the Attorney General to make an examination authorized by this chapter; or
- (5) the provider has not responded within a reasonable time and in an appropriate manner to communications from the Attorney General.

(c) If a provider does not comply with Section 2422A(f) or if the Attorney General otherwise finds that the public health or safety or general welfare requires emergency action, the Attorney General may order a summary suspension of the provider’s license, effective on the date specified in the order.

(d) If the Attorney General suspends, revokes, or denies the renewal of a provider license, the Attorney General may seek a court order authorizing seizure of any or all of the money in a trust account required by Section 2422A, as well as all books, records, accounts, and other property of the provider which are located in this state.

(e) If the Attorney General makes a preliminary determination to suspend or revoke a provider's license, the provider may file a request for a hearing with the Attorney General pursuant to Subchapter IV of the Delaware Administrative Procedures Act, Chapter 101 of Title 29. The Attorney General's preliminary determination may become a final decision if such a request is not timely filed. Notwithstanding any other provisions of this Code, any final order under this section will be a public record.

Section 2435A. PRIVATE ENFORCEMENT.

(a) If an individual voids an agreement pursuant to Section 2425A(b), the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except amounts paid to creditors, in addition to the recovery under subsection (c)(3) and (4).

(b) If an individual voids an agreement pursuant to Section 2425A(a), the individual may recover in a civil action three times the total amount of the fees, charges, money, and payments made by the individual to the provider, in addition to the recovery under subsection (c)(4).

(c) Subject to subsection (d), an individual with respect to whom a provider violates this chapter may recover in a civil action from the provider and any person that caused the violation:

(1) compensatory damages for injury, including non-economic injury, caused by the violation;

(2) except as otherwise provided in Subsection (d), with respect to a violation of Sections 2417A, 2419A, 2420A, 2421A, 2422A, 2423A, 2424A, 2427A, or 2428A(a), (b), or (d), the greater of the amount recoverable under paragraph (1) or \$5,000;

(3) punitive damages; and

(4) reasonable attorney's fees and costs.

(d) In a class action, except for a violation of Section 2428A(a)(5), the minimum damages provided in subsection (c)(2) do not apply.

(e) In addition to the remedy available under subsection (c), if a provider violates an individual's rights under Section 2420A, the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except for amounts paid to creditors.

(f) A provider is not liable under this section for a violation of this chapter if the provider proves that the violation was not intentional and resulted from a good-faith error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. An error of legal judgment with respect to a provider's obligations under this chapter is not a

good-faith error. If in connection with a violation, the provider has received more money than authorized by an agreement or this chapter, the defense provided by this subsection is not available unless the provider refunds the excess within two business days of learning of the violation.

(g) The Attorney General shall assist an individual in enforcing a judgment against the surety bond or other security provided under Section 2413A or 2414A.

Section 2436A. VIOLATION OF UNFAIR OR DECEPTIVE PRACTICES STATUTE.

If an act or practice of a provider violates both this chapter and Chapter 25 of Title 6, an individual may not recover under both for the same act or practice.

Section 2437A. STATUTE OF LIMITATIONS.

(a) An action or proceeding brought pursuant to Section 2433A(a), (b), or (c) must be commenced within four years after the conduct that is the basis of the Attorney General's complaint.

(b) An action brought pursuant to Section 2435A must be commenced within three years after the latest of:

(1) the individual's last transmission of money to a provider;

(2) the individual's last transmission of money to a creditor at the direction of the provider;

(3) the provider's last disbursement to a creditor of the individual;

(4) the provider's last accounting to the individual pursuant to Section 2427A(a);

(5) the date on which the individual discovered or reasonably should have discovered the facts giving rise to the individual's claim; or

(6) termination of actions or proceedings by the Attorney General with respect to a violation of the chapter.

(c) The period prescribed in subsection (b)(5) is tolled during any period during which the provider or, if different, the defendant has materially and willfully misrepresented information required by this chapter to be disclosed to the individual if the information so misrepresented is material to the establishment of the liability of the defendant under this chapter.

Section 2438A. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

Section 2439A. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that Act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. Section 7003(b)).”

Section 2. SEVERABILITY.

If any provision of this Act or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this Act that can be given effect without the invalid provision or application, and to this end the provisions of this Act are severable.

Section 3. TRANSITIONAL PROVISIONS; APPLICATION TO EXISTING TRANSACTIONS.

Transactions entered into before this Act takes effect and the rights, duties, and interests resulting from them may be completed, terminated, or enforced as required or permitted by a law amended, repealed, or modified by this Act as though the amendment, repeal, or modification had not occurred.

Section 4. EXEMPTION FROM CHAPTER 24 OF TITLE 6

Amend Section 2402(b)(4) of Title 6 of the Delaware Code by inserting the phrase "or Chapter 24A of Title 6" after the phrase "Chapter 22 of Title 5".

Section 5. Amend §910 of Title 11 of the Delaware Code in the second undesignated paragraph by deleting the phrase “nonprofit or charitable corporation or association which engages in debt adjusting even though the nonprofit corporation or association may charge and collect nominal sums as reimbursement for expenses in connection with such services”, and by substituting in lieu thereof: “provider which is licensed under Chapter 24A of Title 6.”

Section 6. EFFECTIVE DATE

This Act takes effect six months after enactment.