



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

HOUSE OF REPRESENTATIVES

143rd GENERAL ASSEMBLY

HOUSE BILL NO. 430

AN ACT TO AMEND TITLES 5, 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:

1 Section 1. Amend Title 5 of the Delaware Code by adding a new Chapter 35 to read as follows:

2 "CHAPTER 35. DEBT-MANAGEMENT SERVICES

3 Section 3501. SHORT TITLE.

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

5 Section 3502. DEFINITIONS.

6 In this chapter:

7 (1) "Affiliate":

8 (A) with respect to an individual, means:

9 (i) the spouse of the individual;

10 (ii) a sibling of the individual or the spouse of a sibling;

11 (iii) an individual or the spouse of an individual who is a lineal ancestor or lineal descendant of the  
12 individual or the individual's spouse;

13 (iv) an aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew,  
14 whether related by the whole or the half blood or adoption, or the spouse of any of them; or

15 (v) any other individual occupying the residence of the individual; and

16 (B) with respect to an entity, means:

17 (i) a person that directly or indirectly controls, is controlled by, or is under common control with the  
18 entity;

19 (ii) an officer of, or an individual performing similar functions with respect to, the entity;

- 20 (iii) a director of, or an individual performing similar functions with respect to, the entity;
- 21 (iv) subject to adjustment of the dollar amount pursuant to Section 3532(f), a person that receives or
- 22 received more than \$25,000 from the entity in either the current year or the preceding year or a
- 23 person that owns more than 10 percent of, or an individual who is employed by or is a director of, a
- 24 person that receives or received more than \$25,000 from the entity in either the current year or the
- 25 preceding year;
- 26 (v) an officer or director of, or an individual performing similar functions with respect to, a person
- 27 described in sub-subparagraph (i);
- 28 (vi) the spouse of, or an individual occupying the residence of, an individual described in sub-
- 29 subparagraphs (i) through (v); or
- 30 (vii) an individual who has the relationship specified in subparagraph (A)(iv) to an individual or the
- 31 spouse of an individual described in sub-subparagraphs (i) through (v).

32 (2) "Agreement" means an agreement between a provider and an individual for the performance of debt-management

33 services.

34 (3) "Bank" means a financial institution, including a commercial bank, savings bank, savings and loan association,

35 credit union, and trust company, engaged in the business of banking, chartered under federal or state law, and

36 regulated by a federal or state banking regulatory authority.

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

38 (5) "Certified counselor" means an individual certified by a training program or certifying organization, approved by

39 the Commissioner, that authenticates the competence of individuals providing education and assistance to other

40 individuals in connection with debt-management services.

41 (6) "Commissioner" means the State Bank Commissioner.

42 (7) "Concessions" means assent to repayment of a debt on terms more favorable to an individual than the terms of

43 the contract between the individual and a creditor.

44 (8) "Day" means calendar day.

45 (9) "Debt-management services" means services as an intermediary between an individual and one or more creditors

46 of the individual for the purpose of obtaining concessions, but does not include:

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

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

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

53 (i) licensed by this state;

54 (ii) subject to a disciplinary mechanism;

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

56 (iv) subject to a continuing-education requirement.

57 (10) "Entity" means a person other than an individual.

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

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

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

65 (14) "Principal amount of the debt" means the amount of a debt at the time of an agreement.

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

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

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

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

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

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

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

77 (20) "Trust account" means an account held by a provider that is:

78 (A) established in an insured bank;

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

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

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

83 Section 3503. EXEMPT AGREEMENTS AND PERSONS.

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

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

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

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

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

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

95 (2) a bank;

96 (3) an affiliate, as defined in Section 3502(1)(B)(i), of a bank if the affiliate is regulated by a federal or state  
97 banking regulatory authority; or

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

100 Section 3504. LICENSE AND NOT-FOR-PROFIT STATUS REQUIRED.

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

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

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

106 (d) A provider may be licensed only if it is:

107 (1) organized and properly operating as a not-for-profit entity under the law of the state in which it was  
108 formed; and

109 (2) exempt from taxation under the United States Internal Revenue Code, 26 U.S.C. Section 501, as amended.

110 Section 3505. APPLICATION FOR LICENSE: FORM, FEE, AND ACCOMPANYING DOCUMENTS.

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

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

113 (1) a nonrefundable fee of \$2,000.00, which shall be deposited in the State Treasury to the credit of the State  
114 Bank Commissioner Regulatory Revolving Fund created under § 105(b) of this title, to be used in the  
115 operation of the Office of the State Bank Commissioner as authorized by the General Assembly in its annual  
116 operating budget, notwithstanding any provision to the contrary in § 105(c);

117 (2) the bond required by Section 3513;

118 (3) identification of all trust accounts required by Section 3522, an irrevocable consent authorizing the  
119 Commissioner to review and examine the trust accounts, and the overdraft notification agreement required  
120 by Section 3522;

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

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

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

126 (C) with no deductible;

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

129 (E) not subject to cancellation by the applicant without the approval of the Commissioner; and  
130 (5) evidence of not-for-profit and tax-exempt status applicable to the applicant under the United States  
131 Internal Revenue Code, 26 U.S.C. Section 501 as amended.

132 Section 3506. APPLICATION FOR LICENSE: REQUIRED INFORMATION.

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

- 134 (1) the applicant's name, principal business address and telephone number, and all other business addresses in this  
135 state, electronic-mail addresses, and Internet website addresses;
- 136 (2) the name and address of the applicant's registered agent in this state;
- 137 (3) all names under which the applicant conducts business;
- 138 (4) the address of each location in this state at which the applicant will provide debt-management services or a  
139 statement that the applicant will have no such location;
- 140 (5) the name and home address of each officer and director of the applicant and each person that owns at least 10  
141 percent of the applicant;
- 142 (6) identification of every jurisdiction in which, during the five years immediately preceding the application:
- 143 (A) the applicant or any of its officers or directors has been licensed or registered to provide debt-  
144 management services; or
- 145 (B) individuals have resided when they received debt-management services from the applicant;
- 146 (7) a statement describing, to the extent it is known or should be known by the applicant, any material civil or  
147 criminal judgment or litigation and any material administrative or enforcement action by a governmental agency in  
148 any jurisdiction against the applicant, any of its officers, directors, owners, or agents, or any person who is  
149 authorized to have access to the trust account required by Section 3522;
- 150 (8) the applicant's financial statements, audited by an accountant licensed to conduct audits, for each of the two  
151 years immediately preceding the application or, if it has not been in operation for the two years preceding the  
152 application, for the period of its existence;
- 153 (9) evidence of accreditation by an independent accrediting organization approved by the Commissioner;
- 154 (10) evidence that, within 12 months after initial employment, each of the applicant's counselors becomes certified  
155 as a certified counselor;

- 156 (11) a description of the three most commonly used educational programs that the applicant provides or intends to  
157 provide to individuals who reside in this state and a copy of any materials used or to be used in those programs;
- 158 (12) a description of the applicant's financial analysis and initial budget plan, including any form or electronic model,  
159 used to evaluate the financial condition of individuals;
- 160 (13) a copy of each form of agreement that the applicant will use with individuals who reside in this state;
- 161 (14) the schedule of fees and charges that the applicant will use with individuals who reside in this state;
- 162 (15) at the applicant's expense, the results of a criminal-records check, including fingerprints, conducted within the  
163 immediately preceding 12 months, covering every officer of the applicant and every employee or agent of the  
164 applicant who is authorized to have access to the trust account required by Section 3522;
- 165 (16) the names and addresses of all employers of each director during the 10 years immediately preceding the  
166 application;
- 167 (17) a description of any ownership interest of at least 10 percent by a director, owner, or employee of the applicant  
168 in:
- 169 (A) any affiliate of the applicant; or
- 170 (B) any entity that provides products or services to the applicant or any individual relating to the applicant's  
171 debt-management services;
- 172 (18) a statement of the amount of compensation of the applicant's five most highly compensated employees for each  
173 of the three years immediately preceding the application or, if it has not been in operation for the three years  
174 preceding the application, for the period of its existence; and
- 175 (19) the identity of each director who is an affiliate, as defined in Section 3502(1)(A) or (B)(i), (ii), (iv), (v), (vi), or  
176 (vii), of the applicant; and
- 177 (20) any other information that the Commissioner reasonably requires to perform the Commissioner's duties under  
178 this chapter.

179 Section 3507. APPLICATION FOR LICENSE: OBLIGATION TO UPDATE INFORMATION.

180 An applicant or licensed provider shall notify the Commissioner within 10 days after a change in the information specified  
181 in Section 3505 or 3506.

182 Section 3508. APPLICATION FOR LICENSE: PUBLIC INFORMATION.

183 Except for the information required by Section 3506 (8), (15), and (18) and the addresses required by Section 3506(5), the  
184 Commissioner shall make the information in an application for a provider license available to the public.

185 Section 3509. LICENSE: ISSUANCE OR DENIAL.

186 (a) Except as otherwise provided in subsections (b) and (c), the Commissioner shall issue a provider license to a  
187 person that complies with Sections 3505 and 3506.

188 (b) The Commissioner may deny a license if:

189 (1) the application contains information that is materially erroneous or incomplete;

190 (2) an officer, director, or owner of the applicant has been convicted of a crime, or suffered a civil judgment,  
191 involving dishonesty or the violation of state or federal securities laws;

192 (3) the applicant or any of its officers, directors, or owners has defaulted in the payment of money collected  
193 for others; or

194 (4) the Commissioner finds that the financial responsibility, experience, character, or general fitness of the  
195 applicant or its owners, directors, employees, or agents does not warrant belief that the business will be  
196 operated in compliance with this chapter.

197 (c) The Commissioner shall deny a license if:

198 (1) the application is not accompanied by the fee established pursuant to this chapter; or

199 (2) the applicant's board of directors is not independent of the applicant's employees and agents.

200 (d) Subject to adjustment of the dollar amount pursuant to Section 3532(f), a board of directors is not independent for  
201 purposes of subsection (c) if more than one-fourth of its members:

202 (1) are affiliates of the applicant, as defined in Section 3502(1)(A) or (B)(i), (ii), (iv), (v), (vi), or (vii); or

203 (2) after the date 10 years before first becoming a director of the applicant, were employed by or directors of  
204 a person that received from the applicant more than \$25,000 in either the current year or the preceding year.

205 Section 3510. LICENSE: TIMING.

206 (a) The Commissioner shall approve or make a preliminary determination to deny an initial license as a provider  
207 within 120 days from the date that the Commissioner determines that the application as filed is complete. In connection with a  
208 request pursuant to Section 3506(20) for additional information, the Commissioner may extend the 120-day period for not more  
209 than 60 days. Within seven days after making a preliminary determination to deny an application, the Commissioner, in a record,  
210 shall inform the applicant of the reasons for the proposed denial.



211 (b) If the Commissioner makes a preliminary determination to deny an application for an initial license as a provider,  
212 the applicant may file a request for a hearing with the Commissioner pursuant to Subchapter IV of the Delaware Administrative  
213 Procedures Act, Chapter 101 of Title 29. The Commissioner's preliminary determination may become a final decision if such a  
214 request is not timely filed.

215 (c) Subject to Sections 3511(d) and 3534, a provider license is valid for one year after the date of issuance.

216 Section 3511. RENEWAL OF LICENSES.

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

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

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

221 (2) be accompanied by (i) a nonrefundable fee of \$1,000.00, which shall be deposited in the State Treasury to  
222 the credit of the State Bank Commissioner Regulatory Revolving Fund created under § 105(b) of this title, to  
223 be used in the operation of the Office of the State Bank Commissioner as authorized by the General  
224 Assembly in its annual operating budget, notwithstanding any provision to the contrary in § 105(c), and (ii)  
225 the bond required by Section 3513;

226 (3) contain the matter required for initial licensing as a provider by Section 3506(8) and (9) and a financial  
227 statement, audited by an accountant licensed to conduct audits, for the applicant's fiscal year immediately  
228 preceding the application;

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

231 (5) supply evidence of insurance in an amount equal to the larger of \$500,000 or the highest daily balance in  
232 the trust account required by Section 3522 during the six-month period immediately preceding the  
233 application;

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

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

238 (C) with no deductible;

239 (D) payable to the applicant, the individuals who have agreements with the applicant, and this  
240 state, as their interests may appear; and  
241 (E) not subject to cancellation by the applicant without the approval of the Commissioner;  
242 (6) disclose the total amount of money received by the applicant pursuant to plans during the preceding 12  
243 months from or on behalf of individuals who reside in this state and the total amount of money distributed to  
244 creditors of those individuals during that period;  
245 (7) disclose, to the best of the applicant's knowledge, the gross amount of money accumulated during the  
246 preceding 12 months pursuant to plans by or on behalf of individuals who reside in this state and with whom  
247 the applicant has agreements; and  
248 (8) provide any other information that the Commissioner reasonably requires to perform the Commissioner's  
249 duties under this chapter.

250 (c) Except for the information required by Section 3506(8), (15), and (18) and the addresses required by Section  
251 3506(5), the Commissioner shall make the information in an application for renewal of a provider license available to the public.

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

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

258 (f) Subject to Section 3534, while the final decision is pending, the applicant shall continue to provide debt-  
259 management services to individuals with whom it has agreements. If the Commissioner's final decision is to deny the application,  
260 subject to the Commissioner's order and Section 3534, the applicant shall continue to provide debt-management services to  
261 individuals with whom it has agreements until, with the Commissioner's approval, it transfers the agreements to another licensed  
262 provider or returns to the individuals all unexpended money that is under the applicant's control.

263 Section 3512. LICENSE IN ANOTHER STATE.

264 If a provider holds a license or certificate of registration in another state authorizing it to provide debt-management  
265 services, and the Commissioner has approved the application forms of that state for use under this chapter, the provider may submit

266 a copy of that license or certificate and the application for it in lieu of an application in the form prescribed by Sections 3505(a),  
267 3506, or 3511(b).

268 Section 3513. BOND REQUIRED.

269 (a) Except as otherwise provided in Section 3514, every licensed provider shall file with the Commissioner, in a  
270 form satisfactory to the Commissioner, an original corporate surety bond, with surety provided by a corporation authorized to  
271 transact business in this state, in the principal sum to be determined by the Commissioner, except that the bond amount shall not be  
272 less than \$500,000. In determining the amount of the bond required for a licensed provider, the Commissioner shall consider,  
273 among other things:

274 (1) the dollar value of the licensed provider's Delaware business;

275 (2) the dollar value of all trusts accounts; and

276 (3) such other and further criteria as the Commissioner may deem necessary and appropriate.

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

278 (1) the aggregate value of the bond shall be equal to or greater than the amount determined in accordance  
279 with subsection (a) of this section;

280 (2) the term of the bond shall be commensurate with the license period or continuous;

281 (3) the expiration date of the bond shall not be earlier than midnight of the date on which the license expires;  
282 and

283 (4) the bond shall run to the state for the benefit of the Office of the State Bank Commissioner and for the

284 benefit of all consumers injured by any wrongful act, omission, default, fraud or misrepresentation by a licensed provider in the  
285 course of its activity as a licensed provider. Compensation under the bond shall be for amounts which represent actual losses and  
286 shall not be payable for claims made by business creditors, third-party service providers, agents or persons otherwise in the employ  
287 of the licensed provider. Surety claims shall be paid to the Office of the State Bank Commissioner by the insurer not later than 90  
288 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  
289 the surety on the bond, exclusive of any interest which accrues for payments made after 90 days, shall in no event exceed the  
290 amount of such bond.

291 (c) If the licensed provider changes its surety company or the bond is otherwise amended, the licensed provider shall  
292 immediately provide the Commissioner with the amended original copy of the surety bond. No cancellation of any existing bond

293 by a surety shall be effective unless written notice of its intention to cancel is filed with the Commissioner at least 30 days before  
294 the date upon which cancellation shall take effect.

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

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

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

303 Section 3514. BOND REQUIRED: SUBSTITUTE.

304 (a) In lieu of requiring the filing of a surety bond, the Commissioner may, at the Commissioner's discretion, accept from a  
305 licensed provider an irrevocable letter of credit. Such irrevocable letters of credit shall be provided by an insured depository  
306 institution (as defined in the Federal Deposit Insurance Act at 12 U.S.C. Section 1813(c)) acceptable to the Commissioner, in a form  
307 satisfactory to the Commissioner in the principal sum to be determined by the Commissioner, except that the irrevocable letter of  
308 credit amount shall not be less than \$500,000. In determining the amount of the irrevocable letter of credit required for a licensed  
309 provider, the Commissioner shall consider, among other things:

310 (1) the dollar value of the licensed provider's Delaware business;

311 (2) the dollar value of all trust accounts; and

312 (3) such other and further criteria as the Commissioner may deem necessary and appropriate.

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

314 (1) the aggregate value of the irrevocable letter of credit shall be equal to or greater than the amount  
315 determined by subsection (a) of this section;

316 (2) the irrevocable letter of credit shall run to the state for the benefit of The Office of the State Bank  
317 Commissioner and for the benefit of all consumers injured by the wrongful act, omission, default, fraud  
318 or misrepresentation by a licensed provider in the course of its activity as a licensed provider.

319 Compensation under the irrevocable letter of credit shall be for amounts which represent actual losses  
320 and shall not be payable for claims made by business creditors, third-party service providers, agents or

321 persons otherwise in the employ of the licensed provider. The aggregate liability of the insured  
322 depository institution issuing the irrevocable letter of credit shall in no event exceed the amount of such  
323 irrevocable letter of credit; and

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

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

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

332 Section 3515. REQUIREMENT OF GOOD FAITH.

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

334 Section 3516. CUSTOMER SERVICE.

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

338 Section 3517. PREREQUISITES FOR PROVIDING DEBT-MANAGEMENT SERVICES.

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

- 342 (1) free of additional charge if the individual enters into an agreement;
- 343 (2) for a charge if the individual does not enter into an agreement; and
- 344 (3) for a charge if the individual enters into an agreement, using the following terminology, as applicable, and

345 format:

346 Set-up fee \_\_\_\_\_

347 *dollar amount of fee*

348 Monthly service fee \_\_\_\_\_

349 *dollar amount of fee or method of determining amount*

350 Settlement fee \_\_\_\_\_

351 *dollar amount of fee or method of determining amount*

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

353 (item) \_\_\_\_\_

354 *dollar amount or method of determining amount*

355 (item) \_\_\_\_\_

356 *dollar amount or method of determining amount.*

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

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

360 (2) has prepared a financial analysis; and

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

362 (A) has prepared a plan for the individual;

363 (B) has made a determination, based on the provider's analysis of the information provided by the  
364 individual and otherwise available to it, that the plan is suitable for the individual and the individual  
365 will be able to meet the payment obligations under the plan; and

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

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

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

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

374 (3) with respect to all creditors identified by the individual or otherwise known by the provider to be creditors  
375 of the individual, provide the individual with a list of:

376 (A) creditors that the provider expects to participate in the plan and grant concessions;

377 (B) creditors that the provider expects to participate in the plan but not grant concessions;

378 (C) creditors that the provider expects not to participate in the plan; and

379 (D) all other creditors.

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

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

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

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

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

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

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

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

396 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

397

398 (1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways,  
399 including bankruptcy, to deal with your debts.

400 (2) Using a debt-management plan may hurt your credit rating or credit scores.

401 (3) We may receive compensation for our services from your creditors.

402

403 \_\_\_\_\_  
*Name and business address of provider*

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

407 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

408

409 (1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways,  
410 including bankruptcy, to deal with your debts.

411 (2) Using a debt-management plan may hurt your credit rating or credit scores.

412

413 \_\_\_\_\_  
*Name and business address of provider*

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

416 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

417 (1) Our program is not right for all individuals, and you may ask us to provide information about bankruptcy and other  
418 ways to deal with your debts.

419 (2) Nonpayment of your debts under our program may

420 ·hurt your credit rating or credit scores;

421 ·lead your creditors to increase finance and other charges; and

422 ·lead your creditors to undertake activity, including lawsuits, to collect the debts.

423 (3) Reduction of debt under our program may result in taxable income to you, even though you will not actually receive  
424 any money.

425

426 \_\_\_\_\_  
*Name and business address of provider*

427 **Section 3518. COMMUNICATION BY ELECTRONIC OR OTHER MEANS.**

428 (a) In this section:

429 (1) "Federal act" means the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section  
430 7001 et seq., as amended;



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

433 (b) A provider may satisfy the requirements of Section 3517, 3519, or 3527 by means of the Internet or other  
434 electronic means if the provider obtains a consumer's consent in the manner provided by Section 101(c)(1) of the federal act.

435 (c) The disclosures and materials required by Sections 3517, 3519, and 3527 shall be presented in a form that is  
436 capable of being accurately reproduced for later reference.

437 (d) With respect to disclosure by means of an Internet website, the disclosure of the information required by Section  
438 3517(d) must appear on one or more screens that:

439 (1) contain no other information; and

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

441 (e) At the time of providing the materials and agreement required by Sections 3517(c) and (d), 3519, and 3527, a  
442 provider shall inform the individual that upon electronic, telephonic, or written request, it will send the individual a written copy of  
443 the materials and shall comply with a request as provided in subsection (f).

444 (f) If a provider is requested, before the expiration of 90 days after a plan is completed or terminated, to send a  
445 written copy of the materials required by Section 3517(c) and (d), 3519 or 3527, the provider shall send them at no charge within  
446 three business days after the request, but the provider need not comply with a request more than once per calendar month or if it  
447 reasonably believes the request is made for purposes of harassment. If a request is made more than 90 days after a plan is completed  
448 or terminated, the provider shall send within a reasonable time a written copy of the materials requested.

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

451 (1) its name and all names under which it does business;

452 (2) its principal business address, telephone number, and electronic-mail address, if any; and

453 (3) the names of its principal officers.

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

457 (i) If a provider wishes to terminate an agreement with a consumer pursuant to subsection (h), it shall notify the  
458 consumer that it will terminate the agreement unless the consumer, within 30 days after receiving the notification, consents to

459 electronic communication in the manner provided in Section 101(c) of the federal act. If the consumer consents, the provider may  
460 terminate the agreement only as permitted by Section 3519(a)(6)(G).

461 Section 3519. FORM AND CONTENTS OF AGREEMENT.

462 (a) An agreement must:

463 (1) be in a record;

464 (2) be dated and signed by the provider and the individual;

465 (3) include the name of the individual and the address where the individual resides;

466 (4) include the name, business address, and telephone number of the provider;

467 (5) be delivered to the individual immediately upon formation of the agreement; and

468 (6) disclose:

469 (A) the services to be provided;

470 (B) the amount or method of determining the amount of all fees, individually itemized, to be paid by  
471 the individual;

472 (C) the schedule of payments to be made by or on behalf of the individual, including the amount of  
473 each payment, the date on which each payment is due, and an estimate of the date of the final  
474 payment;

475 (D) if a plan provides for regular periodic payments to creditors:

476 (i) each creditor of the individual to which payment will be made, the amount owed to each  
477 creditor, and any concessions the provider reasonably believes each creditor will offer; and

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

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

482 (F) how the provider will comply with its obligations under Section 3527(a);

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

485 (H) that the individual may cancel the agreement as provided in Section 3520;

486 (I) that the individual may contact the Commissioner with any questions or complaints regarding the  
487 provider; and

488 (J) the address, telephone number, and Internet address or website of the Commissioner.

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

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

493 (d) An agreement must provide that:

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

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

498 (B) with respect to an agreement that contemplates that creditors will settle debts for less than the  
499 principal amount of debt, the provider will refund 65 percent of any portion of the set-up fee that has not been credited against the  
500 settlement fee; and

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

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

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

506 (A) the identity of the creditor; and

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

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

513 (f) An agreement may not:

- 514 (1) provide for application of the law of any jurisdiction other than the United States and this state;
- 515 (2) except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. Section 2, as amended, or the
- 516 Delaware Uniform Arbitration Act, Chapter 57 of Title 10 of the Delaware Code, contain a provision that
- 517 modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are
- 518 generally available to the individual under law other than this chapter;
- 519 (3) contain a provision that restricts the individual's remedies under this chapter or law other than this
- 520 chapter; or
- 521 (4) contain a provision that:
- 522 (A) limits or releases the liability of any person for not performing the agreement or for violating this
- 523 chapter; or
- 524 (B) indemnifies any person for liability arising under the agreement or this chapter.
- 525 (g) All rights and obligations specified in subsection (d) and Section 3520 exist even if not provided in the
- 526 agreement. A provision in an agreement which violates
- 527 subsection (d), (e), or (f) is void.

528 Section 3520. CANCELLATION OF AGREEMENT; WAIVER

529 (a) An individual may cancel an agreement before midnight of the third business day after the individual assents to it,

530 unless the agreement does not comply with subsection (b) or Section 3519 or 3528, in which event the individual may cancel the

531 agreement within 30 days after the individual assents to it. To exercise the right to cancel, the individual must give notice in a

532 record to the provider. Notice by mail is given when mailed.

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

534 Notice of Right to Cancel

535 You may cancel this agreement, without any penalty or obligation, at any time before midnight of the third

536 business day that begins the day after you agree to it by electronic communication or by signing it.

537

538 To cancel this agreement during this period, send an e-mail to

539 \_\_\_\_\_ or mail or deliver a signed, dated copy *E-mail address of provider*

540 of this notice, or any other written notice to \_\_\_\_\_

541 *Name of provider*

542 at \_\_\_\_\_ before midnight on \_\_\_\_\_.

543 *Address of Provider* *Date*

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

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

546

547 I cancel this agreement,

548

\_\_\_\_\_

549 *Print your name*

550

\_\_\_\_\_

551 *Signature*

552

\_\_\_\_\_

553 *Date*

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

559 Section 3521. REQUIRED LANGUAGE.

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

563 Section 3522. TRUST ACCOUNT.

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

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

570 (c) A provider shall:

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

572 management services;

573 (2) disburse money paid by or on behalf of the individual to creditors of the individual as disclosed in the

574 agreement, except that:

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

576 (B) if a plan provides for regular periodic payments to creditors, the disbursement must comply with

577 the due dates established by each creditor; and

578 (3) promptly correct any payments that are not made or that are misdirected as a result of an error by the

579 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

580 result of the failure to pay or misdirection.

581 (d) A provider may not commingle money in a trust account established for the benefit of individuals to whom the

582 provider is furnishing debt-management services with money of other persons.

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

584 account.

585 (f) If a provider has established a trust account pursuant to subsection (a), the provider shall reconcile the trust

586 account at least once a month. The reconciliation must compare the cash balance in the trust account with the sum of

587 the balances in each individual's account. If the provider or its designee has more than one trust account, each trust

588 account must be individually reconciled.

589 (g) If a provider discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money

590 held in trust, the provider immediately shall notify the Commissioner by a method approved by the Commissioner.

591 Unless the Commissioner by rule provides otherwise, within five days thereafter, the provider shall give notice to

592 the Commissioner describing the remedial action taken or to be taken.

593 (h) If an individual terminates an agreement or it becomes reasonably apparent to a provider that a plan has failed,

594 the provider shall promptly refund to the individual all money paid by or on behalf of the individual which has not

595 been paid to creditors, less fees that are payable to the provider under Section 3523.

596 (i) Before relocating a trust account from one bank to another, a provider shall inform the Commissioner of the  
597 name, business address, and telephone number of the new bank. As soon as practicable, the provider shall inform  
598 the Commissioner of the account number of the trust account at the new bank.

599 (j) All providers shall maintain an overdraft notification agreement with every bank at which they have established  
600 the trust accounts required by this section.

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

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

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

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

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

616 Section 3523. FEES AND OTHER CHARGES.

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

619 (b) A provider may not impose charges or receive payment for debt-management services until the provider and the  
620 individual have signed an agreement that complies with Sections 3519 and 3528.

621 (c) If an individual assents to an agreement, a provider may not impose a fee or other charge for educational or  
622 counseling services, or the like, except as otherwise provided in this subsection and Section 3528(d). The

623 Commissioner may authorize a provider to charge a fee based on the nature and extent of the educational or  
624 counseling services furnished by the provider.

625 (d) Subject to adjustment of dollar amounts pursuant to Section 3532(f), the following rules apply:

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

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

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

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

634 (A) subject to Section 3519(d), a fee for consultation, obtaining a credit report, setting up an account,  
635 and the like, in an amount not exceeding the lesser of \$400 and four percent of the debt in the plan at  
636 the inception of the plan; and

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

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

640 (4) Except as otherwise provided in Section 3528(d), if an individual does not assent to an agreement, a  
641 provider may receive for educational and counseling services it provides to the individual a fee not exceeding  
642 \$100 or, with the approval of the Commissioner, a larger fee. The Commissioner may approve a fee larger  
643 than \$100 if the nature and extent of the educational and counseling services warrant the larger fee.

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

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



650 (1) 30 percent of the excess of the principal amount of the debt over the amount paid the creditor pursuant to  
651 the plan; less

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

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

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

655 (g) Subject to adjustment of the dollar amount pursuant to Section 3532(f), if a payment to a provider by an  
656 individual under this chapter is dishonored, a provider may impose a reasonable charge on the individual, not to  
657 exceed the lesser of \$25 and the amount permitted by law other than this chapter.

658 Section 3524. VOLUNTARY CONTRIBUTIONS.

659 A provider may not solicit a voluntary contribution from an individual or an affiliate of the individual for any service  
660 provided to the individual. A provider may accept voluntary contributions from an individual but, until 30 days after completion or  
661 termination of a plan, the aggregate amount of money received from or on behalf of the individual may not exceed the total amount  
662 the provider may charge the individual under Section 3523.

663 Section 3525. VOIDABLE AGREEMENTS.

664 (a) If a provider imposes a fee or other charge or receives money or other payments not authorized by Section 3523  
665 or 3524, the individual may void the agreement and recover as provided in Section 3535.

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

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

670 Section 3526. TERMINATION OF AGREEMENTS.

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

673 (b) If a provider or an individual terminates an agreement, the provider shall immediately return to the individual:

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

675 (2) 65 percent of any portion of the set-up fee received pursuant to Section 3523(d)(2) which has not been  
676 credited against settlement fees.

677 Section 3527. PERIODIC REPORTS AND RETENTION OF RECORDS.

678 (a) A provider shall provide the accounting required by subsection (b):  
679 (1) upon cancellation or termination of an agreement; and  
680 (2) before cancellation or termination of any agreement:  
681 (A) at least once each month; and  
682 (B) within five business days after a request by an individual, but the provider need not comply with  
683 more than one request in any calendar month.

684 (b) A provider, in a record, shall provide each individual for whom it has established a plan an accounting of the  
685 following information:  
686 (1) the amount of money received from the individual since the last report;  
687 (2) the amounts and dates of disbursement made on the individual's behalf, or by the individual upon the  
688 direction of the provider, since the last report to each creditor listed in the plan;  
689 (3) the amounts deducted from the amount received from the individual;  
690 (4) the amount held in reserve; and  
691 (5) if, since the last report, a creditor has agreed to accept as payment in full an amount less than the principal  
692 amount of the debt owed by the individual:  
693 (A) the total amount and terms of the settlement;  
694 (B) the amount of the debt when the individual assented to the plan;  
695 (C) the amount of the debt when the creditor agreed to the settlement; and  
696 (D) the calculation of a settlement fee.

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

700 (d) (1) Every provider shall maintain such books, accounts and records relating to all transactions within this  
701 chapter as will enable the Commissioner to enforce full compliance with this chapter;  
702 (2) All books, accounts and records of the provider shall be preserved and kept available as provided in  
703 this chapter or for such longer period of time as the Commissioner may by regulation require; and

704 (3) The Commissioner may prescribe the minimum information to be shown in such books, accounts and  
705 records of the provider so that such records will enable the Commissioner to determine compliance with  
706 this chapter.

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

709 Section 3528. PROHIBITED ACTS AND PRACTICES.

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

711 (1) misappropriate or misapply money held in trust;

712 (2) settle a debt on behalf of an individual for more than 50 percent of the principal amount of the debt owed  
713 a creditor, unless the individual assents to the settlement after the creditor has assented;

714 (3) take a power of attorney that authorizes it to settle a debt, unless the power of attorney expressly limits the  
715 provider's authority to settle debts for not more than 50 percent of the principal amount of the debt owed a  
716 creditor;

717 (4) exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;

718 (5) initiate a transfer from an individual's account at a bank or with another person unless the transfer is:

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

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

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

723 (ii) payment of a fee;

724 (6) offer a gift or bonus, premium, reward, or other compensation to an individual for executing an  
725 agreement;

726 (7) offer, pay, or give a gift or bonus, premium, reward, or other compensation to a person for referring a  
727 prospective customer, if the person making the referral has a financial interest in the outcome of debt-  
728 management services provided to the customer, unless neither the provider nor the person making the referral  
729 communicates to the prospective customer the identity of the source of the referral;

730 (8) receive a bonus, commission, or other benefit for referring an individual to a person;

731 (9) structure a plan in a manner that would result in a negative amortization of any of an individual's debts,  
732 unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon  
733 payment of the principal amount of the debt;

734 (10) compensate its employees on the basis of a formula that incorporates the number of individuals the  
735 employee induces to enter into agreements;

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

739 (12) make a representation that:

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

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

742 or

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

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

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

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

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

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

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

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

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

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

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

- 759 (4) obtain a mortgage or other security interest from any person in connection with the services provided to  
760 the individual;
- 761 (5) except as permitted by federal law, disclose the identity or identifying information of the individual or the  
762 identity of the individual's creditors, except to:
- 763 (A) the Commissioner, upon proper demand;
  - 764 (B) a creditor of the individual, to the extent necessary to secure the cooperation of the creditor in a  
765 plan; or
  - 766 (C) the extent necessary to administer the plan;
- 767 (6) except as otherwise provided in Section 3523(f), provide the individual less than the full benefit of a  
768 compromise of a debt arranged by the provider;
- 769 (7) charge the individual for or provide credit or other insurance, coupons for goods or services, membership  
770 in a club, access to computers or the Internet, or any other matter not directly related to debt-management  
771 services or educational services concerning personal finance; or
- 772 (8) furnish legal advice or perform legal services, unless the person furnishing that advice to or performing  
773 those services for the individual is licensed to practice law.

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

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

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

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

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

783 Section 3529. NOTICE OF LITIGATION.

784 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  
785 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  
786 notify the Commissioner in a record that it has been sued.

787 Section 3530. ADVERTISING.

788 A provider that advertises debt-management services shall disclose in an easily comprehensible manner the information  
789 specified in Section 3517(d)(3) and (4).

790 Section 3531. LIABILITY FOR THE CONDUCT OF OTHER PERSONS.

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

794 Section 3532. POWERS OF COMMISSIONER.

795 (a) The Commissioner may act on the Commissioner's own initiative or in response to complaints, and may receive  
796 complaints, take action to obtain voluntary compliance with this chapter, refer cases to the attorney general, and seek or provide  
797 remedies as provided in this chapter.

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

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

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

811 (3) If, in the Commissioner's opinion, it is necessary for a thorough examination of a licensed provider other  
812 third parties to assist the Commissioner in such examination. Within 10 days after receipt of a statement  
813 from the Commissioner, such licensed provider shall pay or reimburse the fees, costs and expenses of any  
814 third parties retained by the Commissioner under this subsection.

815 (c) The Commissioner may seek a court order authorizing seizure from a bank at which the person maintains a trust  
816 account required by Section 3522, any or all money, books, records, accounts, and other property of the provider that is in the  
817 control of the bank and relates to individuals who reside in this state.

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

821 (e) The Commissioner shall assess fees to be paid by providers for the expense of administering this chapter,  
822 including supervisory assessment, examination, application and renewal fees, in accordance with this title. All fees shall be paid to  
823 the State Bank Commissioner Regulatory Revolving Fund created by Section 105 of this title.

824 (f) The Commissioner may adopt dollar amounts instead of those specified in Sections 3502, 3509, and 3523 to  
825 reflect inflation, as measured by the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers or, if  
826 that index is not available, another index adopted by rule by the Commissioner. The Commissioner shall adopt a base year and  
827 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  
828 preceding year, is at least 10 percent. The dollar amount must be rounded to the nearest \$100, except that the amounts in Section  
829 3523 must be rounded to the nearest dollar.

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

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

835 Section 3533. ADMINISTRATIVE REMEDIES.

836 (a) In addition to any other enforcement method specified in Chapter 1 of Title 5, the Commissioner may enforce this  
837 chapter and the rules adopted under this chapter by taking one or more of the following actions:

838 (1) ordering a provider or a director, employee, or other agent of a provider to cease and desist from any  
839 violations;

840 (2) ordering a provider or a person that has caused a violation to correct the violation, including making  
841 restitution of money or property to a person aggrieved by a violation;

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

844 (4) prosecuting a civil action to:

845 (A) enforce an order; or

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

847 (5) intervening in an action brought under Section 3535.

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

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

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

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

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

862 (g) (1) Except as provided in paragraph (2) of this subsection, an order issued under subsections (a)(1), (2), (3), or  
863 (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  
864 interested party may petition the Commissioner for a hearing. At the conclusion of such hearing, the Commissioner may affirm the  
865 order as originally issued, or modify, amend or rescind the order.

866 (2) Whenever in the opinion of the Commissioner, the violation that is the subject of an order under subsection  
867 (a)(1) or (2) represents an immediate danger or substantial harm to the interests of any person aggrieved by a violation or the public,  
868 or where such violation or its continuance is likely to cause insolvency or substantial dissipation of the assets of a provider, the  
869 Commissioner may issue an order which shall become effective immediately upon service, without prior notice or hearing. Upon



870 application of any interested party, the Commissioner shall afford an opportunity for a hearing to consider rescission of that order or  
871 any action taken promptly thereafter.

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

875 Section 3534. SUSPENSION, REVOCATION, OR NONRENEWAL OF LICENSE.

876 (a) In this section "insolvent" means:

877 (1) having generally ceased to pay debts in the ordinary course of business other than as a result of good-faith  
878 dispute;

879 (2) being unable to pay debts as they become due; or

880 (3) being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C. Section 101 et seq., as  
881 amended.

882 (b) The Commissioner may suspend, revoke, or deny renewal of a provider's license if:

883 (1) a fact or condition exists that, if it had existed when the licensed provider applied for its provider license,  
884 would have been a reason for denying the license;

885 (2) the provider has committed a material violation of this chapter or a rule or order of the Commissioner  
886 under this chapter;

887 (3) the provider is insolvent;

888 (4) the provider or an employee or affiliate of the provider has refused to permit the Commissioner to make  
889 an examination authorized by this chapter; or

890 (5) the provider has not responded within a reasonable time and in an appropriate manner to communications  
891 from the Commissioner.

892 (c) If a provider does not comply with Section 3522(f) or if the Commissioner otherwise finds that the public health  
893 or safety or general welfare requires emergency action, the Commissioner may order a summary suspension of the provider's  
894 license, effective on the date specified in the order.

895 (d) If the Commissioner suspends, revokes, or denies the renewal of a provider license, the Commissioner may seek  
896 a court order authorizing seizure of any or all of the money in a trust account required by Section 3522, as well as all books,  
897 records, accounts, and other property of the provider which are located in this state.

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

902 Section 3535. PRIVATE ENFORCEMENT.

903 (a) If an individual voids an agreement pursuant to Section 3525(b), the individual may recover in a civil action all  
904 money paid or deposited by or on behalf of the individual pursuant to the agreement, except amounts paid to creditors, in addition to  
905 the recovery under subsection (c)(3) and (4).

906 (b) If an individual voids an agreement pursuant to Section 3525(a), the individual may recover in a civil action three  
907 times the total amount of the fees, charges, money, and payments made by the individual to the provider, in addition to the recovery  
908 under subsection (c)(4).

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

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

912 (2) except as otherwise provided in Subsection (d), with respect to a violation of Sections 3517, 3519, 3520,  
913 3521, 3522, 3523, 3524, 3527, or 3528(a), (b), or (d), the greater of the amount recoverable under paragraph (1) or \$5,000;

914 (3) punitive damages; and

915 (4) reasonable attorney's fees and costs.

916 (d) In a class action, except for a violation of Section 3528(a)(5), the minimum damages provided in subsection  
917 (c)(2) do not apply.

918 (e) In addition to the remedy available under subsection (c), if a provider violates an individual's rights under  
919 Section 3520, the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to  
920 the agreement, except for amounts paid to creditors.

921 (f) A provider is not liable under this section for a violation of this chapter if the provider proves that the violation  
922 was not intentional and resulted from a good-faith error notwithstanding the maintenance of procedures reasonably adapted to avoid  
923 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  
924 connection with a violation, the provider has received more money than authorized by an agreement or this chapter, the defense

925 provided by this subsection is not available unless the provider refunds the excess within two business days of learning of the  
926 violation.

927 (g) The Commissioner shall assist an individual in enforcing a judgment against the surety bond or other security  
928 provided under Section 3513 or 3514.

929 Section 3536. VIOLATION OF UNFAIR OR DECEPTIVE PRACTICES STATUTE.

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

932 Section 3537. STATUTE OF LIMITATIONS.

933 (a) An action or proceeding brought pursuant to Section 3533(a), (b), or (c) must be commenced within four years  
934 after the conduct that is the basis of the Commissioner's complaint.

935 (b) An action brought pursuant to Section 3535 must be commenced within three years after the latest of:

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

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

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

939 (4) the provider's last accounting to the individual pursuant to Section 3527(a);

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

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

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

946 Section 3538. UNIFORMITY OF APPLICATION AND CONSTRUCTION.

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

949 Section 3539. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.

950 This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15  
951 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  
952 authorize electronic delivery of any of the notices described in Section 103(b) of that Act (15 U.S.C. Section 7003(b))."

953 Section 2. SEVERABILITY.

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

957 Section 3. TRANSITIONAL PROVISIONS; APPLICATION TO EXISTING TRANSACTIONS.

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

961 Section 4. EXEMPTION FROM CHAPTER 24 OF TITLE 6

962 Amend Section 2402(b)(4) of Title 6 of the Delaware Code by inserting the words “or Chapter 35” after the words “Chapter 22”  
963 and before the words “of Title 5”.

964 Section 5. Amend Section 910 of Title 11 of the Delaware Code by deleting after the word “association” the phrase  
965 “which engages in debt adjusting even though the non-profit corporation or association may charge and collect nominal sums as  
966 reimbursement for expenses in connection with such services”, and substituting in lieu thereof the following phrase: which is  
967 licensed under Chapter 35 of Title 5.”

968 Section 6. EFFECTIVE DATE

969 This Act takes effect six months after enactment.

#### SYNOPSIS

This Bill creates a new chapter to license and regulate non-profit businesses engaged in offering credit counseling and debt management services. The Bill is modeled on the Uniform Debt-Management Services Act.

Not-for-profit debt counseling providers may be licensed with proof of non-profit status and tax exemption.

Applications for licenses must be accompanied by a nonrefundable fee of \$2,000 to credit of State Banking Commissioner Regulatory Revolving Fund, a corporate surety bond of at least \$500,000, (or irrevocable letter of credit), evidence of insurance against dishonest, fraud, theft and other misconduct of at least \$500,000, identification of all trust accounts with an irrevocable consent authorizing the Commissioner to review and examine the trust accounts and overdraft notification agreement similar to what is imposed on all lawyers licensed in the State of Delaware who hold client trust accounts.

This Bill specifies, in detail, the information that must be contained in license application, updated license information, denials of licensure (subject to Delaware Administrative Procedures Act), renewals of licenses and reciprocity of licensure.

The Bill regulates the counseling of consumers before signing a Debt-Management Plan, including financial analysis, identification of which creditors are expected to participate, or not participate or not grant concessions, certain disclaimers and disclosures including whether the provider is receiving any compensation from the consumer's creditors. All Agreements must have a three business day right of cancellation with complete refund of all fees paid by consumer.

If provider communicates with consumer primarily in a language other than English the provider must furnish all disclosures and documents in that other language.

All pre-Agreement disclosures and disclaimers and Agreements may be made by electronic means if the consumer consents consistent with the Federal Electronic Signatures in Global and National Commerce Act.

The Bill regulates the fees that can be charged, depending on the services being provided, up to a not to exceed maximum.

The Bill provides for the manner of terminating Agreements.

The Bill also provides for prohibited acts by Providers that could involve or lead to collusion, conflicts of interest or other bad practices.

The Bill gives the Delaware Banking Commission full authority to investigate all consumer complaints, impose cease and desist orders, order restitution, civilly prosecute and refer cases to the Delaware attorney general for criminal prosecution.

The Bill also allows for consumers to seek civil damages individually or by class action including punitive damages and attorney's fees.

The Act will take effect six months after enactment.