A bill for an act

relating to commerce; regulating the business of credit counseling and debt management services; providing remedies and criminal penalties; appropriating money; amending Minnesota Statutes 2006, section 325E.311, subdivision 6; proposing coding for new law as Minnesota Statutes, chapter 332A; repealing Minnesota Statutes 2006, sections 332.12; 332.13; 332.14; 332.15; 332.16; 332.17; 332.18; 332.19; 332.20; 332.21; 332.22; 332.23; 332.24; 332.25; 332.26; 332.27; 332.28; 332.29.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

Section 1. Minnesota Statutes 2006, section 325E.311, subdivision 6, is amended to read:

Subd. 6. **Telephone solicitation.** "Telephone solicitation" means any voice communication over a telephone line for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, whether the communication is made by a live operator, through the use of an automatic dialing-announcing device as defined in section 325E.26, subdivision 2, or by other means. Telephone solicitation does not include communications:

(1) to any residential subscriber with that subscriber's prior express invitation or permission; or

(2) by or on behalf of any person or entity with whom a residential subscriber has a prior or current business or personal relationship.

Telephone solicitation also does not include communications if the caller is identified by a caller identification service and the call is:

(i) by or on behalf of an organization that is identified as a nonprofit organization under state or federal law, unless the organization is a debt management service provider defined in section 332A.02;

(ii) by a person soliciting without the intent to complete, and who does not in fact complete, the sales presentation during the call, but who will complete the sales presentation at a later face-to-face meeting between the solicitor who makes the call and the prospective purchaser; or

(iii) by a political party as defined under section 200.02, subdivision 6.

Sec. 2. **[332A.01] DECLARATION OF POLICY.**

The business of rendering credit counseling and debt management services by compromising, settling, adjusting, prorating, or liquidating the indebtedness of a debtor is a matter of public interest and concern and is subject to rules and control in the public interest.

Sec. 3. **[332A.02] DEFINITIONS.**

Subdivision 1. **Scope.** Unless a different meaning is clearly indicated by the context, for the purposes of this chapter the terms defined in this section have the meanings given them.

Subd. 2. **Accreditation.** "Accreditation" means certification as an accredited credit counseling provider by the International Standards Organization or the Council on Accreditation.

Subd. 3. **Attorney general.** "Attorney general" means the attorney general of the state of Minnesota.

Subd. 4. **Commissioner.** "Commissioner" means commissioner of commerce.

Subd. 5. **Controlling or affiliated party.** "Controlling or affiliated party" means any parent or controlling entity of a debt management services provider, or any partially or wholly owned subsidiary of the debt management services provider, or any officer, director, executive manager, partner, or owner of a ten percent or more interest in the debt management service provider or in any parent or controlling entity of the debt management service provider, or any other debt management services provider in this or any other state which has any officer, director, executive manager, partner, or owner of a ten percent or more interest in common with the debt management services provider or in any parent or controlling entity of the debt management services provider.

Subd. 6. **Debt management services agreement.** "Debt management services agreement" means the written contract between the debt management service provider and the debtor.

Subd. 7. **Debt management services plan.** "Debt management services plan" means the debtor's individualized package of debt management services set forth in the debt management services agreement.

Subd. 8. **Debt management services provider.** "Debt management services provider" means any person offering or providing debt management services to a debtor domiciled in this state, regardless of whether or not a fee is charged for the services and regardless of whether the person maintains a physical presence in the state. This term does not include services performed by the following when engaged in the regular course of their respective businesses and professions:

(1) attorneys at law, escrow agents, accountants, broker-dealers in securities;

(2) banks, state or national, trust companies, savings associations, title insurance companies, insurance companies, and all other lending institutions duly authorized to transact business in Minnesota, provided no fee is charged for the service;

(3) persons who, as employees on a regular salary or wage of an employer not engaged in the business of debt management, perform credit services for their employer;

(4) public officers acting in their official capacities and persons acting as a debt management services provider pursuant to court order;

(5) any person while performing services incidental to the dissolution, winding up, or liquidation of a partnership, corporation, or other business enterprise;

(6) the state, its political subdivisions, public agencies, and their employees;

(7) credit unions, provided no fee is charged for the service;

(8) "qualified organizations" designated as representative payees for purposes of the Social Security and Supplemental Security Income representative payee system and the federal Omnibus Budget Reconciliation Act of 1990, Public Law 101-508; and

(9) accelerated mortgage payment providers. "Accelerated mortgage payment providers" are persons who, after satisfying the requirements of sections 332.30 to 332.303, receive funds to make mortgage payments to a lender or lenders, on behalf of mortgagors, in order to exceed regularly scheduled minimum payment obligations under the terms of the indebtedness. The term does not include: (i) persons or entities described in clauses (1) to (8); (ii) mortgage lenders or servicers, industrial loan and thrift companies, or regulated lenders under chapter 56; or (iii) persons authorized to make loans under section 47.20, subdivision 1. For purposes of this clause and sections 332.30 to 332.303, "lender" means the original lender or that lender's assignee, whichever is the current mortgage holder.

Subd. 9. **Debt prorating management services.** "Debt prorating management services" means the provision of any one or more of the following:

(a) managing the financial affairs of an individual by distributing income or money to the individual's creditors;

(b) receiving funds for the purpose of distributing the funds among creditors in payment or partial payment of obligations of a debtor; or

(c) settling, adjusting, prorating, pooling, or liquidating the indebtedness of a debtor. Any person so engaged or holding out as so engaged is deemed to be engaged in debt prorating regardless of whether or not a fee is charged for such services.

Subd. 10. **Debtor.** "Debtor" means the person for whom the debt prorating service is performed.

Subd. 11. **Licensee.** "Licensee" means any person licensed by the commissioner pursuant to this chapter and, where used in conjunction with an act or omission required or prohibited by this chapter, shall mean any person performing debt prorating services.

Subd. 12. **Person.** "Person" means any individual, firm, partnership, association, or corporation.

Sec. 4. **[332A.03] REQUIREMENT OF LICENSE.**

On or after August 1, 2007, it is unlawful for any person, whether or not located in this state, to operate a debt management service provider or provide debt management services, including but not limited to offering, advertising, or executing or causing to be executed any debt management services or debt management services agreement, except as authorized by law without first having obtained a license as provided in this chapter. A person who possesses a valid license as a debt prorater that was issued by the commissioner before August 1, 2007, is deemed to be licensed as a debt management service provider until the date the debt prorater license expires, at which time the licensee must obtain a renewal as a debt management service provider in compliance with this chapter. Debt proraters who were not required to be licensed as debt proraters before August 1, 2007, may continue to provide debt management services without complying with this chapter to those debtors who entered into a contract to participate in a debt management plan before August 1, 2007, except that the debt prorater must comply with section 332A.13, subdivision 2.

Sec. 5. **[332A.04] LICENSE.**

Subdivision 1. **Form.** Application for a license to operate as a debt management service provider in this state must be made in writing to the commissioner, under oath, in the form prescribed by the commissioner, and must contain:

(1) the full name and address of the applicant;

(2) identification of the trust account required under section 332A.13;

(3) consent to the jurisdiction of the courts of this state;

(4) the name and address of the registered agent authorized to accept service of process on behalf of the applicant or appointment of the commissioner as the applicant's agent for purposes of accepting service of process;

(5) a description of the applicant's corporate structure, including parent companies, subsidiaries, and affiliates, and, if applicable, proof of incorporation in this state and other states in which the provider does business;

(6) if the applicant is a partnership or association, of every member of the partnership or association and, if a corporation, of each officer, director, and shareholder owning or controlling, directly or indirectly, more than a ten percent interest in the applicant's debt management service provider's business;

(7) the name of any person with whom the applicant has a contractual relationship or business relationship to provide debt management services, a description of the business relationship between the applicant and the person, and a copy of the contract;

(8) disclosure of:

(i) whether any controlling or affiliated party has ever been convicted of a crime or found civilly liable for an offense involving moral turpitude, including forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any other similar offense or violation, or any violation of a federal or state law or regulation in connection with activities relating to the rendition of debt management services or involving any consumer fraud, false advertising, deceptive trade practices, or similar consumer protection law;

(ii) any judgments, private or public litigation, tax liens, written complaints, administrative actions, or investigations by any government agency against the applicant or any officer, director, manager, or shareholder owning more than five percent interest in the applicant, unresolved or otherwise, filed within the preceding ten years;

(iii) whether the applicant or any person employed by the applicant has had a record of having defaulted in the payment of money collected for others, including the discharge of debts through bankruptcy proceedings; and

(iv) whether the applicant's license or registration to provide debt management services in any other state has ever been revoked or suspended;

(9) a copy of the applicant's standard debt management services agreement that the applicant intends to execute with debtors;

(10) a description of the applicant's individualized counseling program and copies of educational materials;

(11) proof of accreditation of:

(i) the debt management service provider; and

(ii) all individuals employed by, under contract with, or otherwise agents of the provider who offer to provide or provide debt management services;

(12) proof that no member of the board of directors of the debt management service provider has a conflict of interest concerning, is affiliated with the management of, or is the owner of, a direct or indirect pecuniary interest in, the debt management service provider; and

(13) any other information and material as the commissioner may require.

Subd. 2. **Term and scope of license.** The license must remain in full force and effect for one calendar year or until it is surrendered by the licensee or revoked or suspended by the commissioner. The license is limited solely to the business of providing debt management services.

Subd. 3. **Fees.** The license application must be accompanied by payment of $1,000 as a license fee. If the application is denied, the license fee must be returned to the applicant.

Subd. 4. **Bond.** The license application must be accompanied by payment of a surety bond in which the applicant shall be the obligor, in a sum to be determined by the commissioner but not less than $5,000, and in which an insurance company, which is duly authorized by the state of Minnesota to transact the business of fidelity and surety insurance, shall be a surety. However, the commissioner may accept a deposit in cash, or securities that may legally be purchased by savings banks or for trust funds of an aggregate market value equal to the bond requirement, in lieu of the surety bond. The cash or securities must be deposited with the commissioner of finance. The commissioner may also require a fidelity bond in an appropriate amount covering employees of any applicant. Each branch office or additional place of business of an applicant must be bonded as provided in this subdivision. In determining the bond amount necessary for the maintenance of any office whether it is a surety bond, fidelity bond, or both, the commissioner shall consider the financial responsibility, experience, character, and general fitness of the agency and its operators and owners; the volume of business handled or proposed to be handled; the location of the office and the geographical area served or proposed to be served; and other information the commissioner may deem pertinent based upon past performance, previous examinations, annual reports, and manner of business conducted in other states.

Subd. 5. **Condition of bond.** The applicant shall be the obligor. The bond must run to the state of Minnesota for the use of the state and of any person or persons who may have a cause of action against the obligor arising out of the obligor's activities as a debt management service provider. The bond must be conditioned that the obligor will not commit any fraudulent act and will faithfully conform to and abide by the provisions of this chapter and of all rules lawfully made by the commissioner hereunder and pay to the state and to any such person or persons any and all money that may become due or owing to the state or to such person or persons from the obligor under and by virtue of this chapter.

Subd. 6. **Right of action on bond.** If the licensee has failed to account to a debtor or distribute to the debtor's creditors the amounts required by this chapter and the debt management services agreement between the debtor and licensee, the debtor or the debtor's legal representative or receiver, the commissioner, or the attorney general, shall have, in addition to all other legal remedies, a right of action in the name of the debtor on the bond or the security given pursuant to this section, for loss suffered by the debtor, not exceeding the face of the bond or security, and without the necessity of joining the licensee in such suit or action.

Subd. 7. **Licensee list.** The commissioner must maintain a list of licensed debt management service providers. The list must be made available to the public in written form and on the Department of Commerce Web site.

Sec. 6. **[332A.05] NONASSIGNMENT OF LICENSE.**

A license must not be transferred or assigned without the consent of the commissioner.

Sec. 7. **[332A.06] RENEWAL OF LICENSE.**

Each year, each licensee under the provisions of this chapter must, not more than 60 nor less than 30 days before its license is to expire, apply to the commissioner for renewal of its license on a form prescribed by the commissioner. The application must be signed by the licensee under penalty of perjury, contain current information on all matters required in the original application, and be accompanied by a payment of $250. The licensee must maintain a continuous surety bond that satisfies the requirements of section 332A.04, subdivision 4, provided that the commissioner may require a different amount that is at least equal to the largest amount that has accrued in the trust account during the previous year. The renewal is effective for one year.

Sec. 8. **[332A.07] OTHER DUTIES OF LICENSEE.**

Subdivision 1. **Requirement to update information.** A licensee must update any information required by this section provided in its original or renewal application not later than 90 days after the date the events precipitating the update occurred.

Subd. 2. **Inspection of debtor of license.** Each licensee must maintain a copy of its license in its files. The licensee must allow a debtor, upon request, to inspect the license.

Sec. 9. **[332A.08] DENIAL OF LICENSE.**

The commissioner, with notice to the applicant by certified mail sent to the address listed on the application, may deny an application for a license upon finding that applicant:

(1) has submitted an application required under section 332A.04 that contains incorrect, misleading, incomplete, or materially untrue information. An application is incomplete if it does not include all the information required in section 332A.04;

(2) has failed to pay any fee or pay or maintain any bond required by this chapter, or failed to comply with any order, decision, or finding of the commissioner made pursuant to and within the authority of this chapter;

(3) has violated any provision of this chapter or any rule or direction lawfully made by the commissioner under and within the authority of this chapter;

(4) or any controlling or affiliated party has ever been convicted of a crime or found civilly liable for an offense involving moral turpitude, including forgery, embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any other similar offense or violation, or any violation of a federal or state law or regulation in connection with activities relating to the rendition of debt management services or any consumer fraud, false advertising, deceptive trade practices, or similar consumer protection law;

(5) has had a registration or license previously revoked or suspended in this state or any other state or the applicant or licensee has been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the debt management service provider business; or any controlling or affiliated party has been an officer, director, manager, or shareholder owning more than a ten percent interest in a debt management service provider whose registration has previously been revoked or suspended in this state or any other state, or who has been permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the debt management service provider business;

(6) has made any false statement or representation to the commissioner;

(7) is insolvent;

(8) refuses to fully comply with an investigation or examination of the debt management service provider by the commissioner;

(9) has improperly withheld, misappropriated, or converted any money or properties received in the course of doing business;

(10) has failed to have a trust account with an actual cash balance equal to or greater than the sum of the escrow balances of each debtor's account;

(11) has defaulted in making payments to creditors on behalf of debtors as required by agreements between the provider and debtor; or

(12) has used fraudulent, coercive, or dishonest practices, or demonstrated incompetence, untrustworthiness, or financial irresponsibility in this state or elsewhere.

Sec. 10. **[332A.09] SUSPENDING, REVOKING, OR REFUSING TO RENEW LICENSE.**

Subdivision 1. **Procedure.** The commissioner may revoke, suspend, or refuse to renew any license issued hereunder, or may levy a civil penalty under section 45.027, or any combination of actions, if the debt management service provider or any controlling or affiliated person has committed any act or omission for which the commissioner could have refused to issue an initial license or renew an existing license. Revocation or refusal to renew must be upon notice and hearing as prescribed in the Administrative Procedure Act, sections 14.57 to 14.69. The notice must set a time for hearing before the commissioner not less than 20 nor more than 30 days after service of the notice, provided the licensee may waive the 20-day minimum. The commissioner may, in the notice, suspend the license for a period not to exceed 60 days. Unless the notice states that the license is suspended, pending the determination of the main issue, the licensee may continue to transact business until the final decision of the commissioner. If the license is suspended, the commissioner shall hold a hearing and render a final determination within ten days of a request by the licensee. If the commissioner fails to do so, the suspension shall terminate and be of no force or effect.

Subd. 2. **Notification of interested persons.** After the notice and hearing required in subdivision 1, upon issuing an order suspending or revoking a license or refusing to renew a license, the commissioner may notify all individuals who have contracts with the affected licensee and all creditors who have agreed to a plan of forbearance that the license has been revoked and that the order is subject to appeal.

Subd. 3. **Receiver for funds of sanctioned licensee.** When an order is issued revoking or refusing to renew a license, the commissioner may apply and the district court must appoint a receiver to temporarily or permanently receive the assets of the licensee pending a final determination of the validity of the order.

Sec. 11. **[332A.10] WRITTEN DEBT MANAGEMENT SERVICES AGREEMENT.**

Subdivision 1. **Written agreement required.** A debt management services provider may not perform any debt management plan services or receive any money related to a debt management plan until the provider has obtained a debt management services agreement that contains all material terms of the agreement between the debt management service provider and the debtor. A debt management services agreement must be in writing, dated, and signed by the debt management service provider and the debtor. The licensee must furnish the debtor with a copy of the signed contract upon execution.

Subd. 2. **Actions prior to written agreement.** No person may provide debt management services for a debtor unless the person first has:

(1) provided the debtor individualized counseling and educational information that, at a minimum, addresses managing household finances, managing credit and debt, budgeting, and personal savings strategies;

(2) prepared in writing and provided to the debtor, in a form that the debtor may keep, an individualized financial analysis and a proposed debt management plan listing the debtor's known debts with specific recommendations regarding actions the debtor should take to reduce or eliminate the amount of the debts, including written disclosure that debt management services are not suitable for all debtors and that there are other ways, including bankruptcy, to deal with indebtedness;

(3) made a determination supported by an individualized financial analysis that the debtor can reasonably meet the requirements of the proposed debt management plan and that there is a net tangible benefit to the debtor of entering into the proposed debt management plan;

(4) a reasonable, supportable expectation that each creditor of the debtor listed as a participating creditor in the plan will accept payment of the debtor's debts as provided in the proposed debt management plan; and

(5) prepared, in a form the debtor may keep, a written list identifying all known creditors of the debtor that the provider reasonably expects to participate in the plan and the creditors, including secured creditors, that the provider reasonably expects not to participate.

Subd. 3. **Required terms.** (a) Each debt management services agreement must contain the following terms, which must be disclosed prominently and clearly in bold print upon the front page of the agreement, segregated by bold lines from all other information on the page:

(1) the fee amount to be paid by the debtor and whether the initial fee amount is refundable or nonrefundable;

(2) the monthly fee amount or percentage to be paid by the debtor; and

(3) the total amount of fees reasonably anticipated to be paid by the debtor over the term of the agreement.

(b) Each debt management services agreement must also contain the following:

(1) a disclosure that if the amount of debt owed is increased by interest, late fees, over the limit fees, and other amounts imposed by the creditor the length of the debt management services agreement will be extended and remain in force and that the total dollar charges agreed upon may increase at the rate agreed upon in the original contract agreement;

(2) a prominent statement describing the terms upon which the debtor may cancel the contract as set forth in section 332A.11;

(3) a detailed description of all services to be performed by the debt management service for the debtor;

(4) the debt management service provider's refund policy; and

(5) the debt management service provider's principal business address and the name and address of its agent in this state authorized to receive service of process.

Subd. 4. **Prohibited terms.** The following terms shall not be included in the debt management services agreement:

(1) a hold harmless clause;

(2) a confession of judgment, or a power of attorney to confess judgment against the debtor or appear as the debtor in any judicial proceeding;

(3) a waiver of the right to a jury trial, if applicable, in any action brought by or against a debtor;

(4) an assignment of or order for payment of wages or other compensation for services;

(5) a provision in which the debtor agrees not to assert any claim or defense arising out of the debt management services agreement;

(6) a waiver of any provision of this chapter or a release of any obligation required to be performed on the part of the debt management services provider; or

(7) a mandatory arbitration clause.

Subd. 5. **New debt management services agreements; modification of existing agreements.** (a) Separate and additional debt management services agreements that comply with this chapter may be entered into by the debt management service provider and the debtor provided that no additional initial fee may be charged by the debt management services provider.

(b) Any modification of an existing debt management services agreement, including any increase in the number or amount of debts included in the debt management service, must be in writing and signed by both parties. No fees, charges, or other consideration may be demanded from the debtor for the modification, other than an increase in the amount of the monthly maintenance fee established in the original debt management services agreement.

Sec. 12. **[332A.11] RIGHT TO CANCEL.**

Subdivision 1. **Debtor's right to cancel.** A debtor has the right to cancel the debt management services agreement without cause at any time upon ten days' written notice to the debt management service provider. In the event of cancellation, the debt management service provider must, within ten days of the cancellation, notify the debtor's creditors of the cancellation and provide a refund of all unexpended funds paid by or for the debtor to the debt management service provider.

Subd. 2. **Notice of debtor's right to cancel.** A debt management services agreement must contain, on its face, in an easily readable typeface immediately adjacent to the space for signature by the debtor, the following notice: Right To Cancel: You have the right to cancel this contract at any time on ten days' written notice.

Subd. 3. **Automatic termination.** Upon the payment of all listed debts and fees, the debt management services agreement must automatically terminate, and all unexpended funds paid by or for the debtor to the debt management service provider must be immediately returned to the debtor.

Subd. 4. **Debt management service provider's right to cancel.** A debt management services provider may cancel a debt management services agreement with cause upon 30 days' written notice to the debtor. Within ten days of the cancellation, the debt management service provider must: (1) notify the debtor's creditors of the cancellation; and (2) return to the debtor all unexpended funds paid by or for the debtor.

Sec. 13. **[332A.12] BOOKS, RECORDS, AND INFORMATION.**

Subdivision 1. **Records retention.** Every licensee must keep, and use in the licensee's business, such books, accounts, and records as will enable the commissioner to determine whether the licensee is complying with this chapter and of the rules, orders, and directives adopted by the commissioner pursuant to this chapter. Every licensee must preserve such books, accounts, and records for at least six years after making the final entry on any transaction recorded therein. Examinations of the books, records, and method of operations conducted under the supervision of the commissioner shall be done at the cost of the licensee. The cost must be assessed as determined pursuant to section 46.131.

Subd. 2. **Statements to debtors.** Each licensee must maintain and must make available records and accounts that will enable each debtor to ascertain the amounts paid to the creditors of the debtor. A statement showing amounts received from the debtor, disbursements to each creditor, amounts which any creditor has agreed to accept as payment in full for any debt owed the creditor by the debtor, charges deducted by the licensee, and such other information as the commissioner may prescribe must be furnished by the licensee to the debtor at least monthly and, in addition, upon any cancellation or termination of the contract. In addition to the statements required by this subdivision, each debtor must have reasonable access, without cost, to information in the licensee's files applicable to the debtor. These statements, records, and accounts must otherwise remain confidential except for duly authorized state and government officials, the commissioner, the attorney general, the debtor, and the debtor's representative and designees. Each licensee must prepare and retain in the file of each debtor a written analysis of the debtor's income and expenses to substantiate that the plan of payment is feasible and practical.

Sec. 14. **[332A.13] FEES, PAYMENTS, AND CONSENT OF CREDITORS.**

Subdivision 1. **Origination fee; credit background report cost.** The licensee may charge a nonrefundable origination fee of not more than $50, which may be retained by the licensee from the initial amount paid by the debtor to the licensee. The licensee may also collect from the debtor as part of the origination fee an additional amount for the actual cost of a credit report obtained from a one or more credit reporting agencies not related to or affiliated with the licensee. The amount charged for the credit reports may not exceed $10 per report or $25 for all such reports, whichever is less. The cost of only one credit background report may be collected from the debtor in any 12-month period.

Subd. 2. **Monthly maintenance fee.** The licensee may charge a periodic fee for account maintenance or other purposes, but only if the fee is reasonable for the service provider and does exceed 15 percent of the monthly payment amount.

Subd. 3. **Additional fees unauthorized.** A debt management services provider may not impose any fee or other charge or receive any funds or other payment other than the initial fee or monthly maintenance fee authorized by this section.

Subd. 4. **Amount retained of periodic payments.** The debt management service provider may retain as payment for the fees authorized by this section no more than 15 percent of any periodic payment made to the debt management service provider by the debtor. The remaining 85 percent must be disbursed to listed creditors pursuant to and in accordance with the debt management services agreement.

Subd. 5. **Advance payments.** No fees or charges may be received or retained for any payments by the debtor made more than the following number of days in advance of the date specified in the debt management services agreement on which they are due: (1) 42 days in the case of contracts requiring monthly payments; (2) 15 days in the case of agreements requiring biweekly payments; or (3) seven days in the case of agreements requiring weekly payments. For those agreements which do not require payments in specified amounts, a payment is deemed an advance payment to the extent it exceeds twice the average regular payment theretofore made by the debtor pursuant to that contract. This subdivision does not apply when it is the intention of the debtor to use the advance payments to satisfy future payment of obligations due within 30 days under the contract. This subdivision supersedes any inconsistent provision of this chapter.

Subd. 6. **Consent of creditors.** A licensee must actively seek to obtain the consent of all creditors to the debt management services plan set forth in the debt management services agreement. Consent by a creditor may be express and in writing, or may be evidenced by acceptance of a payment made pursuant to the debt management services plan set forth in the contract. The licensee must notify the debtor within ten days after the expiration of the 60-day period prescribed in this subdivision of any failure to obtain the required consent and of the debtor's right to cancel without penalty. The notice must be in a form as the commissioner shall prescribe. Nothing contained in this section is deemed to require the return of any origination fee and any fees earned by the licensee prior to cancellation or default.

Subd. 7. **Withdrawal of creditor.** Whenever a creditor withdraws from a debt management plan, or refuses to participate in a debt management plan, the debt management service provider must promptly notify the debtor of the withdrawal or refusal. In no case may this notice be provided more than 15 days after the debt management plan learns of the creditor's decision to withdraw from or refuse to participate in a plan. This notice must include the identity of the creditor withdrawing from the plan, the amount of the monthly payment to that creditor, and the right of the debtor to cancel the agreement under section 332A.11.

Subd. 8. **Payments held in trust.** Any payment received by a licensee from or on behalf of a debtor must be held in trust by the licensee from the moment it is received. The licensee may commingle the payment with the licensee's own property or funds, but only to the extent necessary to ensure the maintenance of a minimum balance if the financial institution at which the trust account is held requires a minimum balance to avoid the assessment of fees or penalties for failure to maintain a minimum balance. The debt management service provider must maintain a separate trust account and deposit in the account all payments received. All disbursements, whether to the debtor or to the creditors of the debtor, or to the licensee, must be made from such account.

Subd. 9. **Timely payment of creditors.** The debt management service provider must disburse any funds paid by or on behalf of a debtor to creditors of the consumer within 42 days after receipt of the funds, or earlier if necessary to comply with the due date in the contract between the debtor and the creditor, unless the reasonable payment of one or more of the debtor's obligations requires that the funds be held for a longer period so as to accumulate a sum certain or where the debtor's payment is returned for insufficient funds or other reason that makes the withholding of such payments in the net interest of the debtor.

Sec. 15. **[332A.14] PROHIBITIONS.**

A licensee shall not:

(1) purchase from a creditor any obligation of a debtor;

(2) use, threaten to use, seek to have used or seek to have threatened the use of any legal process, including but not limited to garnishment and repossession of personal property, against any debtor while the debt management services agreement between the licensee and the debtor remains executory;

(3) advise a debtor to stop paying a creditor until a debt management service plan is in place;

(4) require as a condition of performing debt management services require in any debt management services agreement the purchase of any services, stock, insurance, commodity, or other property or any interest therein either by the debtor or the licensee;

(5) compromise any debts unless the prior written approval of the debtor has been obtained to such compromise and unless such compromise inures solely to the benefit of the debtor;

(6) receive from any debtor as security or in payment of any fee a promissory note or other promise to pay or any mortgage or other security, whether as to real or personal property;

(7) lend money or provide credit to any debtor if any interest or fee is charged, or directly or indirectly collect any fee for referring, advising, procuring, arranging, or assisting a consumer in obtaining any extension of credit or other debtor service from a lender or service provider;

(8) structure a debt management agreement that would result in negative amortization of any debt in the plan;

(9) engage in any unfair, deceptive, or unconscionable act or practice in connection with any service provided to any debtor;

(10) offer, pay, or give any material cash fee, gift, bonus, premium, reward, or other compensation to any person for referring any prospective customer to the licensee or for enrolling a debtor in a debt management services plan, or provide any other incentives for employees or agents of the debt management service provider to induce debtors to enter into a debt management plan;

(11) receive any cash, fee, gift, bonus, premium, reward, or other compensation from any person other than the debtor or a person in the debtor's behalf in connection with activities as a licensee; provided that this paragraph does not apply to a licensee which is a bona fide nonprofit corporation duly organized under chapter 317A;

(12) enter into a contract with a debtor unless a thorough written budget analysis indicates that the debtor can reasonably meet the requirements of the financial adjustment plan and will be benefited by the plan;

(13) in any way charge or purport to charge or provide any debtor credit insurance in conjunction with any contract or agreement involved in the financial adjustment plan;

(14) operate or employ a person who is an employee or owner of a collection agency or process-serving business; or

(15) require or attempt to require payment of a sum that the provider states, discloses, or advertises to be a voluntary contribution from the debtor.

Sec. 16. **[332A.15] RULES.**

The commissioner may make and file in accordance with the provisions of chapter 14 such reasonable rules as shall be necessary for the administration of this chapter.

Sec. 17. **[332A.16] ADVERTISEMENT OF DEBT MANAGEMENT SERVICES PLANS.**

No debt management service provider may make false, deceptive, misleading statements or omissions about the rates, terms, or conditions of an actual or proposed debt management plan or its debt management services, or create the likelihood of consumer confusion or misunderstanding regarding its services, including but not limited to the following:

(1) in any broadly disseminated advertising, fail to disclose the amount of fees that it regularly charges for its services;

(2) represent that the debt management service provider is a nonprofit, not-for-profit, or has similar status or characteristics if some or all of the debt management service will be provided by a for-profit company that is a controlling or affiliated party to the debt management service provider; or

(3) make any communication that gives the impression that the debt management service provider is acting on behalf of a government agency.

Sec. 18. **[332A.17] DEBT MANAGEMENT SERVICES AGREEMENT VOID.**

Any debtor has the right to rescind any debt management services agreement with a debt management service provider that commits a material violation of this chapter. On rescission, all fees paid to the debt management service provider or any other person other than creditors of the debtor must be returned to the debtor entering into the debt management services agreement within ten days of rescission of the debt management services agreement.

Sec. 19. **[332A.18] ENFORCEMENT; REMEDIES.**

Subdivision 1. **Violation a deceptive practice.** A violation of any of the provisions of this chapter is considered an unfair or deceptive trade practice under section 8.31, subdivision 1. A private right of action under section 8.31 by an aggrieved debtor is in the public interest.

Subd. 2. **Private right of action.** (a) A debt management service provider who fails to comply with any of the provisions of this chapter is liable in an individual action for the sum of: (i) actual, incidental, and consequential damages sustained by the debtor as a result of the failure; and (ii) statutory damages of up to $1,000.

(b) A debt management service provider who fails to comply with any of the provisions of this chapter is liable in a class action for the sum of: (i) the amount that each named plaintiff could recover under paragraph (a), clause (i); and (ii) such amount as the court may allow for all other class members.

(c) In determining the amount of statutory damages, the court shall consider, among other relevant factors:

(1) the frequency, nature, and persistence of noncompliance;

(2) the extent to which the noncompliance was intentional; and

(3) in the case of a class action, the number of debtors adversely affected.

(d) A plaintiff or class successful in a legal or equitable action is entitled to the costs of the action, plus reasonable attorney fees.

Subd. 3. **Injunctive relief.** A debtor may sue a debt management service provider for temporary or permanent injunctive or other appropriate equitable relief to prevent violations of any provision of this chapter. A court must grant injunctive relief on a showing that the debt management service provider has violated any provision of this chapter, or in the case of a temporary injunction, on a showing that the debtor is likely to prevail on allegations that the debt management service provider violated with any provision of this chapter.

Subd. 4. **Remedies cumulative.** The remedies provided in this section are cumulative and do not restrict any remedy that is otherwise available. The provisions of this chapter are not exclusive and are in addition to any other requirements, rights, remedies, and penalties provided by law.

Subd. 5. **Public enforcement.** The attorney general has the right to obtain any remedy provided in this section.

Subd. 6. **Criminal penalties.** Any person willfully violating any of the provisions of this chapter shall be guilty of a gross misdemeanor.

Sec. 20. **[332A.19] INVESTIGATION.**

Subdivision 1. **Examination; audit.** The commissioner may examine the books and records of every licensee and of any person engaged in the business of providing debt management services as defined in section 332A.02 at any reasonable time. The commissioner once during any calendar year may require the submission of an audit prepared by a certified public accountant of the books and records of each licensee hereunder. If the licensee has, within one year previous to the commissioner's demand, had an audit prepared for some other purpose, this audit may be submitted to satisfy the requirement of this section. The commissioner may investigate any complaint concerning violations of this chapter and may require the attendance and sworn testimony of witnesses and the production of documents.

Subd. 2. **Duties of attorney general and county attorney.** Upon transmittal from the commissioner of a written complaint of any person feeling aggrieved, the attorney general may forward the complaint to the county attorney of the county wherein the business is situated, who may investigate and report. The attorney general or county attorney may require the attendance and sworn testimony of witnesses and the production of documents.

Sec. 21. **APPROPRIATION.**

$150,000 is appropriated from the general fund to the commissioner of commerce for expenses associated with the licensing of debt management service providers. The appropriation is available until spent.

Sec. 22. **REPEALER.**

Minnesota Statutes 2006, sections 332.12; 332.13; 332.14; 332.15; 332.16; 332.17; 332.18; 332.19; 332.20; 332.21; 332.22; 332.23; 332.24; 332.25; 332.26; 332.27; 332.28; and 332.29, are repealed.