

A bill for an act

relating to commerce; regulating the business of providing debt management services; providing enforcement powers, civil remedies, and criminal penalties; appropriating money; amending Minnesota Statutes 2006, sections 45.011, subdivision 1; 46.04, subdivision 1; 46.05; 46.131, subdivision 2; 325E.311, subdivision 6; 325N.01; 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 45.011, subdivision 1, is amended to read:

Subdivision 1. **Scope.** As used in chapters 45 to 83, 155A, 332, 332A, 345, and 359, and sections 325D.30 to 325D.42, 326.83 to 326.991, and 386.61 to 386.78, unless the context indicates otherwise, the terms defined in this section have the meanings given them.

Sec. 2. Minnesota Statutes 2006, section 46.04, subdivision 1, is amended to read:

Subdivision 1. **General.** The commissioner of commerce, referred to in chapters 46 to 59A, and ~~sections 332.12 to 332.29~~ chapter 332A, as the commissioner, is vested with all the powers, authority, and privileges which, prior to the enactment of Laws 1909, chapter 201, were conferred by law upon the public examiner, and shall take over all duties in relation to state banks, savings banks, trust companies, savings associations, and other financial institutions within the state which, prior to the enactment of chapter 201, were imposed upon the public examiner. The commissioner of commerce shall exercise a constant supervision, either personally or through the examiners herein provided for, over the books and affairs of all state banks, savings banks, trust companies, savings

H.F. No. 1515, 1st Engrossment - 85th Legislative Session (2007-2008)

associations, credit unions, industrial loan and thrift companies, and other financial institutions doing business within this state; and shall, through examiners, examine each financial institution at least once every 24 calendar months. In satisfying this examination requirement, the commissioner may accept reports of examination prepared by a federal agency having comparable supervisory powers and examination procedures. With the exception of industrial loan and thrift companies which do not have deposit liabilities and licensed regulated lenders, it shall be the principal purpose of these examinations to inspect and verify the assets and liabilities of each and so far investigate the character and value of the assets of each institution as to determine with reasonable certainty that the values are correctly carried on its books. Assets and liabilities shall be verified in accordance with methods of procedure which the commissioner may determine to be adequate to carry out the intentions of this section. It shall be the further purpose of these examinations to assess the adequacy of capital protection and the capacity of the institution to meet usual and reasonably anticipated deposit withdrawals and other cash commitments without resorting to excessive borrowing or sale of assets at a significant loss, and to investigate each institution's compliance with applicable laws and rules. Based on the examination findings, the commissioner shall make a determination as to whether the institution is being operated in a safe and sound manner. None of the above provisions limits the commissioner in making additional examinations as deemed necessary or advisable. The commissioner shall investigate the methods of operation and conduct of these institutions and their systems of accounting, to ascertain whether these methods and systems are in accordance with law and sound banking principles. The commissioner may make requirements as to records as deemed necessary to facilitate the carrying out of the commissioner's duties and to properly protect the public interest. The commissioner may examine, or cause to be examined by these examiners, on oath, any officer, director, trustee, owner, agent, clerk, customer, or depositor of any financial institution touching the affairs and business thereof, and may issue, or cause to be issued by the examiners, subpoenas, and administer, or cause to be administered by the examiners, oaths. In case of any refusal to obey any subpoena issued under the commissioner's direction, the refusal may at once be reported to the district court of the district in which the bank or other financial institution is located, and this court shall enforce obedience to these subpoenas in the manner provided by law for enforcing obedience to subpoenas of the court. In all matters relating to official duties, the commissioner of commerce has the power possessed by courts of law to issue subpoenas and cause them to be served and enforced, and all officers, directors, trustees, and employees of state banks, savings banks, trust companies, savings associations, and other financial institutions within the state,

and all persons having dealings with or knowledge of the affairs or methods of these institutions, shall afford reasonable facilities for these examinations, make returns and reports to the commissioner of commerce as the commissioner may require; attend and answer, under oath, the commissioner's lawful inquiries; produce and exhibit any books, accounts, documents, and property as the commissioner may desire to inspect, and in all things aid the commissioner in the performance of duties.

Sec. 3. Minnesota Statutes 2006, section 46.05, is amended to read:

46.05 SUPERVISION OVER FINANCIAL INSTITUTIONS.

Every state bank, savings bank, trust company, savings association, debt management services provider, and other financial institutions shall be at all times under the supervision and subject to the control of the commissioner of commerce. If, and whenever in the performance of duties, the commissioner finds it necessary to make a special investigation of any financial institution under the commissioner's supervision, and other than a complete examination, the commissioner shall make a charge therefor to include only the necessary costs thereof. Such a fee shall be payable to the commissioner on the commissioner's making a request for payment.

Sec. 4. Minnesota Statutes 2006, section 46.131, subdivision 2, is amended to read:

Subd. 2. **Assessment authority.** Each bank, trust company, savings bank, savings association, regulated lender, industrial loan and thrift company, credit union, motor vehicle sales finance company, ~~debt prorating agency~~ management services provider and insurance premium finance company organized under the laws of this state or required to be administered by the commissioner of commerce shall pay into the state treasury its proportionate share of the cost of maintaining the Department of Commerce.

Sec. 5. 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 services 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. 6. Minnesota Statutes 2006, section 325N.01, is amended to read:

325N.01 DEFINITIONS.

The definitions in paragraphs (a) to (h) apply to sections 325N.01 to 325N.09.

(a) "Foreclosure consultant" means any person who, directly or indirectly, makes any solicitation, representation, or offer to any owner to perform for compensation or who, for compensation, performs any service which the person in any manner represents will in any manner do any of the following:

(1) stop or postpone the foreclosure sale;

(2) obtain any forbearance from any beneficiary or mortgagee;

(3) assist the owner to exercise the right of reinstatement provided in section 580.30;

(4) obtain any extension of the period within which the owner may reinstate the owner's obligation;

(5) obtain any waiver of an acceleration clause contained in any promissory note or contract secured by a mortgage on a residence in foreclosure or contained in the mortgage;

(6) assist the owner in foreclosure or loan default to obtain a loan or advance of funds;

(7) avoid or ameliorate the impairment of the owner's credit resulting from the recording of a notice of default or the conduct of a foreclosure sale; or

(8) save the owner's residence from foreclosure.

(b) A foreclosure consultant does not include any of the following:

(1) a person licensed to practice law in this state when the person renders service in the course of his or her practice as an attorney-at-law;

(2) a person licensed as a debt ~~prorater under sections 332.12 to 332.29~~ management services provider under chapter 332A, when the person is acting as a debt ~~prorater~~ management services provider as defined in ~~these sections~~ that chapter;

(3) a person licensed as a real estate broker or salesperson under chapter 82 when the person engages in acts whose performance requires licensure under that chapter unless the person is engaged in offering services designed to, or purportedly designed to, enable the owner to retain possession of the residence in foreclosure;

(4) a person licensed as an accountant under chapter 326A when the person is acting in any capacity for which the person is licensed under those provisions;

(5) a person or the person's authorized agent acting under the express authority or written approval of the Department of Housing and Urban Development or other department or agency of the United States or this state to provide services;

(6) a person who holds or is owed an obligation secured by a lien on any residence in foreclosure when the person performs services in connection with this obligation or lien if the obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance;

(7) any person or entity doing business under any law of this state, or of the United States relating to banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of these persons or entities, and any agent or employee of these persons or entities while engaged in the business of these persons or entities;

(8) a person licensed as a residential mortgage originator or servicer pursuant to chapter 58, when acting under the authority of that license or a foreclosure purchaser as defined in section 325N.10;

(9) a nonprofit agency or organization that offers counseling or advice to an owner of a home in foreclosure or loan default if they do not contract for services with for-profit lenders or foreclosure purchasers; and

(10) a judgment creditor of the owner, to the extent that the judgment creditor's claim accrued prior to the personal service of the foreclosure notice required by section 580.03, but excluding a person who purchased the claim after such personal service.

(c) "Foreclosure reconveyance" means a transaction involving:

(1) the transfer of title to real property by a foreclosed homeowner during a foreclosure proceeding, either by transfer of interest from the foreclosed homeowner or by creation of a mortgage or other lien or encumbrance during the foreclosure process

that allows the acquirer to obtain title to the property by redeeming the property as a junior lienholder; and

(2) the subsequent conveyance, or promise of a subsequent conveyance, of an interest back to the foreclosed homeowner by the acquirer or a person acting in participation with the acquirer that allows the foreclosed homeowner to possess the real property following the completion of the foreclosure proceeding, which interest includes, but is not limited to, an interest in a contract for deed, purchase agreement, option to purchase, or lease.

(d) "Person" means any individual, partnership, corporation, limited liability company, association, or other group, however organized.

(e) "Service" means and includes, but is not limited to, any of the following:

(1) debt, budget, or financial counseling of any type;

(2) receiving money for the purpose of distributing it to creditors in payment or partial payment of any obligation secured by a lien on a residence in foreclosure;

(3) contacting creditors on behalf of an owner of a residence in foreclosure;

(4) arranging or attempting to arrange for an extension of the period within which the owner of a residence in foreclosure may cure the owner's default and reinstate his or her obligation pursuant to section 580.30;

(5) arranging or attempting to arrange for any delay or postponement of the time of sale of the residence in foreclosure;

(6) advising the filing of any document or assisting in any manner in the preparation of any document for filing with any bankruptcy court; or

(7) giving any advice, explanation, or instruction to an owner of a residence in foreclosure, which in any manner relates to the cure of a default in or the reinstatement of an obligation secured by a lien on the residence in foreclosure, the full satisfaction of that obligation, or the postponement or avoidance of a sale of a residence in foreclosure, pursuant to a power of sale contained in any mortgage.

(f) "Residence in foreclosure" means residential real property consisting of one to four family dwelling units, one of which the owner occupies as his or her principal place of residence, and against which there is an outstanding notice of pendency of foreclosure, recorded pursuant to section 580.032, or against which a summons and complaint has been served under chapter 581.

(g) "Owner" means the record owner of the residential real property in foreclosure at the time the notice of pendency was recorded, or the summons and complaint served.

(h) "Contract" means any agreement, or any term in any agreement, between a foreclosure consultant and an owner for the rendition of any service as defined in paragraph (e).

Sec. 7. **[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 person directly or indirectly controlling, controlled by, or under common control with another person.

Subd. 6. Debt management services agreement. "Debt management services agreement" means the written contract between the debt management services 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) state or national banks, 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 and collection agencies, 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 management services. "Debt management services" means the provision of any one or more of the following:

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

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

(3) 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 the provision of debt management services 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. Person. "Person" means any individual, firm, partnership, association, or corporation.

Subd. 12. Registrant. "Registrant" means any person registered 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 management services.

Sec. 8. [332A.03] REQUIREMENT OF REGISTRATION.

On or after August 1, 2007, it is unlawful for any person, whether or not located in this state, to operate as 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 becoming registered 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 registered as a debt management services 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. 9. [332A.04] REGISTRATION.

Subdivision 1. **Form.** Application for registration to operate as a debt management services 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 of each principal of the entity applying;
- (2) the address, which must not be a post office box, and the telephone number and, if applicable, e-mail address, of the applicant;
- (3) identification of the trust account required under section 332A.13;
- (4) consent to the jurisdiction of the courts of this state;
- (5) 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;
- (6) 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

10.1 in the applicant, unresolved or otherwise, filed or otherwise commenced within the
10.2 preceding ten years;

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

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

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

10.10 (8) proof of accreditation of:

10.11 (i) the debt management services provider; and

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

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

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

10.19 Subd. 3. **Fees.** The registration application must be accompanied by payment of
10.20 \$1,000 as a registration fee.

10.21 Subd. 4. **Bond.** The registration application must be accompanied by payment of
10.22 the premium for a surety bond in which the applicant shall be the obligor, in a sum to be
10.23 determined by the commissioner but not less than \$5,000, and in which an insurance
10.24 company, which is duly authorized by the state of Minnesota to transact the business of
10.25 fidelity and surety insurance, shall be a surety. However, the commissioner may accept
10.26 a deposit in cash, or securities that may legally be purchased by savings banks or for
10.27 trust funds of an aggregate market value equal to the bond requirement, in lieu of the
10.28 surety bond. The cash or securities must be deposited with the commissioner of finance.
10.29 The commissioner may also require a fidelity bond in an appropriate amount covering
10.30 employees of any applicant. Each branch office or additional place of business of an
10.31 applicant must be bonded as provided in this subdivision. In determining the bond amount
10.32 necessary for the maintenance of any office, whether it is a surety bond, fidelity bond, or
10.33 both, the commissioner shall consider the financial responsibility, experience, character,
10.34 and general fitness of the debt management services provider and its operators and owners;
10.35 the volume of business handled or proposed to be handled; the location of the office
10.36 and the geographical area served or proposed to be served; and other information the

11.1 commissioner may deem pertinent based upon past performance, previous examinations,
11.2 annual reports, and manner of business conducted in other states.

11.3 Subd. 5. **Condition of bond.** The bond must run to the state of Minnesota for the
11.4 use of the state and of any person or persons who may have a cause of action against the
11.5 obligor arising out of the obligor's activities as a debt management services provider to
11.6 a debtor domiciled in this state. The bond must be conditioned that the obligor will not
11.7 commit any fraudulent act and will faithfully conform to and abide by the provisions of
11.8 this chapter and of all rules lawfully made by the commissioner under this chapter and
11.9 pay to the state and to any such person or persons any and all money that may become
11.10 due or owing to the state or to such person or persons from the obligor under and by
11.11 virtue of this chapter.

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

11.20 Subd. 7. **Registrant list.** The commissioner must maintain a list of registered debt
11.21 management services providers. The list must be made available to the public in written
11.22 form upon request and on the Department of Commerce Web site.

11.23 **Sec. 10. [332A.05] NONASSIGNMENT OF REGISTRATION.**

11.24 A registration must not be transferred or assigned without the consent of the
11.25 commissioner.

11.26 **Sec. 11. [332A.06] RENEWAL OF REGISTRATION.**

11.27 Each year, each registrant under the provisions of this chapter must, not more than
11.28 60 nor less than 30 days before its registration is to expire, apply to the commissioner for
11.29 renewal of its registration on a form prescribed by the commissioner. The application must
11.30 be signed by the registrant under penalty of perjury, contain current information on all
11.31 matters required in the original application, and be accompanied by a payment of \$250.
11.32 The registrant must maintain a continuous surety bond that satisfies the requirements of
11.33 section 332A.04, subdivision 4, provided that the commissioner may require a different

12.1 amount that is at least equal to the largest amount that has accrued in the registrant's trust
12.2 account during the previous year. The renewal is effective for one year.

12.3 Sec. 12. **[332A.07] OTHER DUTIES OF REGISTRANT.**

12.4 Subdivision 1. Requirement to update information. A registrant must update any
12.5 information required by this chapter provided in its original or renewal application not
12.6 later than 90 days after the date the events precipitating the update occurred.

12.7 Subd. 2. Inspection of debtor of registration. Each registrant must maintain a
12.8 copy of its registration in its files. The registrant must allow a debtor, upon request, to
12.9 inspect the registration.

12.10 Sec. 13. **[332A.08] DENIAL OF REGISTRATION.**

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

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

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

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

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

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

13.1 registration has previously been revoked or suspended in this state or any other state, or
13.2 who has been permanently or temporarily enjoined by any court of competent jurisdiction
13.3 from engaging in or continuing any conduct or practice involving any aspect of the debt
13.4 management services provider business;

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

13.6 (7) is insolvent;

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

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

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

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

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

13.17 Sec. 14. **[332A.09] SUSPENDING, REVOKING, OR REFUSING TO RENEW**
13.18 **REGISTRATION.**

13.19 Subdivision 1. **Procedure.** The commissioner may revoke, suspend, or refuse
13.20 to renew any registration issued under this chapter, or may levy a civil penalty under
13.21 section 45.027, or any combination of actions, if the debt management services provider
13.22 or any controlling or affiliated person has committed any act or omission for which the
13.23 commissioner could have refused to issue an initial registration or renew an existing
13.24 registration. Revocation of or refusal to renew a registration must be upon notice and
13.25 hearing as prescribed in the Administrative Procedure Act, sections 14.57 to 14.69. The
13.26 notice must set a time for hearing before the commissioner not less than 20 nor more than
13.27 30 days after service of the notice, provided the registrant may waive the 20-day minimum.
13.28 The commissioner may, in the notice, suspend the registration for a period not to exceed 60
13.29 days. Unless the notice states that the registration is suspended, pending the determination
13.30 of the main issue, the registrant may continue to transact business until the final decision of
13.31 the commissioner. If the registration is suspended, the commissioner shall hold a hearing
13.32 and render a final determination within ten days of a request by the registrant. If the
13.33 commissioner fails to do so, the suspension shall terminate and be of no force or effect.

13.34 Subd. 2. **Notification of interested persons.** After the notice and hearing required
13.35 in subdivision 1, upon issuing an order suspending or revoking a registration or refusing to

14.1 renew a registration, the commissioner may notify all individuals who have contracts with
14.2 the affected registrant and all creditors who have agreed to a debt management services
14.3 plan that the registration has been revoked and that the order is subject to appeal.

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

14.8 Sec. 15. **[332A.10] WRITTEN DEBT MANAGEMENT SERVICES**
14.9 **AGREEMENT.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

15.25 (1) a hold harmless clause;

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

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

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

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

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

15.36 (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 services 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. 16. **[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 services 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 services provider's right to cancel.** A debt management services provider may cancel a debt management services agreement with good cause upon 30 days' written notice to the debtor. Within ten days after the cancellation, the debt management services 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. 17. **[332A.12] BOOKS, RECORDS, AND INFORMATION.**

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

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

17.25 **Sec. 18. [332A.13] FEES, PAYMENTS, AND CONSENT OF CREDITORS.**

17.26 Subdivision 1. **Origination fee; credit background report cost.** The registrant
17.27 may charge a nonrefundable origination fee of not more than \$50, which may be retained
17.28 by the registrant from the initial amount paid by the debtor to the registrant.

17.29 Subd. 2. **Monthly maintenance fee.** The registrant may charge a periodic fee for
17.30 account maintenance or other purposes, but only if the fee is reasonable for the services
17.31 provided and does exceed the lesser of 15 percent of the monthly payment amount or \$75.

17.32 Subd. 3. **Additional fees unauthorized.** A registrant may not impose any fee or
17.33 other charge or receive any funds or other payment other than the initial fee or monthly
17.34 maintenance fee authorized by this section.

18.1 Subd. 4. **Amount of periodic payments retained.** The registrant may retain as
18.2 payment for the fees authorized by this section no more than 15 percent of any periodic
18.3 payment made to the registrant by the debtor. The remaining 85 percent must be disbursed
18.4 to listed creditors under and in accordance with the debt management services agreement.
18.5 No fees or charges may be received or retained by the registrant for any handling of
18.6 recurring payments. Recurring payments include current rent, mortgage, utility, telephone,
18.7 maintenance as defined in section 518.27, child support, insurance premiums, and such
18.8 other payments as the commissioner may by rule prescribe.

18.9 Subd. 5. **Advance payments.** No fees or charges may be received or retained for
18.10 any payments by the debtor made more than the following number of days in advance
18.11 of the date specified in the debt management services agreement on which they are due:
18.12 (1) 42 days in the case of contracts requiring monthly payments; (2) 15 days in the case
18.13 of agreements requiring biweekly payments; or (3) seven days in the case of agreements
18.14 requiring weekly payments. For those agreements which do not require payments in
18.15 specified amounts, a payment is deemed an advance payment to the extent it exceeds
18.16 twice the average regular payment previously made by the debtor under that contract. This
18.17 subdivision does not apply when the debtor intends to use the advance payments to satisfy
18.18 future payment of obligations due within 30 days under the contract. This subdivision
18.19 supersedes any inconsistent provision of this chapter.

18.20 Subd. 6. **Consent of creditors.** A registrant must actively seek to obtain the consent
18.21 of all creditors to the debt management services plan set forth in the debt management
18.22 services agreement. Consent by a creditor may be express and in writing, or may be
18.23 evidenced by acceptance of a payment made under the debt management services plan
18.24 set forth in the contract. The registrant must notify the debtor within ten days after any
18.25 failure to obtain the required consent and of the debtor's right to cancel without penalty.
18.26 The notice must be in a form as the commissioner shall prescribe. Nothing contained in
18.27 this section is deemed to require the return of any origination fee and any fees earned by
18.28 the registrant prior to cancellation or default.

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

19.1 Subd. 8. **Payments held in trust.** The registrant must maintain a separate trust
19.2 account and deposit in the account all payments received from the moment that they are
19.3 received, except that the registrant may commingle the payment with the registrant's
19.4 own property or funds, but only to the extent necessary to ensure the maintenance of a
19.5 minimum balance if the financial institution at which the trust account is held requires
19.6 a minimum balance to avoid the assessment of fees or penalties for failure to maintain
19.7 a minimum balance. All disbursements, whether to the debtor or to the creditors of the
19.8 debtor, or to the registrant, must be made from such account.

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

19.16 Sec. 19. **[332A.14] PROHIBITIONS.**

19.17 A registrant shall not:

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

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

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

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

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

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

19.34 (7) lend money or provide credit to any debtor if any interest or fee is charged,
19.35 or directly or indirectly collect any fee for referring, advising, procuring, arranging, or

20.1 assisting a consumer in obtaining any extension of credit or other debtor service from a
20.2 lender or service provider;

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

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

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

20.12 (11) receive any cash, fee, gift, bonus, premium, reward, or other compensation
20.13 from any person other than the debtor or a person on the debtor's behalf in connection
20.14 with activities as a registrant, provided that this paragraph does not apply to a registrant
20.15 which is a bona fide nonprofit corporation duly organized under chapter 317A or under
20.16 the similar laws of another state;

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

20.20 (13) in any way charge or purport to charge or provide any debtor credit insurance in
20.21 conjunction with any contract or agreement involved in the debt management services
20.22 plan;

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

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

20.27 **Sec. 20. [332A.16] ADVERTISEMENT OF DEBT MANAGEMENT SERVICES**
20.28 **PLANS.**

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

20.34 (1) represent that the debt management services provider is a nonprofit, not-for-profit,
20.35 or has similar status or characteristics if some or all of the debt management services will

21.1 be provided by a for-profit company that is a controlling or affiliated party to the debt
21.2 management services provider; or

21.3 (2) make any communication that gives the impression that the debt management
21.4 services provider is acting on behalf of a government agency.

21.5 Sec. 21. **[332A.17] DEBT MANAGEMENT SERVICES AGREEMENT**
21.6 **RESCISSION.**

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

21.13 Sec. 22. **[332A.18] ENFORCEMENT; REMEDIES.**

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

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

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

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

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

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

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

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

21.33 Subd. 3. **Injunctive relief.** A debtor may sue a debt management services provider
21.34 for temporary or permanent injunctive or other appropriate equitable relief to prevent

22.1 violations of any provision of this chapter. A court must grant injunctive relief on a
22.2 showing that the debt management services provider has violated any provision of this
22.3 chapter, or in the case of a temporary injunction, on a showing that the debtor is likely to
22.4 prevail on allegations that the debt management services provider violated any provision
22.5 of this chapter.

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

22.10 Subd. 5. **Public enforcement.** The attorney general shall enforce this chapter
22.11 under section 8.31.

22.12 **Sec. 23. [332A.19] INVESTIGATION.**

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

22.22 **Sec. 24. APPROPRIATION.**

22.23 (a) \$..... is appropriated for fiscal year 2008 from the general fund to the
22.24 commissioner of commerce for costs associated with registration of debt management
22.25 services providers, including the startup costs necessitated by this act.

22.26 (b) \$..... is appropriated for fiscal year 2009 from the general fund to the
22.27 commissioner of commerce for costs associated with registration of debt management
22.28 services providers. This amount is added to the base for fiscal year 2010 and beyond.

22.29 **Sec. 25. REPEALER.**

22.30 Minnesota Statutes 2006, sections 332.12; 332.13; 332.14; 332.15; 332.16; 332.17;
22.31 332.18; 332.19; 332.20; 332.21; 332.22; 332.23; 332.24; 332.25; 332.26; 332.27; 332.28;
22.32 and 332.29, are repealed.

- 23.1 Sec. 26. EFFECTIVE DATE.
- 23.2 Sections 1 to 23 and 25 are effective January 1, 2008. Section 24 is effective July
- 23.3 1, 2007.