

**CHAPTER 210—S.F.No. 2930**

*An act relating to commerce; regulating debt management services; repealing an obsolete criminal provision; amending Minnesota Statutes 2007 Supplement, sections 332A.02, subdivision 2; 332A.04, subdivisions 1, 2, 4; 332A.06; 332A.10, subdivision 5; 332A.12, by adding a subdivision; 332A.13, subdivision 8; repealing Minnesota Statutes 2006, section 609B.163.*

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

Section 1. Minnesota Statutes 2007 Supplement, section 332A.02, subdivision 2, is amended to read:

Subd. 2. **Accreditation.** "Accreditation" means certification as an accredited credit counseling provider by the Council on Accreditation, the Bureau Veritas Certification North America, Inc., or BSI Management Systems America, Inc.

Sec. 2. Minnesota Statutes 2007 Supplement, section 332A.04, subdivision 1, is amended to read:

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

in the applicant, unresolved or otherwise, filed or otherwise commenced 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;

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

(8) proof of accreditation, unless the applicant was licensed in Minnesota as a debt prorater immediately before August 1, 2007; and

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

The commissioner may, for good cause shown, temporarily waive any requirement of this subdivision.

Sec. 3. Minnesota Statutes 2007 Supplement, section 332A.04, subdivision 2, is amended to read:

Subd. 2. **Term and scope of registration.** ~~The A registration must remain in full force and effect for one year~~ is effective until 11:59 p.m. on December 31 of the year for which the application for registration is filed or until it is surrendered by the registrant or revoked or suspended by the commissioner. The registration is limited solely to the business of providing debt management services.

Sec. 4. Minnesota Statutes 2007 Supplement, section 332A.04, subdivision 4, is amended to read:

Subd. 4. **Bond.** The registration application must be accompanied by ~~payment of the premium for~~ 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 in this state 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 debt management services provider 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.

Sec. 5. Minnesota Statutes 2007 Supplement, section 332A.06, is amended to read:

#### **332A.06 RENEWAL OF REGISTRATION.**

Each year, each registrant under the provisions of this chapter must, not more than 60 nor less than 30 days before its registration is to expire, apply to the commissioner for renewal of its registration on a form prescribed by the commissioner. The application must be signed by the registrant under penalty of perjury, contain current information on all matters required in the original application, and be accompanied by a payment of \$250. The registrant 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 registrant's trust account during the previous year. The renewal is effective for one year. The commissioner may, for good cause shown, temporarily waive any requirement of this section.

Sec. 6. Minnesota Statutes 2007 Supplement, section 332A.10, subdivision 5, is amended to read:

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, except that the signature of the debtor is not required if:

(1) a creditor is added to or deleted from a debt management services agreement at the request of the debtor or a debtor voluntarily increases the amount of a payment, provided the debt management services provider must provide an updated payment schedule to the debtor within seven days; or

(2) the payment amount to a creditor in the agreement increases by \$10 or less and the total payment amount to all creditors increases a total of \$20 or less as a result of incorrect or incomplete information provided by the debtor regarding the amount of debt owed a creditor, provided the debt management services provider must notify the debtor of the increase within seven days.

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. 7. Minnesota Statutes 2007 Supplement, section 332A.12, is amended by adding a subdivision to read:

Subd. 1a. **Annual report.** On or before March 15 of each calendar year, each registrant must file a report with the commissioner containing such information as the commissioner may require about the preceding calendar year. The report must be in a form the commissioner prescribes.

Sec. 8. Minnesota Statutes 2007 Supplement, section 332A.13, subdivision 8, is amended to read:

Subd. 8. **Payments held in trust.** The registrant must maintain a separate trust account and deposit in the account all payments received from the moment that ~~they are received~~ the funds are available, except that the registrant may commingle the payment

with the registrant'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. All disbursements, whether to the debtor or to the creditors of the debtor, or to the registrant, must be made from such account, except that disbursements may be made from a trust account to an account established solely for the purpose of making disbursements to debtors and creditors.

Sec. 9. **REPEALER.**

Minnesota Statutes 2006, section 609B.163, is repealed.

Sec. 10. **EFFECTIVE DATE.**

Sections 1 to 9 are effective the day following final enactment.

Presented to the governor April 17, 2008

Signed by the governor April 21, 2008, 11:41 a.m.