

House Bill 1154

By: Representatives Jacobs of the 80th, Fleming of the 121st, Mabra of the 63rd, Evans of the 42nd, Willard of the 51st, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 7 and Chapter 5 of Title 18 of the Official Code of Georgia Annotated,
2 relating to banking and finance and debtor and creditor, respectively, so as to enact a new
3 chapter in Title 7, to regulate debt resolution service providers and repeal Chapter 5, relating
4 to debt adjustments; to provide for a legislative purpose; to provide for definitions; to provide
5 for applicability; to provide for licensing requirements for debt resolution service providers;
6 to provide for the keeping of records; to provide for minimum bonding for debt resolution
7 service providers; to provide for required disclosures and practices by a debt resolution
8 service provider; to provide for the collection of fees by a debt resolution service provider;
9 to provide for consumer funds held by debt resolution service providers or third-party
10 payment processors; to provide for prohibited acts by a debt resolution service provider; to
11 provide for the enforcement of rules and regulations by the Department of Banking and
12 Finance; to provide for private causes of action for violations; to provide for related matters;
13 to provide for effective dates; to repeal conflicting laws; and for other purposes.

14 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

15 SECTION 1.

16 Title 7 of the Official Code of Georgia Annotated, relating to banking and finance, is
17 amended by adding a new chapter to read as follows:

18 "CHAPTER 10

19 7-10-1.

20 (a) The purpose of this chapter is to regulate debt resolution service providers who contract
21 with consumers.

22 (b) This chapter shall be liberally construed to accomplish its purpose.

23 7-10-2.

24 As used in this chapter, the term:

25 (1) 'Advertising' means information about a provider or about the provider's debt
26 resolution services, communicated in writing or orally to an individual consumer or the
27 public by telephone, television, Internet, radio, or other electronic medium, or by written
28 material sent by mail, sent electronically, posted publicly, or posted at the provider's
29 business location.

30 (2) 'Affiliate' means any of the following:

31 (A) A person that controls, is controlled by, or is under common control with the
32 provider;

33 (B) An executive officer or director of or individual performing similar functions with
34 respect to the provider; or

35 (C) An executive officer or director of or an individual performing similar functions
36 with respect to a person described in subparagraph (A) of this paragraph.

37 (3) 'Commissioner' means the commissioner of banking and finance.

38 (4) 'Concession' means assent to repayment of a debt on terms more favorable to a
39 consumer than the terms of the agreement under which the consumer became indebted
40 to the creditor.

41 (5) 'Consumer' means an individual who resides in this state and seeks a debt resolution
42 service or enters a debt resolution plan.

43 (6) 'Control' means the direct or indirect possession of power to direct or cause the
44 direction of management and policies of a person, whether through the ownership of
45 voting or nonvoting securities, by contract, or otherwise.

46 (7) 'Creditor' means a person to whom a person owes money.

47 (8) 'Debt management service' means a service in which a provider furnishes or seeks to
48 furnish services to a consumer designed to repay the consumer's principal amount of the
49 debt in full.

50 (9) 'Debt resolution plan' means the terms of a written agreement between a provider and
51 a consumer setting forth the details of the debt resolution service.

52 (10) 'Debt resolution service' means a service in which a provider furnishes or seeks to
53 furnish a debt management service or debt settlement service to a consumer. Such term
54 shall not include an extension of credit, including the consolidation or refinance of a loan,
55 or bankruptcy services provided by an attorney licensed to practice law in this state.

56 (11) 'Debt settlement service' means a service in which a provider furnishes or seeks to
57 furnish services to a consumer designed to compromise a consumer's principal amount
58 of debt.

59 (12) 'Department' means the Department of Banking and Finance.

- 60 (13) 'Licensee' means a provider duly licensed under this chapter.
- 61 (14) 'Misrepresent' means to make a false statement of a substantive fact or to engage in
 62 any conduct which leads to a false belief material to the transaction.
- 63 (15) 'Person' means any individual, sole proprietorship, partnership, corporation, limited
 64 liability company, association, trust, organization, or any other group of individuals,
 65 however organized.
- 66 (16) 'Principal amount of the debt' means the amount of a debt owed by a consumer at
 67 the time the debt is added to a debt resolution plan.
- 68 (17) 'Provider' means a person, other than a third-party payment processor, who directly
 69 or indirectly acts as an intermediary between a consumer and one or more creditors and
 70 that provides or offers to provide a debt resolution service to a consumer in this state
 71 regardless of whether the person charges a fee or receives any other consideration in
 72 exchange for the debt resolution service.
- 73 (18) 'Secured debt' means a debt for which a creditor has a mortgage, lien, or security
 74 interest in collateral.
- 75 (19) 'Third-party payment processor' means a person, other than a provider or a
 76 subsidiary or affiliate of a provider, that directly contracts with a consumer to assist a
 77 consumer in establishing a depository account at a bank or credit union in a consumer's
 78 name in order to enable a consumer to make disbursements pursuant to the terms of a
 79 debt resolution plan.
- 80 (20) 'Ultimate equitable owner' means a person who:
- 81 (A) Owns, directly or indirectly, a 10 percent or more interest in a corporation or any
 82 other form of business organization;
- 83 (B) Owns, directly or indirectly, 10 percent or more of the voting shares of any
 84 corporation or any other form of business organization; or
- 85 (C) Exerts control, directly or indirectly, over a corporation or any other form of
 86 business organization, regardless of whether such person owns or controls such interest
 87 through one or more natural persons or one or more proxies, powers of attorney,
 88 nominees, corporations, associations, limited liability companies, partnerships, trusts,
 89 joint-stock companies, other entities or devices, or any combination thereof.
- 90 (21) 'Unsecured debt' means a debt for which a creditor does not have collateral.

91 7-10-3.

- 92 (a) Except as otherwise provided in this Code section, no person, regardless of whether
 93 located in this state, shall act as a provider to a consumer within this state without first
 94 obtaining a license under this chapter to act as a debt management service provider or to
 95 act as a debt settlement service provider.

- 96 (b) A license to engage in debt management shall authorize a licensee to engage in debt
97 management services and debt settlement services.
- 98 (c) A license to engage in debt settlement shall authorize a licensee to only engage in debt
99 settlement services.
- 100 (d) The business of providing debt resolution services shall be conducted in this state if a
101 debt resolution service provider solicits or contracts with consumers located in this state.
- 102 (e) This chapter shall not apply to:
- 103 (1) An attorney licensed to practice in this state who provides debt resolution services
104 on behalf of a client as an ancillary matter to the attorney's representation of such client,
105 unless:
- 106 (A) The attorney is compensated by a provider or by an agent of such provider; or
107 (B) The attorney compensates a provider or an agent of such provider;
- 108 (2) A title insurance or abstract company employee or agent, or other person legally
109 authorized to engage in escrow business in this state and while engaged in such business
110 but who is not actively engaged in the business of providing debt resolution services;
- 111 (3) A judicial officer or person acting under a court order;
- 112 (4) A person who has legal authority under federal or state law to act as a representative
113 payee for a consumer to the extent that person is paying bills or other debts on behalf of
114 the consumer;
- 115 (5) A person who pays bills or other debts owed by a consumer and on behalf of a
116 consumer, if the money used to make payments belongs exclusively to the consumer and
117 the person does not initiate any contact with individual creditors of the consumer to
118 compromise a debt, arrange a new payment schedule, or otherwise change the terms of
119 the debt;
- 120 (6) A state or federally chartered bank, trust company, credit union, savings and loan
121 association, or savings bank, the deposits of which are federally insured;
- 122 (7) A certified public accountant licensed to practice accounting in this state, unless the
123 certified public accountant holds himself or herself out to the public as a provider or is
124 employed, affiliated with, or otherwise working on behalf of a provider;
- 125 (8) A mortgage lender, mortgage broker, or mortgage loan originator licensed by the
126 department;
- 127 (9) The United States of America, the State of Georgia or any other state, any county,
128 any city, and any agency, authority, division or corporate instrumentality of any
129 governmental entity;
- 130 (10) An individual employed by a licensee; or

131 (11) Any person exempted from the licensing requirements of this chapter when acting
132 within the scope of employment and under the supervision of the licensee or exempted
133 person as an employee and not as an independent contractor.

134 7-10-4.

135 (a) A provider that seeks to be licensed with the department shall file a written application
136 which shall be under oath and in a form prescribed by the department and shall pay an
137 application fee in an amount determined by the department. The department shall set
138 licensing fees in an amount to defray the costs of its investigation and review of the
139 application. A licensee application shall include the following:

140 (1) The applicant's name, the applicant's principal business address and telephone
141 number, any additional business addresses of the applicant which are located in this state,
142 and the applicant's e-mail address and Internet website address;

143 (2) All names under which the applicant conducts business;

144 (3) The address of each location in this state at which the applicant will provide debt
145 resolution services, or if the applicant will have no such location, a statement to that
146 effect;

147 (4) The name and home address of each executive officer, director, and ultimate
148 equitable owner of the applicant;

149 (5) If the applicant is a nonprofit or tax exempt organization, a detailed description of the
150 ownership interest of any officer, director, agent, or employee of the applicant
151 organization, or any member of the immediate family of an officer, director, agent, or
152 employee of the applicant organization who is an ultimate equitable owner of a for profit
153 affiliate or subsidiary of the applicant organization or in any other for profit business
154 entity that will provide debt resolution services to the applicant organization or to a
155 consumer in relation to the debt resolution business;

156 (6) Information and items required by Code Sections 7-10-6 and 7-10-10; and

157 (7) Such other data and pertinent information as the department may require with respect
158 to the applicant, its directors, officers, or ultimate equitable owners.

159 (b) In the event the department retains third parties to aid it in the review of initial or
160 renewal applications, examinations, investigations, or any of its other responsibilities under
161 this chapter, the cost to utilize these third parties shall be the sole liability of the provider
162 and paid directly by the provider.

163 (c) The department shall, by rule and regulation, prescribe annual license fees and
164 supervision fees to be paid by each debt resolution service provider doing business in this
165 state. The department may, by rule and regulation, prescribe reasonable application and
166 related fees, investigation fees, hearing fees, and fees to provide copies of any book,

167 account, report, or other paper filed in its office or for any certification thereof or for
168 processing any papers as required by this chapter. The department, in its discretion, may
169 require the payment of such fees in any manner deemed to be efficient, including collection
170 through automated clearing-house arrangements or other electronic means, so that the state
171 receives funds no later than the date the payment is required to be made.

172 (d) Unless the commissioner notifies an applicant that a longer period is necessary, the
173 commissioner shall approve or deny an application for licensure not later than 90 days after
174 receipt of a completed application. The commissioner shall inform the applicant in writing
175 of the reason for any license or renewal denial.

176 (e) The commissioner may refuse to accept an application for licensure if the application
177 contains material errors or materially incomplete information. An application shall be
178 deemed materially incomplete if it does not include all of the information required by this
179 Code section or the rules and regulations of the department.

180 (f) The commissioner may deny an initial or renewal license application if:

181 (1) The applicant or any director, officer, or employee of the applicant has been
182 convicted of a felony as provided in Code Section 7-10-6;

183 (2) The applicant or any director or executive officer has been found civilly liable, either
184 through a judgment, order, or settlement, related to a claim of conversion, theft, money
185 laundering, bribery, forgery, counterfeiting, embezzlement, tax evasion, kickbacks,
186 identity theft, cyber-attacks, fraud, including, but not limited to, check fraud, credit card
187 fraud, mortgage fraud, medical fraud, corporate fraud, bank account fraud, payment
188 (point of sale) fraud, currency fraud, bank fraud, and securities fraud, or a felony directly
189 related to the financial services business;

190 (3) The registration or license of the applicant or any director, officer, affiliate, ultimate
191 equitable owner, or employee of the applicant has been revoked or suspended in this state
192 or another state within the preceding five years. In the event the registration or license
193 was revoked or suspended for noncompliance with any provision of this chapter, other
194 than subsection (h) of this Code section, Code Section 7-10-6 or 7-10-17, or revoked or
195 suspended for any act in another jurisdiction, other than an act which, if committed within
196 this state, would constitute a violation of subsection (h) of this Code section, Code
197 Section 7-10-6 or 7-10-17, the department, upon the applicant providing information the
198 commissioner finds sufficient to show that the grounds for the previous revocation of
199 suspension no longer exist and any problem cited in the previous revocation or
200 suspension has been corrected or is no longer applicable, has the discretion to issue or
201 renew a license prior to the expiration of the five-year period;

202 (4) Any person who is a director, officer, affiliate, ultimate equitable owner, or employee
203 of the applicant and is personally subject to a final cease and desist order that has been

204 issued within the preceding five years if such order was based upon a violation of this
205 chapter. In the event the cease and desist order was issued for noncompliance with any
206 provision of this chapter, other than subsection (h) of this Code section, Code Section
207 7-10-6 or 7-10-17, the department, upon the applicant providing information the
208 commissioner finds sufficient to show that the grounds for the previous cease and desist
209 order no longer exist and any problem cited in the previous cease and desist order has
210 been corrected or is no longer applicable, has the discretion to issue or renew a license
211 prior to the expiration of the five-year period;

212 (5) Any person who is a director, officer, affiliate, or ultimate equitable owner of the
213 applicant or an individual who directs the affairs, controls, or establishes policy for the
214 applicant has been in one or more of those roles at a registrant or licensee in any state
215 whose application has been denied or license revoked or suspended within the preceding
216 five years. In the event the application was denied or registration or license was revoked
217 or suspended for noncompliance with any provision of this chapter, other than subsection
218 (h) of this Code section, Code Section 7-10-6 or 7-10-17, or application was denied or
219 registration or license was revoked or suspended for any act in another jurisdiction, other
220 than an act which, if committed within this state, would constitute a violation of
221 subsection (h) of this Code section, Code Section 7-10-6 or 7-10-17, the department,
222 upon the applicant providing information the commissioner finds sufficient to show that
223 the grounds for the previous revocation of suspension no longer exist and any problem
224 cited in the previous application denial or revocation or suspension has been corrected
225 or is no longer applicable, has the discretion to issue or renew a license prior to the
226 expiration of the five-year period;

227 (6) The commissioner, based on specific evidence, reasonably finds that the applicant
228 does not warrant the belief that the business will be operated lawfully or within the
229 provisions and purposes of this chapter; or

230 (7) The applicant fails to satisfy the department that it is financially sound and
231 responsible and appears able to conduct the business of debt resolution service in an
232 honest and efficient manner and with the confidence and trust of the community.

233 (g) On written request, the applicant shall be entitled to a hearing, in accordance with
234 Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act,' to contest the denial
235 of an initial or renewal application. A request for a hearing shall be made within 30 days
236 of the mailing of the notice to the applicant stating that the application has been denied and
237 stating the reasons for denial.

238 (h) In addition to the power to refuse an initial application as specified in subsection (f)
239 of this Code section, the commissioner may suspend or revoke a provider's license if the
240 commissioner finds that any of the following conditions are met:

- 241 (1) A fact or condition exists that, if it had existed when the provider applied for
 242 licensure, would have been grounds for denying the license application;
- 243 (2) A fact or condition exists that the commissioner was not aware of when the provider
 244 applied for a license and would have been grounds for denying the license application;
- 245 (3) An applicant made a false statement or misrepresentation in an initial or renewal
 246 application for licensure or failed to give a true reply to a question in an initial or renewal
 247 application;
- 248 (4) A provider has violated this chapter, a rule and regulation of the department, or an
 249 order of the commissioner;
- 250 (5) A provider has committed any fraud, engaged in any dishonest activities, or made
 251 any misrepresentations;
- 252 (6) A provider failed to pay, within 30 days after it becomes final or such longer period
 253 as permitted by its terms, a judgment recovered in any court by a consumer or creditor
 254 in an action arising out of such provider's business;
- 255 (7) A provider refuses to permit the commissioner to make an examination or fails to
 256 cooperate with an investigation;
- 257 (8) A provider purposely withheld, deleted, destroyed, or altered information requested
 258 by an examiner of the department or made false statements or misrepresentations to the
 259 department;
- 260 (9) A provider failed to respond within a reasonable time and in an appropriate manner
 261 to communications or requests from the commissioner;
- 262 (10) A provider received money from or on behalf of a consumer for disbursement to a
 263 creditor pursuant to providing a debt management service and the provider failed to
 264 disburse money to the creditor on behalf of the consumer within 30 days;
- 265 (11) The commissioner determines that a debt management service provider's account
 266 or a debt settlement service provider's account, if the debt settlement service provider
 267 administers, maintains, receives, or holds money paid by or on behalf of a consumer for
 268 disbursements to the consumer's creditors, is not materially in balance with and
 269 reconciled with the amount of funds remitted by the consumer; or
- 270 (12) A provider has not operated lawfully or within the provisions and purposes of this
 271 chapter.
- 272 (i) Notice of the department's intention to enter an order suspending or revoking a license
 273 under this chapter shall be given to the provider in writing and mailed to the provider's
 274 principal place of business as filed with the department. Within 20 days of the date of
 275 notice of intention to enter an order of suspension or revocation under this chapter, the
 276 provider may request in writing a hearing in accordance with Chapter 13 of Title 50, the
 277 'Georgia Administrative Procedure Act,' to contest the order. If a hearing is not requested

278 in writing within 20 days of the date of such notion of intention, the department shall enter
279 a final order regarding the suspension or revocation.

280 (j) Notwithstanding the requirements in this Code section dealing with affiliates and
281 ultimate equitable owners of an applicant, the department, upon written request from the
282 applicant, has the discretion to waive some or all of the requirements in this Code section
283 as it relates to ultimate equitable owners and affiliates.

284 7-10-5.

285 (a) The department shall be authorized to:

286 (1) Participate in the Nationwide Multistate Licensing System in order to facilitate the
287 sharing of information and standardization of the licensing and application processes for
288 providers by electronic or other means;

289 (2) Enter into operating agreements, information sharing agreements, interstate
290 cooperative agreements, and other contracts necessary for the department's participation
291 in the Nationwide Multistate Licensing System;

292 (3) Request that the Nationwide Multistate Licensing System adopt an appropriate
293 privacy, data security, and security breach notification policy that is in full compliance
294 with existing state and federal law;

295 (4) Disclose or cause to be disclosed without liability via the Nationwide Multistate
296 Licensing System applicant and licensee information, including, but not limited to,
297 violations of this chapter and enforcement actions to facilitate regulatory oversight of
298 providers across state jurisdictional lines;

299 (5) Establish and adopt, by rule and regulation, requirements for participation by
300 applicants and licensees in the Nationwide Multistate Licensing System upon the
301 department's determination that each new or amended requirement is consistent with both
302 the public interest and the purposes of this chapter; and

303 (6) Pay all fees received from licensees and applicants related to applications, licenses,
304 and renewals to the Office of the State Treasurer; provided, however, that the department
305 may net such fees to recover the cost of participation in the Nationwide Multistate
306 Licensing System.

307 (b) Irrespective of its participation in the Nationwide Multistate Licensing System, the
308 department shall retain full and exclusive authority over determinations whether to grant,
309 deny, or renew applications or suspend or revoke licenses issued to providers in accordance
310 with this chapter. Nothing in this Code section shall be construed to reduce this authority.

311 (c) Except as otherwise provided in this chapter, information disclosed through the
312 Nationwide Multistate Licensing System and Registry shall be deemed to be disclosed
313 directly to the department and shall be subject to Code Section 7-1-70. Such information

314 shall not be disclosed to the public and shall remain privileged and confidential pursuant
315 to Code Section 7-1-70.

316 7-10-6.

317 (a)(1) As used in this Code section, the term 'conviction data' means a record of a
318 finding, verdict, or plea of guilty or plea of nolo contendere with regard to any crime,
319 regardless of whether an appeal of the conviction has been sought.

320 (2) The department may refuse to issue a license or may revoke a license if it finds that
321 the applicant or licensee, or any person who is a director, officer, partner, agent,
322 employee, or ultimate equitable owner of the applicant or licensee, or any individual who
323 directs the affairs, controls, or establishes policy for the applicant or licensee has been
324 convicted of a felony in any jurisdiction or of a crime which, if committed within this
325 state, would constitute a felony under the laws of this state. For the purposes of this
326 chapter, a person shall be deemed to have been convicted of a crime if such person shall
327 have pleaded guilty or nolo contendere to a charge thereof before a court or federal
328 magistrate or shall have been found guilty thereof by the decision or judgment of a court
329 or federal magistrate or by the verdict of a jury, irrespective of the pronouncement of
330 sentence or the suspension thereof, and regardless of whether first offender treatment
331 without adjudication of guilt pursuant to the charge was entered, or an adjudication or
332 sentence was otherwise withheld or not entered on that charge, unless and until such plea
333 of guilty or such decision, judgment, or verdict shall have been set aside, reversed, or
334 otherwise abrogated by lawful judicial process or until probation, sentence, or both
335 probation and sentence of a first offender have been successfully completed and
336 documented, or unless the person convicted of the crime shall have received a pardon
337 thereon from the President of the United States or the governor or other pardoning
338 authority in the jurisdiction where the conviction occurred, or shall have received an
339 official certification of pardon granted by the state's pardoning body where the conviction
340 occurred which removes the legal disabilities resulting from such conviction and restores
341 civil and political rights.

342 (b) The department shall be authorized to obtain conviction data with respect to any
343 applicant or licensee, or any person who is a director, officer, partner, agent, employee, or
344 ultimate equitable owner of the applicant or licensee, or any individual who directs the
345 affairs, controls, or establishes policy for the applicant or licensee. The department may
346 directly submit to the Georgia Crime Information Center two complete sets of fingerprints
347 of such person, together with the required records search fees and such other information
348 as may be required. Fees for background checks that the department administers shall be
349 sent to the department by applicants and licensees together with the fingerprints.

350 (c) Upon request by the department, each applicant or licensee, or any person who is a
351 director, officer, partner, agent, employee, or ultimate equitable owner of the applicant or
352 licensee, or any individual who directs the affairs, controls, or establishes policy for the
353 applicant or licensee shall submit to the department two complete sets of fingerprints, the
354 required records search fees, and such other information as may be required. Fees for
355 background checks that the department administers shall be submitted to the department
356 by applicants or licensees together with two complete sets of fingerprints and the
357 department is authorized to net such fees to recover any costs incurred by the department
358 related to running the background checks. Upon receipt of fingerprints, fees, and other
359 required information, the Georgia Crime Information Center shall promptly transmit one
360 set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and
361 an appropriate report and shall retain the other set and promptly conduct a search of its own
362 records and records to which it has access. The Georgia Crime Information Center shall
363 notify the department in writing of any derogatory finding, including, but not limited to,
364 any conviction data regarding the fingerprint records check, or if there is no such finding.
365 All conviction data received by the department or by the applicant or licensee shall be used
366 by the party requesting such data for the exclusive purpose of carrying out the
367 responsibilities of this chapter, shall not be a public record, shall be confidential, and shall
368 not be disclosed to any other person or agency except to any person or agency which
369 otherwise has a legal right to inspect the file. All such records shall be maintained by the
370 department and the applicant or licensee pursuant to laws regarding such records and the
371 rules and regulations of the Federal Bureau of Investigation and the Georgia Crime
372 Information Center, as applicable.

373 (d) Every applicant and licensee shall be authorized and required to obtain and maintain
374 the results of background checks on employees. Such background checks shall be handled
375 by the Georgia Crime Information Center pursuant to Code Section 35-3-34 and the rules
376 and regulations of the Georgia Crime Information Center. Applicants and licensees shall
377 be responsible for any applicable fees charged by the Georgia Crime Information Center.
378 An applicant or licensee may only employ a person whose background data has been
379 checked and been found to be in compliance with all lawful requirements prior to the initial
380 date of hire. This subsection shall not apply to directors, officers, partners, or ultimate
381 equitable owners of applicants or licensees, or to persons who direct the affairs, control,
382 or establish policy for applicants or licensees, whose background must have been
383 investigated through the department before taking office, beginning employment, or
384 securing ownership. Upon receipt of information from the Georgia Crime Information
385 Center that is incomplete or that indicates an employee has a criminal record in any state
386 other than Georgia, the employer shall submit to the department two complete sets of

387 fingerprint cards for such person, together with the applicable fees and any other required
388 information. The department shall submit such fingerprints as provided in subsection (b)
389 of this Code section.

390 (e) Applicants and licensees shall have the primary responsibility for obtaining
391 background checks on employees. The department shall be entitled to review the files of
392 any applicant or licensee to determine whether the required background checks have been
393 run and whether all employees are qualified. The department shall be authorized to discuss
394 the status of employee background checks with applicants and licensees. Notwithstanding
395 any other provisions in this chapter, the department shall retain the right to obtain
396 conviction data on employees of applicants and licensees.

397 (f) Upon an applicant or licensee determining that or any person who is a director, officer,
398 partner, agent, employee, or ultimate equitable owner of the applicant or licensee, or any
399 individual who directs the affairs, controls, or establishes policy for the applicant or
400 licensee has been convicted of a felony, the applicant or licensee is authorized to terminate
401 or otherwise remove the convicted felon from any position or relationship with the
402 applicant or licensee.

403 (g) The department may use the Nationwide Multistate Licensing System and Registry as
404 a channeling agent for requesting information from and distributing information to the
405 Department of Justice, any governmental agency, or any source so directed by the
406 department.

407 (h) Notwithstanding the requirements in this Code section dealing with affiliates and
408 ultimate equitable owners of an applicant or licensee, the department, upon written request
409 from the applicant or licensee, has the discretion to waive some or all of the requirements
410 in this Code section as it relates to ultimate equitable owners and affiliates.

411 7-10-7.

412 (a) Except as provided in this Code section, no person shall become an ultimate equitable
413 owner of any licensee through acquisition or other change in control or become an
414 executive officer of a licensee, unless the person has first received written approval for
415 such acquisition, change in control, or designation as an executive officer from the
416 department. In order to obtain such approval, the person shall:

417 (1) File a change in control application with the department in such form as the
418 department may prescribe from time to time;

419 (2) Provide such other information as the department may require concerning the
420 financial responsibility, background, experience, and activities of the applicant, its
421 directors and officers, if a corporation, and its members, if applicable, and of any

422 proposed new directors, officers, members, or ultimate equitable owners of the licensee;
423 and

424 (3) Pay an application fee as the department may prescribe.

425 (b) The department may prescribe additional requirements for approval of such
426 acquisition, change in control, or designation as an executive officer through rules and
427 regulations.

428 (c) If an application to become an ultimate equitable owner of any licensee through
429 acquisition or other change in control or become an executive officer of a licensee is
430 denied, the department shall notify the applicant of the denial and the reasons for the
431 denial.

432 (d) Notwithstanding the requirements in this Code section dealing with affiliates and
433 ultimate equitable owners of a licensee, the department, upon written request from the
434 licensee, has the discretion to waive some or all of the requirements in this Code section
435 as it relates to ultimate equitable owners and affiliates.

436 7-10-8.

437 All licenses issued pursuant to this chapter shall expire on December 31 of each year and
438 each application for renewal shall be made annually on or before December 1 of each year.
439 A license may be renewed by the filing of an application substantially conforming to the
440 requirements of Code Section 7-10-4 as specifically modified in the department's rules and
441 regulations. No investigation fee shall be payable in connection with such renewal
442 application. However, an annual license fee established by rule and regulation of the
443 department to defray the cost of supervision shall be paid with each renewal application,
444 which fee shall not be refunded or prorated.

445 7-10-9.

446 (a) A provider shall keep and use books, accounts, and other records that will enable the
447 commissioner to determine if the provider is complying with this chapter and maintain any
448 other records as required by the commissioner. The commissioner may examine the
449 records at any time. Each licensee shall preserve such books, accounts, and records for five
450 years or such greater period of time as prescribed in the department's rules and regulations.

451 (b) The department may investigate and examine the affairs, business, premises, and
452 records of any licensee insofar as such affairs, business, premises, and records pertain to
453 debt resolution service. The department may conduct such investigations or examinations
454 at least once every 24 months. The department may accept examination reports performed
455 and produced by other state or federal agencies in satisfaction of this requirement, unless

456 the department determines that the examinations are not available or do not provide
457 information necessary to fulfill the responsibilities of the department under this chapter.
458 (c) Notwithstanding subsection (b) of this Code section, the department may alter the
459 frequency or scope of investigations or examinations through rules and regulations
460 prescribed by the department. In addition, if the department determines that based on the
461 records submitted to the department and past history of operations of the licensee in the
462 state, such investigations or examinations are unnecessary then the department may waive
463 such investigations and examinations.
464 (d) Each licensee shall pay an examination or investigation fee as established by the rules
465 and regulations of the department to be used to defray the costs of the examination or
466 investigation, which the department may net to recover the costs of the examination or
467 investigation.
468 (e) The department, in its discretion, may:
469 (1) Make such public or private examination or investigation within or outside of this
470 state as it deems necessary to determine whether any person has violated this chapter, any
471 department rule and regulation, or order issued under this chapter, to aid in the
472 enforcement of this chapter, or to assist in the prescribing of rules and regulations
473 pursuant to this chapter;
474 (2) Require or permit any person to file a statement in writing, under oath or otherwise,
475 as to all the facts and circumstances concerning the matter to be investigated;
476 (3) Request any financial data from an applicant or licensee; and
477 (4) Conduct an on-site examination of a licensee at any location of the licensee without
478 prior notice to the licensee.
479 (f) For the purpose of conducting any examination or investigation as provided in this
480 Code section, the department shall have the power to administer oaths, to call any party to
481 testify under oath in the course of such examinations or investigations, to require the
482 attendance of witnesses, to require the production of books, accounts, records, documents,
483 and papers, and to take the depositions of witnesses; and for such purposes the department
484 is authorized to issue a subpoena for any witness or for the production of documentary
485 evidence. Such subpoenas may be served by certified mail or statutory overnight delivery,
486 return receipt requested, to the addressee's business mailing address, by examiners
487 appointed by the department, or shall be directed for service to the sheriff of the county
488 where such witness resides or is found or where the person in custody of any books,
489 accounts, records, documents, or papers resides or is found.
490 (g) In case of refusal to obey a subpoena issued under this chapter to any person, a superior
491 court of an appropriate jurisdiction, upon application by the department, may issue to the
492 person an order requiring him or her to appear before the court to show cause why he or

493 she should not be held in contempt for refusal to obey the subpoena. Failure to obey a
 494 subpoena may be punished as contempt by the court.

495 (h) Each provider shall file a report, verified by an oath or affirmation of the owner,
 496 manager, president, chief executive officer, or chairperson of the board of directors of the
 497 provider, with the commissioner at each renewal of the provider's license. The report shall,
 498 at a minimum, disclose in detail and under appropriate headings:

499 (1) The assets and liabilities of the provider at the beginning and end of the period, if the
 500 provider is a nonprofit or tax-exempt organization;

501 (2) The total number of debt resolution plans the provider has initiated on behalf of
 502 consumers in this state during the year;

503 (3) Records of total and average fees charged to consumers, including all voluntary
 504 contributions received from consumers; and

505 (4) Any additional information as required by the rules and regulations promulgated by
 506 the department.

507 (i) A provider shall file with the commissioner a blank copy of the debt resolution plan
 508 described in Code Section 7-10-13 and blank copies of the written information required in
 509 subsections (a) and (b) of Code Section 7-10-12 with the initial and renewal application for
 510 licensure.

511 (j) Examinations and investigations conducted under this chapter and information obtained
 512 by the department in the course of its duties under this chapter shall be confidential, except
 513 as provided in this subsection, pursuant to the provisions of Code Section 7-1-70. In
 514 addition to the exceptions set forth in subsection (b) of Code Section 7-1-70, the
 515 department shall be authorized to share information obtained under this chapter with other
 516 state and federal regulatory agencies or law enforcement authorities. In the case of such
 517 sharing, the safeguards to confidentiality already in place within such agencies or
 518 authorities shall be deemed adequate. The commissioner or an examiner specifically
 519 designated may disclose such information as is necessary to conduct a civil or
 520 administrative investigation or proceeding. Information contained in the records of the
 521 department that is not confidential and may be made available to the public either on the
 522 department's website or upon receipt by the department of a written request shall include:

523 (1) The documentation set forth in paragraphs (1) through (3) of subsection (a) of Code
 524 Section 7-10-4 and subsections (h) and (i) of this Code section;

525 (2) The name, business address, and telephone, facsimile, and license numbers of a
 526 licensee;

527 (3) The names and titles of the principal officers;

528 (4) The name of the owner or owners thereof;

529 (5) The business address of a licensee's registered agent for service;

530 (6) The name, business address, telephone number, and facsimile number of all locations
 531 of a licensee;

532 (7) The terms of or a copy of any bond filed by a licensee;

533 (8) Information concerning any violation of this chapter, any rule or regulation, or order
 534 issued under this chapter, provided the information is derived from a final order of the
 535 department; and

536 (9) Imposition of an administrative fine or penalty under this chapter.

537 (k) In the absence of malice, fraud, or bad faith, a person shall not be subject to civil
 538 liability arising out of furnishing the department with information required by this chapter
 539 or required by the department under the authority granted in this chapter. No civil cause
 540 of action of any nature shall arise against such person:

541 (1) For any information relating to suspected prohibited conduct furnished to or received
 542 from law enforcement officials, their agents, or employees or to or from other regulatory
 543 or licensing authorities;

544 (2) For any such information furnished to or received from other persons subject to the
 545 provisions of this chapter; or

546 (3) For any information furnished in complaints filed with the department.

547 (l) The commissioner or any employee or agent of the department shall not be subject to
 548 civil liability, and no civil cause of action of any nature shall be maintained against such
 549 persons arising out of the performance of activities or duties under this chapter or by
 550 publication of any report of activities under this Code section.

551 7-10-10.

552 (a) At the time the provider files an initial or renewal license application with the
 553 commissioner, a provider shall file a surety bond in a form approved by the commissioner.
 554 Such bond shall:

555 (1) Run concurrently with the period of licensure;

556 (2) Be available for the benefit of any person damaged by noncompliance of a provider
 557 or its agents, other than a third-party payment processor, with the provisions of this
 558 chapter, the rules and regulations enacted by the department, any condition of the bond,
 559 or that may become due and owing any person arising out of the debt resolution services
 560 offered by a provider, including, but not limited to, failure to take reasonable care to
 561 protect confidential consumer information from unauthorized access;

562 (3) Be available for the benefit of the department for any moneys owed the department
 563 by a provider including, but not limited to, fees, fines, penalties, or assessments;

564 (4) Be available for the benefit of a third party retained by the department to aid in the
 565 review of the initial or renewal application, examination, investigation, or any of the

566 department's other responsibilities under this chapter or the rules and regulations enacted
567 by the department;

568 (5) Be in favor of this state for the use of this state or the use of any person who has a
569 claim under this chapter against the provider;

570 (6) Be issued by a bonding, surety, or insurance company that is authorized to do
571 business in this state and approved by the department; and

572 (7) Be conditioned on the provider and its agents complying with all state and federal
573 laws, including rules and regulations, governing the business of debt resolution services.

574 (b) A surety bond filed as required under subsection (a) of this Code section shall:

575 (1) If the provider administers, maintains, receives, or holds money paid by or on behalf
576 of a consumer for disbursement to the consumer's creditors, be in an amount equal to the
577 average daily balance of the provider's account servicing trust funds for Georgia
578 consumers over the six-month period preceding the issuance of the bond, or in the case
579 of an initial application, in an amount determined by the commissioner, but not less than
580 \$25,000.00 or more than \$100,000.00; provided, however, that if at the time of the initial
581 application the provider has data regarding the average daily balance of trust funds held
582 on behalf of Georgia consumers, the commissioner shall have the discretion to require
583 that the bond be in an amount equal to the average daily balance of the trust funds held
584 on behalf of Georgia consumers over the six-month period preceding the issuance of the
585 bond; or

586 (2) Be in the amount of \$50,000.00, if the provider provides a debt settlement service
587 and utilizes a third-party payment processor to administer, maintain, receive, or hold
588 money paid by or on behalf of a consumer for disbursement to the consumer's creditors.

589 (c) In lieu of a bond, the department, by rule and regulation, may establish alternative
590 financial requirements to provide substantially equivalent protection to pay damages, fees,
591 finances, assessments and penalties to persons with a potential claim against providers
592 pursuant to this chapter or the rules and regulations enacted pursuant to this chapter.

593 (d) The commissioner may adjust the required amount of the provider's bond when the
594 provider submits an application for the renewal of its license or to reflect the findings of
595 an examination issued by the department.

596 (e) In addition to a surety bond, the provider is required to obtain and maintain at all times
597 insurance coverage for employee dishonesty, forgery, and computer fraud in an amount not
598 less than the greater of \$100,000.00 or 10 percent of the monthly average for the
599 immediately preceding six months of the aggregate amount of all deposits made with such
600 person by all debtors. The deductible on such coverage shall not exceed 10 percent of the
601 face amount of the policy coverage. Such policy shall be issued by a company licensed to
602 do business in Georgia and approved by the department, that is rated at least 'A' or its

603 equivalent by a nationally recognized rating organization, and such policy shall provide for
604 30 days' advance written notice of termination of the policy to be provided to the
605 department.

606 7-10-11.

607 Advertisement for debt resolution services shall not be false, misleading, or deceptive.

608 7-10-12.

609 (a) If the proposed debt resolution plan involves debt management service, prior to
610 enrolling a consumer in a debt resolution plan, the provider shall provide the consumer
611 individualized counseling and educational information that, at a minimum, addresses the
612 topics of managing household finances, managing credit and debt, and budgeting.

613 (b) A provider that enrolls a consumer in a debt resolution plan shall:

614 (1) If the provider is providing a debt management service, prepare an individualized
615 financial analysis and an initial debt management plan for the consumer's debts with
616 specific recommendations regarding actions the consumer should take;

617 (2) Determine that the consumer has a reasonable ability to make payments under the
618 proposed debt resolution plan based on the information provided by the consumer;

619 (3) If the provider is providing a debt management service, reasonably expect that each
620 creditor of the consumer listed as a participating creditor in the plan will accept payment
621 of the consumer's debts as provided in the initial plan, provided that the consumer has
622 provided accurate information to the provider;

623 (4) If the provider is providing a debt management service, prepare a list for all creditors
624 identified by the consumer or identified through additional investigation, in a form the
625 consumer can keep, of the creditors the provider reasonably expects to participate in the
626 plan; and

627 (5) Provide a written document to the consumer in a form the consumer may keep that
628 clearly and conspicuously contains the following statement in boldface type and provides
629 for proof of acknowledgment of each statement by a consumer with their initials:

630 (A) If a debt management service is being provided, that debt management services are
631 not suitable for all consumers and that consumers may request information about other
632 ways, including bankruptcy, to deal with indebtedness;

633 (B) If a debt settlement service is being provided, that debt settlement services are not
634 suitable for all consumers;

635 (C) That the consumer has seven days to cancel a debt resolution plan;

636 (D) If applicable, that if the provider is a nonprofit or tax-exempt organization, the
637 provider cannot require donations or contributions; and

638 (E) If applicable, that some of the provider's funding comes from contributions from
 639 creditors who participate in debt management plans and include the actual amount of
 640 creditor contributions it reasonably expects to receive from such consumer's completion
 641 of the debt management plan.

642 (c) A consumer shall give electronic, telephonic, or written notice to the provider to cancel
 643 a debt resolution plan at least seven days prior to the effective date of the cancellation. The
 644 provider shall cancel a debt resolution plan within seven days after the date the provider
 645 receives the notice from the consumer. The provider shall continue making disbursements
 646 to the consumer's creditors if money has been paid to the provider under the debt resolution
 647 plan until the expiration of the seven-day period, unless otherwise agreed in writing by the
 648 consumer and the provider.

649 (d) A provider may provide the information required by paragraphs (1), (4), and (5) of
 650 subsection (b) of this Code section through its Internet website if the provider:

651 (1) Has complied with Chapter 12 of Title 10, the 'Uniform Electronic Transactions Act'
 652 and the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C.
 653 Section 7001, et seq., in effect as of January 1, 2014;

654 (2) Informs the consumer that the provider will make available a paper copy or copies
 655 within seven days of an electronic, telephonic, or written request; and

656 (3) Discloses on its Internet website:

657 (A) The provider's name and each name under which it does business;

658 (B) The provider's principal business address and telephone number; and

659 (C) The names of the provider's principal officers.

660 (e) If the provider discusses its services with a consumer primarily in a language other than
 661 English, the provider shall provide the debt resolution plan in that language.

662 (f) A provider, including a provider that does business only or principally through the
 663 Internet, shall maintain a telephone system staffed at a level that reasonably permits a
 664 consumer to access an employee during ordinary business hours.

665 (g) A debt management service provider or a debt settlement service provider who
 666 administers, maintains, receives, or holds money on behalf of consumers, shall provide to
 667 the consumer a written report accounting for:

668 (1) The amount of money received from the consumer since the last report;

669 (2) The amount and date of each disbursement made on the consumer's behalf to each
 670 creditor listed in the debt resolution plan since the last report;

671 (3) Any amount deducted from amounts received from the consumer; and

672 (4) Any amount held in reserve.

673 (h) The provider shall, at no charge, provide the report under subsection (g) of this Code
 674 section:

- 675 (1) At least once each calendar month; and
676 (2) Within ten days of a request by a consumer.

677 7-10-13.

678 (a) A debt resolution services provider shall not provide a consumer with a debt resolution
679 plan before the provider has fully complied with the applicable provisions of subsections
680 (a), (b), and (e) of Code Section 7-10-12.

681 (b) Each debt resolution plan shall:

682 (1) Be dated and signed by the consumer;

683 (2) Include the name and address of the consumer and the name, address, and telephone
684 number of the provider;

685 (3) Describe the debt resolution services to be provided;

686 (4) State all fees, individually itemized, to be paid by the consumer;

687 (5) If the proposed debt resolution plan provides for debt management services, list in
688 the debt resolution plan or accompanying document, to the extent the information is
689 available to the provider at the time the plan is executed, each participating creditor of the
690 consumer, the amount owed to each creditor and the schedule of payments the consumer
691 will be required to make to the creditor, including the amount and date on which each
692 payment will be due;

693 (6) State the existence of a surety bond or insurance for consumer claims;

694 (7) State that establishment of a debt resolution plan may impact the consumer's credit
695 rating and credit score either favorably or unfavorably, depending on creditor policies and
696 the consumer's payment history before and during participation in the debt resolution
697 plan;

698 (8) State that either party may cancel the debt resolution plan without penalty at any time
699 on seven days' notice and that a consumer who cancels a debt resolution plan is entitled
700 to a refund of all money that the consumer has paid to the provider that has not been
701 disbursed to unsecured creditors or the provider for earned fees; and

702 (9) Be typed in at least ten-point font.

703 (c) A debt resolution plan may contain a consumer arbitration provision or a mediation
704 provision, as long as the arbitration or mediation takes place within this state and the debt
705 resolution plan is governed by the laws of this state.

706 (d) A provider may deliver the debt resolution plan through the Internet if the provider:

707 (1) Has complied with Chapter 12 of Title 10, the 'Uniform Electronic Transactions Act'
708 and the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C.
709 Section 7001, et seq., in effect as of January 1, 2014;

710 (2) Sends the consumer a paper copy of the debt resolution plan within seven days of
 711 receipt of an electronic, telephonic, or written request by a consumer; and

712 (3) Discloses on a prominent page of its Internet website:

713 (A) The provider's name and each name under which it does business;

714 (B) The provider's principal business address and telephone number; and

715 (C) The names of the provider's principal officers.

716 (e) If the provider discusses its services or negotiates with a consumer primarily in a
 717 language other than English, the provider shall not begin performance of a debt resolution
 718 plan until the provider and consumer sign a copy of the written debt resolution plan in the
 719 language primarily utilized in discussions with the consumer, and a copy of the plan shall
 720 be produced to the consumer.

721 7-10-14.

722 Subject to subsection (c) of Code Section 7-10-12, if a provider or a consumer cancels a
 723 debt resolution plan, the provider or any third-party payment processor holding the
 724 consumer's trust funds shall immediately return any money held by the provider or
 725 third-party payment processor for the consumer's benefit.

726 7-10-15.

727 (a) No provider shall impose a fee or charge on a consumer, or receive payment from a
 728 consumer or other person on behalf of a consumer, for providing or offering to provide a
 729 debt resolution service except as allowed under this Code section.

730 (b) For purposes of this Code section, fees or charges include both voluntary or
 731 involuntary contributions and any other fees charged to or collected from a consumer or
 732 a third party on behalf of a consumer, other than fees charged by a third-party payment
 733 processor to a consumer pursuant to the terms of a contract between the third-party
 734 payment processor and the consumer.

735 (c) No fee or charge shall be imposed on a consumer and no payment for debt resolution
 736 services shall be accepted until the consumer has entered into a written debt resolution plan
 737 as provided for under Code Section 7-10-13.

738 (d) No fee or other charge for debt counseling or education services shall be accepted
 739 except as authorized by this Code section. The commissioner may adopt rules and
 740 regulations authorizing a provider to charge a fee based on the nature and extent of the
 741 counseling or education services furnished by the provider.

742 (e) If a consumer is enrolled in a debt resolution plan that provides debt management
 743 services for a reduction of finance charges or fees for late payment, default, or delinquency
 744 as a concession from creditors, the provider may charge:

- 745 (1) A fee not to exceed \$100.00 for debt counseling or education services, including
746 obtaining a credit report, setting up an account, and other similar services; and
- 747 (2) A monthly service fee, not to exceed the lesser of:
- 748 (A) Ten dollars multiplied by the number of accounts remaining in the plan on the day
749 of the month the fee is assessed; or
- 750 (B) Fifty dollars.
- 751 (f) If a consumer is enrolled in a debt resolution plan that provides for debt settlement
752 services, then the fees for the debt settlement services shall not be charged or collected
753 until the time a settlement agreement is reached with a creditor, and at least one payment
754 has been made toward the settlement agreement by or on behalf of the consumer. The fee
755 with respect to each debt included in such plan shall:
- 756 (1) Bear the same proportional relationship to the total fee for settling all debt included
757 in the debt resolution plan as the principal amount of the particular debt bears to the total
758 principal amount of the debt included in the plan; or
- 759 (2) Be a percentage of the amount saved as a result of the settlement, determined as the
760 difference between the principal amount of the debt and the amount actually paid to
761 satisfy the debt. The percentage charged cannot change from one debt to another.
- 762 (g) If a consumer does not enter into a debt management plan with a provider, the debt
763 management services provider may receive payment for debt counseling or education
764 services provided to the consumer in an amount not to exceed \$100.00; provided, however,
765 that the commissioner may adopt rules and regulations authorizing a debt management
766 services provider to charge a fee greater than \$100.00 based on the nature and extent of the
767 educational and counseling services furnished by the provider.
- 768 (h) If within 90 days of receiving debt counseling or education services, a consumer enters
769 into a debt management plan with a provider, the provider shall refund to the consumer any
770 payments received for debt counseling or education services.
- 771 (i) A provider may impose a reasonable charge on the consumer, the amount of which
772 shall be the lesser of \$25.00 or an amount otherwise permitted by a law for payment which
773 is later dishonored.
- 774 7-10-16.
- 775 (a) All money paid by or on behalf of a Georgia consumer and received by the provider
776 or a third-party payment processor for disbursement to the consumer's creditor, shall
777 constitute a trust fund until paid to the individual creditor or returned to the consumer. The
778 provider or third-party payment processor, whichever person receives, holds, administers,
779 or maintains the trust funds, shall have a fiduciary duty to preserve and account for trust
780 funds held on behalf of consumers. No party, other than the individual consumer, a

781 provider, a third-party payment processor, or a bank or credit union authorized to do
782 business in this state whose deposits are federally insured, shall be authorized to administer
783 or maintain funds to be used for disbursement to a consumer's creditor.

784 (b) If a provider receives, holds, administers, or maintains trust funds on behalf of a
785 consumer, then all trust funds paid by or on behalf of any consumer for disbursement to
786 any of the consumer's creditors shall be immediately deposited by the provider into an
787 account administered by a bank or credit union authorized to do business in this state and
788 whose deposits are federally insured until the trust funds are paid over to the individual
789 creditor or consumer; provided, however, that nothing herein shall preclude a provider
790 from receiving disbursements contractually agreed upon for services provided as
791 authorized by a consumer from the trust funds. A provider shall not commingle the trust
792 funds in an account established for the benefit of consumers with any operating funds of
793 the provider. The account shall be segregated by individual consumers in order that the
794 total amount of trust funds for each consumer can be readily ascertained and federal deposit
795 insurance, if applicable, obtained. A provider shall exercise due care to appropriately
796 manage the funds in the account.

797 (c) If a third-party payment processor receives, holds, administers, or maintains trust funds
798 on behalf of a consumer, then all trust funds paid by or on behalf of any Georgia consumer
799 for disbursement to any of the consumer's creditors shall be immediately deposited by the
800 third-party payment processor into an account administered by a bank or credit union
801 authorized to do business in this state and whose deposits are federally insured until the
802 trust funds are paid over to the individual creditor or consumer; provided, however, that
803 nothing in this Code section shall preclude a provider or a third-party payment processor
804 from receiving disbursements contractually agreed upon for services provided as
805 authorized by the consumer from the trust funds. The account shall be structured in such
806 a way so that funds are transferred directly into the account by the consumer and only the
807 consumer can authorize the bank to make disbursements of funds from the account. A
808 third-party payment processor shall not commingle trust funds in an account established
809 for the benefit of a consumer with any operating funds of the provider. The account shall
810 be segregated by individual consumers in order that the total amount of trust funds for each
811 consumer can be readily ascertained and federal deposit insurance, if applicable, obtained.
812 A third-party payment processor shall exercise due care to appropriately manage the trust
813 funds in the account.

814 (d) An account administered or maintained by a provider or a third-party payment
815 processor shall at all times be materially in balance with and reconciled to the consumers'
816 accounts. Failure of a provider to maintain that balance in a provider administered or

817 maintained account shall be cause for a summary suspension and revocation of the
 818 provider's license under Code Section 7-10-4.

819 (e) If a provider administered or maintained account does not contain sufficient money to
 820 cover the aggregate consumer balances, and the provider has not corrected the deficiency
 821 within 48 hours of discovery, the provider shall notify the commissioner by telephone,
 822 facsimile, e-mail, or other methods approved by the commissioner and provide written
 823 notice, including a description, of the remedial action taken.

824 (f) If a third-party payment processor administered or maintained account does not contain
 825 sufficient money to cover the aggregate consumer balances, the provider shall, within 24
 826 hours of discovery, notify the commissioner by telephone, facsimile, e-mail or other
 827 methods approved by the commissioner and provide written notice, including a description
 828 of the remedial action taken by the third-party payment processor. Every contract between
 829 a provider and a third-party payment processor that receives, holds, administers, or
 830 maintains consumer trust funds shall provide that the third-party payment processor will,
 831 within 24 hours of discovering such deficiency, notify the commissioner and the provider
 832 by telephone, facsimile, e-mail or other methods approved by the commissioner and
 833 provide written notice, including a description of the remedial action taken by the
 834 third-party payment processor.

835 7-10-17.

836 (a) It shall be prohibited for a provider to:

837 (1) Purchase a debt or obligation of a consumer;

838 (2) Except as otherwise permitted by this chapter, receive or charge a fee in any form,
 839 including, but not limited to, a promissory note or other negotiable instrument, other than
 840 a check or a draft;

841 (3) Lend money or provide credit to the consumer, other than a deferral of permissible
 842 fees earned by the provider;

843 (4) Obtain a mortgage or other security interest in property owned by a consumer;

844 (5) Offer, pay, or give a gift, bonus, premium, reward, or other compensation to a person
 845 for entering into a debt management plan;

846 (6) Represent that the provider is authorized or competent to furnish legal advice or
 847 perform legal services unless the provider is an attorney licensed to practice law in this
 848 state;

849 (7) Use an unconscionable means to obtain a contract, including, but not limited to, a
 850 debt management plan with a consumer;

851 (8) Engage in an unfair, deceptive, or unconscionable act or practice in connection with
 852 a debt management service provided to a consumer; or

853 (9) Require or attempt to require payment of an amount that the provider states,
854 discloses, or advertises to be a voluntary contribution from the consumer.

855 (b) A provider shall not have a legal claim of action against a consumer related to the
856 cancellation of any agreement pursuant to the terms of this chapter or whenever any
857 agreement is void pursuant to this chapter.

858 (c) A provider shall not request or require a consumer to execute any document, including,
859 but not limited to, a disclosure related to debt resolution services or in a debt resolution
860 plan that includes:

861 (1) A confession of judgment clause;

862 (2) An assignment of or order for payment of wages or other compensation for debt
863 management services; or

864 (3) A wavier of any provision of this chapter.

865 7-10-18.

866 A provider owes a duty to a consumer who receives debt resolution services from the
867 provider to ensure that any client money held by the provider is managed properly at all
868 times.

869 7-10-19.

870 Nothing in this chapter shall limit any statutory or common law right of any person to bring
871 any action in any court for any act related to debt resolution service or the right of the state
872 to punish any person for any violation of any law.

873 7-10-20.

874 The department may make reasonable rules and regulations, not inconsistent with law, for
875 the interpretation and enforcement of this chapter.

876 7-10-21.

877 In the course of its regulation and supervision of debt resolution service, the department
878 may determine that certain statutory requirements related to applications are unnecessarily
879 burdensome on potential applicants. In the event the department reached such a
880 determination, the department, in its sole discretion, may issue a specific order directed to
881 a category or categories of debt resolution service providers, modifying or amending some
882 or all of the requirements in Code Sections 7-10-4, 7-10-5, 7-10-6, 7-10-7, and 7-10-10 to
883 limit the scope of these Code sections related to applications.

884 7-10-22.

885 (a) Failure to comply with an examination or investigation pursuant to this chapter shall
886 be grounds for issuance of suspension or revocation of a license or a cease and desist order.

887 (b) Whenever it shall appear to the department that any person required to be licensed
888 under this chapter or employed by a person required to be registered under this chapter has
889 violated any law of this state or any order or rule and regulation of the department, the
890 department may issue an initial written order requiring such person to cease and desist
891 immediately from such unauthorized practices. Such cease and desist order shall be final
892 20 days after it is issued unless the person to whom it is issued makes a written request
893 within such 20 day period for a hearing. The hearing shall be conducted in accordance
894 with Chapter 13 of Title 50, the 'Georgia Administrative Procedure Act.' A cease and
895 desist order to an unlicensed person that orders them to cease acting as a provider without
896 the appropriate license shall be final 30 days from the date of issuance, and there shall be
897 no opportunity for an administrative hearing. If the proper license or evidence of
898 exemption is delivered to the department within the 30 days period, the order shall be
899 rescinded by the department.

900 (c) Initial judicial review under the Georgia Administrative Procedure Act of the decision
901 of the department denying an initial or renewal application, suspending or revoking a
902 license, or ordering a person to cease and desist shall be available solely in the superior
903 court of the county of domicile of the department.

904 (d) The commissioner may receive and act on complaints, take action to obtain voluntary
905 compliance with this chapter, and refer cases to the Attorney General for prosecution.

906 (e) The commissioner may enforce this chapter and rules and regulations adopted under
907 this chapter by:

908 (1) Ordering the violator to cease and desist from the violation and any similar
909 violations;

910 (2) Ordering the violator to take affirmative action to correct the violation, including the
911 restitution of money or property to a person aggrieved by the violation;

912 (3) Imposing an administrative fine or penalty not to exceed \$1,000.00 for each violation
913 of this chapter, the rules and regulations adopted under this chapter, or an order issued
914 by the department; and

915 (4) Rejecting an initial application or revoking or suspending a license as provided for
916 in Code Section 7-10-4.

917 (f) The commissioner, through the Attorney General, may bring an action in the superior
918 court to enjoin a person from engaging in an act or continuing course of action that violates
919 this chapter, the rules and regulations of the department, or an order the department. The
920 court may issue a preliminary or final injunction.

921 (g) Whenever a person shall fail to comply with the terms of an order of the department
 922 which has been properly issued under the circumstances, the department, no sooner than
 923 ten days after mailing a notice of noncompliance, may, through the Attorney General,
 924 petition the principal court for an order directing such person to obey the order of the
 925 department within the period of time as shall be fixed by the court. Upon filing of such
 926 petition, the court shall allow a motion to show cause why it should not be granted.
 927 Whenever, after a hearing upon the merits or after failure of such person to appear when
 928 ordered, it shall appear that the order of the department was properly issued, the court shall
 929 grant the petition of the department.

930 7-10-23.

931 (a) An agreement for debt resolution services between a consumer and a person required
 932 to be licensed under this chapter that is not licensed under this chapter shall be void.

933 (b) A consumer shall be entitled to recover all fees paid, costs, actual damages, punitive
 934 damages, and reasonable attorney's fees under a void agreement.

935 (c) In addition to any other remedies provided by this chapter, a consumer who is
 936 aggrieved by a violation of this chapter, a violation of a rule and regulation adopted by the
 937 department under this chapter, or by any unfair, unconscionable, or deceptive act or
 938 practice may recover actual damages.

939 (d) An aggrieved consumer may sue for injunctive and other appropriate equitable relief
 940 to stop a person from violating this chapter.

941 (e) The remedies provided in this Code section are not intended to be the exclusive
 942 remedies available to a consumer nor must the consumer exhaust any administrative
 943 remedies provided under this chapter or any other applicable law.

944 7-10-24.

945 Any person who:

946 (1) Shall violate the provisions of subsection (a) of Code Section 7-10-3, by the willfully
 947 engaging in debt resolution services without being licensed or exempt, shall be guilty of
 948 a felony punishable as provided in Code Section 7-1-845; or

949 (2) Shall willfully violate any of the other provisions of this chapter shall be guilty of a
 950 misdemeanor and shall be punished by imprisonment for not more than one year or by
 951 a fine or not more than \$1,000.00, or by both fine and imprisonment."

952 **SECTION 2.**

953 Title 18 of the Official Code of Georgia Annotated, relating to debtor and creditor, is
 954 amended by repealing Chapter 5, relating to debt adjustment.

955 **SECTION 3.**

956 This Act shall become effective on January 1, 2015; provided, however, that Code Section
957 7-10-20 in Section 2 of this Act shall become effective upon its approval by the Governor
958 or upon its becoming law without such approval.

959 **SECTION 4.**

960 All laws and parts of laws in conflict with this Act are repealed.