

House Bill 387

By: Representatives Kelley of the 16th, Jacobs of the 80th, Willard of the 51st, Mabra of the 63rd, Fleming of the 121st, and others

A BILL TO BE ENTITLED
AN ACT

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

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

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

17 "CHAPTER 10

18 7-10-1.

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

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

22 7-10-2.

23 As used in this chapter, the term:

- 24 (1) 'Advertising' means information communicated in writing or orally to a consumer or
25 the public by telephone, television, Internet, radio, or other electronic medium, or by
26 written material sent by mail, sent electronically, posted publicly, or posted at the
27 provider's business location.
- 28 (2) 'Affiliate' means any of the following:
- 29 (A) A person that controls, is controlled by, or is under common control with the
30 provider;
- 31 (B) An executive officer or director of or an individual performing executive functions
32 with respect to the provider; or
- 33 (C) An executive officer or director of or an individual performing executive functions
34 with respect to a person described in subparagraph (A) of this paragraph.
- 35 (3) 'Commissioner' means the commissioner of banking and finance.
- 36 (4) 'Control' means the direct or indirect possession of power to direct or cause the
37 direction of management and policies of a person, whether through the ownership of
38 voting or nonvoting securities, by contract, or otherwise.
- 39 (5) 'Debt management service' means a service in which a provider furnishes or offers
40 to furnish to a consumer services designed to repay the principal amount of the
41 consumer's debt in full.
- 42 (6) 'Debt resolution plan' means a written agreement setting forth the details of debt
43 resolution services.
- 44 (7) 'Debt resolution service' means a debt management service or debt settlement service.
45 Such term shall not include an extension of credit, including the consolidation or
46 refinance of a loan, or bankruptcy services provided by an attorney licensed to practice
47 law in this state.
- 48 (8) 'Debt settlement service' means a service designed to settle, in full, the principal
49 amount of a consumer's debt by negotiating a reduction and discharge of that debt.
- 50 (9) 'Department' means the Department of Banking and Finance.
- 51 (10) 'Licensee' means a provider duly licensed under this chapter.
- 52 (11) 'Person' means any individual, sole proprietorship, partnership, corporation, limited
53 liability company, association, trust, organization, or any other group of individuals,
54 however organized.
- 55 (12) 'Provider' means a person, other than a third-party payment processor, that provides
56 or offers to provide a debt resolution service in this state regardless of whether the person
57 charges a fee or receives any other consideration in exchange for such services.
- 58 (13) 'Secured debt' means a debt for which a creditor has a mortgage, lien, or security
59 interest in collateral.
- 60 (14) 'Substantial equitable owner' means a person who:

61 (A) Owns, directly or indirectly, a 10 percent or more interest in a corporation or any
 62 other form of business organization;

63 (B) Owns, directly or indirectly, 10 percent or more of the voting shares of any
 64 corporation or any other form of business organization; or

65 (C) Exerts control over a corporation or any other form of business organization,
 66 regardless of whether such person owns or controls such interest through one or more
 67 natural persons or one or more proxies, powers of attorney, nominees, corporations,
 68 associations, limited liability companies, partnerships, trusts, joint-stock companies,
 69 other entities or devices, or any combination thereof.

70 (15) 'Third-party payment processor' means a person, other than a subsidiary of a
 71 provider, that directly contracts with a consumer to assist a consumer in establishing a
 72 depository account at a bank or credit union in a consumer's name in order to enable a
 73 consumer to make disbursements pursuant to the terms of a debt resolution plan.

74 (16) 'Unsecured debt' means a debt for which a creditor does not have collateral.

75 7-10-3.

76 (a) Except as otherwise provided in this Code section, no person, regardless of whether
 77 located in this state, shall act as a provider without first obtaining a license under this
 78 chapter.

79 (b) A license to engage in debt management shall authorize engagement in debt
 80 management services and debt settlement services.

81 (c) A license to engage in debt settlement shall authorize engagement only in debt
 82 settlement services.

83 (d) The business of providing debt resolution services shall be conducted in this state if a
 84 debt resolution service provider solicits or contracts with consumers located in this state.

85 (e) This chapter shall not apply to:

86 (1) An attorney licensed to practice in this state who provides debt resolution services
 87 on behalf of a client as an ancillary matter to the attorney's representation of such client,
 88 unless:

89 (A) The attorney is compensated by a provider or by an agent of such provider; or

90 (B) the attorney compensates a provider or an agent of such provider;

91 (2) A title insurance or abstract company employee or agent, or other person legally
 92 authorized to engage in escrow business in this state and while engaged in such business
 93 but who is not actively engaged in the business of providing debt resolution services;

94 (3) A judicial officer or person acting under a court order;

- 95 (4) A person who has legal authority under federal or state law to act as a representative
 96 payee for a consumer to the extent that person is paying bills or other debts on behalf of
 97 the consumer;
- 98 (5) A person who pays bills or other debts owed by a consumer and on behalf of a
 99 consumer, if the money used to make payments belongs exclusively to the consumer and
 100 the person does not initiate any contact with individual creditors of the consumer to
 101 compromise a debt, arrange a new payment schedule, or otherwise change the terms of
 102 the debt;
- 103 (6) A state or federally chartered bank, trust company, credit union, savings and loan
 104 association, or savings bank, the deposits of which are federally insured;
- 105 (7) A certified public accountant licensed to practice accounting in this state, unless the
 106 certified public accountant holds himself or herself out to the public as a provider or is
 107 employed, affiliated with, or otherwise working on behalf of a provider;
- 108 (8) A mortgage lender, mortgage broker, or mortgage loan originator licensed by the
 109 department;
- 110 (9) The United States of America, the State of Georgia or any other state, any county,
 111 any city, and any agency, authority, division or corporate instrumentality of any
 112 governmental entity;
- 113 (10) An individual employed by a licensee; or
- 114 (11) Any person exempted from the licensing requirements of this chapter when acting
 115 within the scope of employment and under the supervision of a licensee or exempted
 116 person as an employee and not as an independent contractor.

117 7-10-4.

- 118 (a) A provider that seeks to be licensed with the department shall file a written application
 119 which shall be under oath and in a form prescribed by the department and shall pay an
 120 application fee in an amount determined by the department. The department shall set
 121 licensing fees in an amount to defray the costs of its investigation and review of the
 122 application. An application for licensure shall include the following:
- 123 (1) The applicant's name, the applicant's principal business address and telephone
 124 number, any additional business addresses of the applicant which are located in this state,
 125 and the applicant's e-mail address and Internet website address;
- 126 (2) All names under which the applicant conducts business;
- 127 (3) The address of each location in this state at which the applicant will provide debt
 128 resolution services, or if the applicant will have no such location, a statement to that
 129 effect;

- 130 (4) The name and home address of each executive officer, director, and substantial
131 equitable owner of the applicant;
- 132 (5) If the applicant is a nonprofit or tax exempt organization, a detailed description of the
133 ownership interest of any officer, director, agent, or employee of the applicant
134 organization, or any member of the immediate family of an officer, director, agent, or
135 employee of the applicant organization who is a substantial equitable owner of a for profit
136 affiliate or subsidiary of the applicant organization or in any other for profit business
137 entity that will provide debt resolution services to the applicant organization or to a
138 consumer in relation to the debt resolution business;
- 139 (6) Information and items required by Code Sections 7-10-6 and 7-10-10; and
- 140 (7) Such other data and pertinent information as the department may require with respect
141 to the applicant, its directors, officers, or substantial equitable owners.
- 142 (b) In the event the department retains third parties to aid it in the review of initial or
143 renewal applications, examinations, investigations, or any of its other responsibilities under
144 this chapter, the cost to utilize these third parties shall be the sole liability of the provider
145 and paid directly by the provider.
- 146 (c) The department shall, by rule and regulation, prescribe annual license fees and
147 supervision fees to be paid by each provider doing business in this state. The department
148 may, by rule and regulation, prescribe reasonable application and related fees, investigation
149 fees, hearing fees, and fees to provide copies of any book, account, report, or other paper
150 filed in its office or for any certification thereof or for processing any papers as required
151 by this chapter. The department, in its discretion, may require the payment of such fees in
152 any manner deemed to be efficient, including collection through automated clearing-house
153 arrangements or other electronic means, so that the state receives funds no later than the
154 date the payment is required to be made.
- 155 (d) Unless the commissioner notifies an applicant that a longer period is necessary, the
156 commissioner shall approve or deny an application for licensure not later than 90 days after
157 receipt of a completed application. The commissioner shall inform the applicant in writing
158 of the reason for any denial of licensure or renewal of licensure.
- 159 (e) The commissioner may refuse to accept an application for licensure if the application
160 contains material errors or materially incomplete information. An application shall be
161 deemed materially incomplete if it does not include all of the information required by this
162 Code section or the rules and regulations of the department.
- 163 (f) The commissioner may deny an initial or renewal license application if:
- 164 (1) The applicant or any director, officer, or employee of the applicant has been
165 convicted of a felony as provided in Code Section 7-10-6;

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

173 (3) The registration or license of the applicant or any director, officer, affiliate,
174 substantial equitable owner, or employee of the applicant has been revoked or suspended
175 in this state or another state within the preceding five years. In the event the registration
176 or license was revoked or suspended for noncompliance with any provision of this
177 chapter, other than subsection (h) of this Code section, Code Section 7-10-6 or 7-10-17,
178 or revoked or suspended for any act in another jurisdiction, other than an act which, if
179 committed within this state, would constitute a violation of subsection (h) of this Code
180 section, Code Section 7-10-6 or 7-10-17, the department, upon the applicant providing
181 information the commissioner finds sufficient to show that the grounds for the previous
182 revocation of suspension no longer exist and any problem cited in the previous revocation
183 or suspension has been corrected or is no longer applicable, has the discretion to issue or
184 renew a license prior to the expiration of the five-year period;

185 (4) Any person who is a director, officer, affiliate, substantial equitable owner, or
186 employee of the applicant and is personally subject to a final cease and desist order that
187 has been issued within the preceding five years if such order was based upon a violation
188 of this chapter. In the event the cease and desist order was issued for noncompliance with
189 any provision of this chapter, other than subsection (h) of this Code section, Code Section
190 7-10-6 or 7-10-17, the department, upon the applicant providing information the
191 commissioner finds sufficient to show that the grounds for the previous cease and desist
192 order no longer exist and any problem cited in the previous cease and desist order has
193 been corrected or is no longer applicable, has the discretion to issue or renew a license
194 prior to the expiration of the five-year period;

195 (5) Any person who is a director, officer, affiliate, or substantial equitable owner of the
196 applicant or an individual who directs the affairs, controls, or establishes policy for the
197 applicant has been in one or more of those roles at a registrant or licensee in any state
198 whose application has been denied or license revoked or suspended within the preceding
199 five years. In the event the application was denied or registration or license was revoked
200 or suspended for noncompliance with any provision of this chapter, other than subsection
201 (h) of this Code section, Code Section 7-10-6 or 7-10-17, or application was denied or
202 registration or license was revoked or suspended for any act in another jurisdiction, other

203 than an act which, if committed within this state, would constitute a violation of
204 subsection (h) of this Code section, Code Section 7-10-6 or 7-10-17, the department,
205 upon the applicant providing information the commissioner finds sufficient to show that
206 the grounds for the previous revocation of suspension no longer exist and any problem
207 cited in the previous application denial or revocation or suspension has been corrected
208 or is no longer applicable, has the discretion to issue or renew a license prior to the
209 expiration of the five-year period;

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

213 (7) The applicant fails to satisfy the department that it is financially sound and
214 responsible and appears able to conduct the business of providing debt resolution services
215 in an honest and efficient manner and with the confidence and trust of the community.

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

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

224 (1) A fact or condition exists that, if it had existed when the provider applied for
225 licensure, would have been grounds for denying the license application;

226 (2) A fact or condition exists that the commissioner was not aware of when the provider
227 applied for a license and would have been grounds for denying the license application;

228 (3) An applicant made a false statement or a false statement of a substantive fact or
229 engaged in any conduct that leads to a false belief material to a transaction in an initial
230 or renewal application for licensure;

231 (4) An applicant failed to give a true reply to a question in an initial or renewal
232 application for licensure;

233 (5) A provider has violated this chapter, a rule and regulation of the department, or an
234 order of the commissioner;

235 (6) A provider has committed any fraud, engaged in any dishonest activities, made a
236 false statement of a substantive fact, or engaged in any conduct that leads to a false belief
237 material to a transaction;

238 (7) A provider failed to pay, within 30 days after it becomes final or such longer period
 239 as permitted by its terms, a judgment recovered in any court by a consumer or creditor
 240 in an action arising out of such provider's business;

241 (8) A provider refuses to permit the commissioner to make an examination or fails to
 242 cooperate with an investigation;

243 (9) A provider purposely withheld, deleted, destroyed, or altered information requested
 244 by an examiner of the department;

245 (10) A provider made a false statement or a false statement of a substantive fact or
 246 engaged in any conduct that leads to a false belief material to a transaction to the
 247 department;

248 (11) A provider failed to respond within a reasonable time and in an appropriate manner
 249 to communications or requests from the commissioner;

250 (12) A provider received money from or on behalf of a consumer for disbursement to a
 251 creditor pursuant to providing a debt management service and the provider failed to
 252 disburse money to the creditor on behalf of the consumer within 30 days;

253 (13) The commissioner determines that a debt management service only provider's
 254 account or a debt settlement service only provider's account, if the debt settlement service
 255 only provider administers, maintains, receives, or holds money paid by or on behalf of
 256 a consumer for disbursements to the consumer's creditors, is not materially in balance
 257 with and reconciled with the amount of funds remitted by the consumer; or

258 (14) A provider has operated unlawfully or contrary to the provisions and purposes of
 259 this chapter.

260 (i) Notice of the department's intention to enter an order suspending or revoking a license
 261 under this chapter shall be given to the provider in writing and mailed to the provider's
 262 principal place of business as filed with the department. Within 20 days of the date of
 263 notice of intention to enter an order of suspension or revocation under this chapter, the
 264 provider may request in writing a hearing in accordance with Chapter 13 of Title 50, the
 265 'Georgia Administrative Procedure Act,' to contest the order. If a hearing is not requested
 266 in writing within 20 days of the date of such notice of intention, the department shall enter
 267 a final order regarding the suspension or revocation.

268 (j) Notwithstanding the requirements in this Code section dealing with affiliates and
 269 substantial equitable owners of an applicant, the department, upon written request from the
 270 applicant, has the discretion to waive some or all of the requirements in this Code section
 271 as it relates to substantial equitable owners and affiliates.

272 7-10-5.

273 (a) The department shall be authorized to:

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

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

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

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

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

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

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

300 (c) Except as otherwise provided in this chapter, information disclosed through the
301 Nationwide Multistate Licensing System and Registry shall be deemed to be disclosed
302 directly to the department and shall be subject to Code Section 7-1-70. Such information
303 shall not be disclosed to the public and shall remain privileged and confidential pursuant
304 to Code Section 7-1-70.

305 7-10-6.

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

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

331 (b) The department shall be authorized to obtain conviction data with respect to any
332 applicant or licensee, or any person who is a director, officer, partner, agent, employee, or
333 substantial equitable owner of the applicant or licensee, or any individual who directs the
334 affairs, controls, or establishes policy for the applicant or licensee. The department may
335 directly submit to the Georgia Crime Information Center two complete sets of fingerprints
336 of such person, together with the required records search fees and such other information
337 as may be required. Fees for background checks that the department administers shall be
338 sent to the department by applicants and licensees together with the fingerprints.

339 (c) Upon request by the department, each applicant or licensee, or any person who is a
340 director, officer, partner, agent, employee, or substantial equitable owner of the applicant
341 or licensee, or any individual who directs the affairs, controls, or establishes policy for the
342 applicant or licensee shall submit to the department two complete sets of fingerprints, the
343 required records search fees, and such other information as may be required. Fees for
344 background checks that the department administers shall be submitted to the department
345 by applicants or licensees together with two complete sets of fingerprints and the

346 department is authorized to net such fees to recover any costs incurred by the department
347 related to running the background checks. Upon receipt of fingerprints, fees, and other
348 required information, the Georgia Crime Information Center shall promptly transmit one
349 set of fingerprints to the Federal Bureau of Investigation for a search of bureau records and
350 an appropriate report and shall retain the other set and promptly conduct a search of its own
351 records and records to which it has access. The Georgia Crime Information Center shall
352 notify the department in writing of any derogatory finding, including, but not limited to,
353 any conviction data regarding the fingerprint records check, or if there is no such finding.
354 All conviction data received by the department or by the applicant or licensee shall be used
355 by the party requesting such data for the exclusive purpose of carrying out the
356 responsibilities of this chapter, shall not be a public record, shall be confidential, and shall
357 not be disclosed to any other person or agency except to any person or agency which
358 otherwise has a legal right to inspect the file. All such records shall be maintained by the
359 department and the applicant or licensee pursuant to laws regarding such records and the
360 rules and regulations of the Federal Bureau of Investigation and the Georgia Crime
361 Information Center, as applicable.

362 (d) Every applicant and licensee shall be authorized and required to obtain and maintain
363 the results of background checks on employees. Such background checks shall be handled
364 by the Georgia Crime Information Center pursuant to Code Section 35-3-34 and the rules
365 and regulations of the Georgia Crime Information Center. Applicants and licensees shall
366 be responsible for any applicable fees charged by the Georgia Crime Information Center.
367 An applicant or licensee may only employ a person whose background data has been
368 checked and been found to be in compliance with all lawful requirements prior to the initial
369 date of hire. This subsection shall not apply to directors, officers, partners, or substantial
370 equitable owners of applicants or licensees, or to persons who direct the affairs, control,
371 or establish policy for applicants or licensees, whose background must have been
372 investigated through the department before taking office, beginning employment, or
373 securing ownership. Upon receipt of information from the Georgia Crime Information
374 Center that is incomplete or that indicates an employee has a criminal record in any state
375 other than Georgia, the employer shall submit to the department two complete sets of
376 fingerprint cards for such person, together with the applicable fees and any other required
377 information. The department shall submit such fingerprints as provided in subsection (b)
378 of this Code section.

379 (e) Applicants and licensees shall have the primary responsibility for obtaining
380 background checks on employees. The department shall be entitled to review the files of
381 any applicant or licensee to determine whether the required background checks have been
382 run and whether all employees are qualified. The department shall be authorized to discuss

383 the status of employee background checks with applicants and licensees. Notwithstanding
384 any other provisions in this chapter, the department shall retain the right to obtain
385 conviction data on employees of applicants and licensees.

386 (f) Upon an applicant or licensee determining that or any person who is a director, officer,
387 partner, agent, employee, or substantial equitable owner of the applicant or licensee, or any
388 individual who directs the affairs, controls, or establishes policy for the applicant or
389 licensee has been convicted of a felony, the applicant or licensee is authorized to terminate
390 or otherwise remove the convicted felon from any position or relationship with the
391 applicant or licensee.

392 (g) Notwithstanding the requirements in this Code section dealing with affiliates and
393 substantial equitable owners of an applicant or licensee, the department, upon written
394 request from the applicant or licensee, has the discretion to waive some or all of the
395 requirements in this Code section as it relates to substantial equitable owners and affiliates.

396 7-10-7.

397 (a) Except as provided in this Code section, no person shall become a substantial equitable
398 owner of any licensee through acquisition or other change in control or become an
399 executive officer of a licensee, unless the person has first received written approval for
400 such acquisition, change in control, or designation as an executive officer from the
401 department. In order to obtain such approval, the person shall:

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

404 (2) Provide such other information as the department may require concerning the
405 financial responsibility, background, experience, and activities of the applicant, its
406 directors and officers, if a corporation, and its members, if applicable, and of any
407 proposed new directors, officers, members, or substantial equitable owners of the
408 licensee; and

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

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

413 (c) If an application to become a substantial equitable owner of any licensee through
414 acquisition or other change in control or become an executive officer of a licensee is
415 denied, the department shall notify the applicant of the denial and the reasons for the
416 denial.

417 (d) Notwithstanding the requirements in this Code section dealing with affiliates and
418 substantial equitable owners of a licensee, the department, upon written request from the

419 licensee, has the discretion to waive some or all of the requirements in this Code section
420 as it relates to substantial equitable owners and affiliates.

421 7-10-8.

422 All licenses issued pursuant to this chapter shall expire on December 31 of each year and
423 each application for renewal shall be made annually on or before December 1 of each year.

424 A license may be renewed by the filing of an application substantially conforming to the
425 requirements of Code Section 7-10-4. No investigation fee shall be payable in connection
426 with such renewal application. However, an annual license fee established by rule and
427 regulation of the department to defray the cost of supervision shall be paid with each
428 renewal application, which fee shall not be refunded or prorated.

429 7-10-9.

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

435 (b) The department may investigate and examine the affairs, business, premises, and
436 records of any licensee insofar as such affairs, business, premises, and records pertain to
437 its debt resolution services. The department may conduct such investigations or
438 examinations at least once every 24 months. The department may accept examination
439 reports performed and produced by other state or federal agencies in satisfaction of this
440 requirement, unless the department determines that the examinations are not available or
441 do not provide information necessary to fulfill the responsibilities of the department under
442 this chapter.

443 (c) Notwithstanding subsection (b) of this Code section, the department may alter the
444 frequency or scope of investigations or examinations through rules and regulations
445 prescribed by the department. In addition, if the department determines that based on the
446 records submitted to the department and past history of operations of the licensee in the
447 state, such investigations or examinations are unnecessary then the department may waive
448 such investigations and examinations.

449 (d) Each licensee shall pay an examination or investigation fee as established by the rules
450 and regulations of the department for purposes of defraying the costs of the examination
451 or investigation.

452 (e) The department, in its discretion, may:

453 (1) Make such public or private examination or investigation within or outside of this
454 state as it deems necessary to determine whether any person has violated this chapter, any
455 department rule and regulation, or order issued under this chapter, to aid in the
456 enforcement of this chapter, or to assist in the prescribing of rules and regulations
457 pursuant to this chapter;

458 (2) Require or permit any person to file a statement in writing, under oath or otherwise,
459 as to all the facts and circumstances concerning the matter to be investigated;

460 (3) Request any financial data from an applicant or licensee; and

461 (4) Conduct an on-site examination of a licensee at any location of the licensee without
462 prior notice to the licensee.

463 (f) For the purpose of conducting any examination or investigation as provided in this
464 Code section, the department shall have the power to administer oaths, to call any party to
465 testify under oath in the course of such examinations or investigations, to require the
466 attendance of witnesses, to require the production of books, accounts, records, documents,
467 and papers, and to take the depositions of witnesses; and for such purposes the department
468 is authorized to obtain from the superior court a subpoena for any witness or for the
469 production of documentary evidence. Such subpoenas shall be issued by the superior court
470 of the county where such witness resides or is found or where the person in custody of any
471 books, accounts, records, documents, or papers resides or is found. Such subpoenas may
472 be served by certified mail or statutory overnight delivery, return receipt requested, to the
473 addressee's business mailing address, by examiners appointed by the department, or shall
474 be directed for service to the sheriff of the county where such witness resides or is found
475 or where the person in custody of any books, accounts, records, documents, or papers
476 resides or is found.

477 (g) In case of refusal to obey a subpoena issued under this chapter to any person, the
478 superior court of the county where such witness resides or is found or where the person in
479 custody of any books, accounts, records, documents, or papers resides or is found, upon
480 application by the department, may issue to the person an order requiring him or her to
481 appear before the court to show cause why he or she should not be held in contempt for
482 refusal to obey the subpoena. Failure to obey a subpoena may be punished as contempt by
483 the court.

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

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

- 490 (2) The total number of debt resolution plans the provider has initiated on behalf of
491 consumers in this state during the year;
- 492 (3) Records of total and average fees charged to consumers, including all voluntary
493 contributions received from consumers; and
- 494 (4) Any additional information as required by the rules and regulations promulgated by
495 the department.
- 496 (i) A provider shall file with the commissioner a blank copy of the debt resolution plan
497 described in Code Section 7-10-13 and blank copies of the written information required in
498 subsections (a) and (b) of Code Section 7-10-12 with the initial and renewal application for
499 licensure.
- 500 (j) Examinations and investigations conducted under this chapter and information obtained
501 by the department in the course of its duties under this chapter shall be confidential, except
502 as provided in this subsection, pursuant to the provisions of Code Section 7-1-70. In
503 addition to the exceptions set forth in subsection (b) of Code Section 7-1-70, the
504 department shall be authorized to share information obtained under this chapter with other
505 state and federal regulatory agencies or law enforcement authorities. In the case of such
506 sharing, the safeguards to confidentiality already in place within such agencies or
507 authorities shall be deemed adequate. The commissioner or an examiner specifically
508 designated may disclose such information as is necessary to conduct a civil or
509 administrative investigation or proceeding. Information contained in the records of the
510 department that is not confidential and may be made available to the public either on the
511 department's website or upon receipt by the department of a written request shall include:
- 512 (1) The documentation set forth in paragraphs (1) through (3) of subsection (a) of Code
513 Section 7-10-4 and subsections (h) and (i) of this Code section;
- 514 (2) The name, business address, and telephone, facsimile, and license numbers of a
515 licensee;
- 516 (3) The names and titles of the principal of a provider;
- 517 (4) The name of the owner or owners of a provider;
- 518 (5) The business address of a licensee's registered agent for service;
- 519 (6) The name, business address, telephone number, and facsimile number of all locations
520 of a licensee;
- 521 (7) The terms of or a copy of any bond filed by a licensee;
- 522 (8) Information concerning any violation of this chapter, any rule or regulation, or order
523 issued under this chapter, provided the information is derived from a final order of the
524 department; and
- 525 (9) Imposition of an administrative fine or penalty under this chapter.

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

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

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

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

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

540 7-10-10.

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

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

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

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

553 (4) Be available for the benefit of a third party retained by the department to aid in the
 554 review of the initial or renewal application, examination, investigation, or any of the
 555 department's other responsibilities under this chapter or the rules and regulations enacted
 556 by the department;

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

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

561 (7) Be conditioned on the provider and its agents complying with all state and federal
562 laws, including rules and regulations, governing the business of debt resolution services.
563 (b) A surety bond filed as required under subsection (a) of this Code section shall:
564 (1) If the provider administers, maintains, receives, or holds money paid by or on behalf
565 of a consumer for disbursement to the consumer's creditors, be in an amount equal to the
566 average daily balance of the provider's account servicing trust funds for Georgia
567 consumers over the six-month period preceding the issuance of the bond, or in the case
568 of an initial application, in an amount determined by the commissioner, but not less than
569 \$25,000.00 or more than \$100,000.00; provided, however, that if at the time of the initial
570 application the provider has data regarding the average daily balance of trust funds held
571 on behalf of Georgia consumers, the commissioner shall have the discretion to require
572 that the bond be in an amount equal to the average daily balance of the trust funds held
573 on behalf of Georgia consumers over the six-month period preceding the issuance of the
574 bond; or
575 (2) Be in the amount of \$50,000.00, if the provider provides a debt settlement service
576 and utilizes a third-party payment processor to administer, maintain, receive, or hold
577 money paid by or on behalf of a consumer for disbursement to the consumer's creditors.
578 (c) In lieu of a bond, the department, by rule and regulation, may establish alternative
579 financial requirements to provide substantially equivalent protection to pay damages, fees,
580 finances, assessments and penalties to persons with a potential claim against providers
581 pursuant to this chapter or the rules and regulations enacted pursuant to this chapter.
582 (d) The commissioner may adjust the required amount of the provider's bond when the
583 provider submits an application for the renewal of its license or to reflect the findings of
584 an examination issued by the department.
585 (e) In addition to a surety bond, the provider is required to obtain and maintain at all times
586 insurance coverage for employee dishonesty, forgery, and computer fraud in an amount not
587 less than the greater of \$100,000.00 or 10 percent of the monthly average for the
588 immediately preceding six months of the aggregate amount of all deposits made with such
589 person by all debtors. The deductible on such coverage shall not exceed 10 percent of the
590 face amount of the policy coverage. Such policy shall be issued by a company licensed to
591 do business in Georgia and approved by the department, that is rated at least 'A' or its
592 equivalent by a nationally recognized rating organization, and such policy shall provide for
593 30 days' advance written notice of termination of the policy to be provided to the
594 department.

595 7-10-11.
596 Advertising for debt resolution services shall not be false, misleading, or deceptive.

597 7-10-12.

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

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

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

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

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

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

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

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

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

624 (C) That the consumer must give seven days' notice to cancel a debt resolution plan;

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

627 (E) If applicable, that some of the provider's funding comes from contributions from
628 creditors who participate in debt management plans and include the actual amount of
629 creditor contributions it reasonably expects to receive from such consumer's completion
630 of the debt management plan; and

631 (6)(A) If a debt settlement service is being provided, the provider shall provide a
632 written document to the consumer in a form the consumer may keep that clearly and
633 conspicuously contains, in boldface type, a table containing the following information:

- 634 (i) A listing of each of the debts the consumer has informed the provider that the
 635 consumer intends to enroll into the debt settlement program, in the amounts known
 636 to the provider at the time the list is prepared; and
- 637 (ii) The fee the provider will charge for each debt the provider proposes to settle.
- 638 (B) The information described in this paragraph shall be subject to change if, at the
 639 time the consumer and the provider enter into a contract for the provision of debt
 640 settlement services, the consumer elects to enroll additional or fewer debts than were
 641 originally disclosed to the provider or the amount of such debts differ from the amount
 642 used by the provider to prepare the list.
- 643 (c) A consumer shall give electronic, telephonic, or written notice to the provider to cancel
 644 a debt resolution plan at least seven days prior to the effective date of the cancellation. The
 645 provider shall cancel a debt resolution plan within seven days after the date the provider
 646 receives the notice from the consumer. The provider shall continue making disbursements
 647 to the consumer's creditors if money has been paid to the provider under the debt resolution
 648 plan until the expiration of the seven-day period, unless otherwise agreed in writing by the
 649 consumer and the provider.
- 650 (d) A provider may provide the information required by paragraphs (1), (4), and (5) of
 651 subsection (b) of this Code section through its Internet website if the provider:
- 652 (1) Has complied with Chapter 12 of Title 10, the 'Uniform Electronic Transactions Act'
 653 and the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C.
 654 Section 7001, et seq., in effect as of January 1, 2015;
- 655 (2) Informs the consumer that the provider will make available a paper copy or copies
 656 within seven days of an electronic, telephonic, or written request; and
- 657 (3) Discloses on its Internet website:
- 658 (A) The provider's name and each name under which it does business;
 659 (B) The provider's principal business address and telephone number; and
 660 (C) The names of the provider's principal officers.
- 661 (e) If the provider discusses its services with a consumer primarily in a language other than
 662 English, the provider shall provide the debt resolution plan in that language.
- 663 (f) A provider, including a provider that does business only or principally through the
 664 Internet, shall maintain a telephone system staffed at a level that reasonably permits a
 665 consumer to access an employee during ordinary business hours.
- 666 (g) A debt management service provider or a debt settlement service provider who
 667 administers, maintains, receives, or holds money on behalf of consumers, shall provide to
 668 the consumer a written report accounting for:
- 669 (1) The amount of money received from the consumer since the last report;

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

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

673 (4) Any amount held in reserve.

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

676 (1) At least once each calendar month; and

677 (2) Within ten days of a request by a consumer.

678 7-10-13.

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

682 (b) Each debt resolution plan shall:

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

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

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

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

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

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

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

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

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

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

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

708 (1) Has complied with Chapter 12 of Title 10, the 'Uniform Electronic Transactions Act'
 709 and the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C.
 710 Section 7001, et seq., in effect as of January 1, 2015;

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

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

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

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

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

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

722 7-10-14.

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

727 7-10-15.

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

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

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

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

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

746 (1) A fee not to exceed \$100.00 for debt counseling or education services, including
747 obtaining a credit report, setting up an account, and other similar services; and

748 (2) A monthly service fee, not to exceed the lesser of:

749 (A) Ten dollars multiplied by the number of accounts remaining in the plan on the day
750 of the month the fee is assessed; or

751 (B) Fifty dollars.

752 (f) If a consumer is enrolled in a debt resolution plan that provides for debt settlement
753 services, then the fees for the debt settlement services shall not be charged or collected
754 until the time a settlement agreement is reached with a creditor, and at least one payment
755 has been made toward the settlement agreement by or on behalf of the consumer. The fee
756 with respect to each debt included in such plan shall:

757 (1) Bear the same proportional relationship to the total fee for settling all debt included
758 in the debt resolution plan as the principal amount of the particular debt bears to the total
759 principal amount of the debt included in the plan; or

760 (2) Be a percentage of the amount saved as a result of the settlement, determined as the
761 difference between the principal amount of the debt and the amount actually paid to
762 satisfy the debt. The percentage charged cannot change from one debt to another.

763 (3) The maximum fee allowable pursuant to this Section 7-10-15(f) in any contract for
764 the provision of debt settlement services shall be no greater than thirty percent (30.0%)
765 of each debt owed by such consumer at the time the debt is included in the debt resolution
766 plan.

767 (g) If a consumer does not enter into a debt management plan with a provider, the debt
768 management services provider may receive payment for debt counseling or education
769 services provided to the consumer in an amount not to exceed \$100.00; provided, however,
770 that the commissioner may adopt rules and regulations authorizing a debt management
771 services provider to charge a fee greater than \$100.00 based on the nature and extent of the
772 educational and counseling services furnished by the provider.

773 (h) If within 90 days of receiving debt counseling or education services, a consumer enters
774 into a debt management plan with a provider, the provider shall refund to the consumer any
775 payments received for debt counseling or education services.

776 (i) A provider may impose a reasonable charge on the consumer, the amount of which
777 shall be the lesser of \$25.00 or an amount otherwise permitted by a law for payment which
778 is later dishonored.

779 7-10-16.

780 (a) All money paid by or on behalf of a Georgia consumer and received by the provider
781 or a third-party payment processor for disbursement to the consumer's creditor, shall
782 constitute a trust fund until paid to the individual creditor or returned to the consumer. The
783 provider or third-party payment processor, whichever person receives, holds, administers,
784 or maintains the trust funds, shall have a fiduciary duty to preserve and account for trust
785 funds held on behalf of consumers. No party, other than the individual consumer, a
786 provider, a third-party payment processor, or a bank or credit union authorized to do
787 business in this state whose deposits are federally insured, shall be authorized to administer
788 or maintain funds to be used for disbursement to a consumer's creditor.

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

802 (c) If a third-party payment processor receives, holds, administers, or maintains trust funds
803 on behalf of a consumer, then all trust funds paid by or on behalf of any Georgia consumer
804 for disbursement to any of the consumer's creditors shall be immediately deposited by the
805 third-party payment processor into an account administered by a bank or credit union
806 authorized to do business in this state and whose deposits are federally insured until the
807 trust funds are paid over to the individual creditor or consumer; provided, however, that
808 nothing in this Code section shall preclude a provider or a third-party payment processor
809 from receiving disbursements contractually agreed upon for services provided as
810 authorized by the consumer from the trust funds. The account shall be structured in such
811 a way so that funds are transferred directly into the account by the consumer and only the

812 consumer can authorize the bank to make disbursements of funds from the account. A
 813 third-party payment processor shall not commingle trust funds in an account established
 814 for the benefit of a consumer with any operating funds of the provider. The account shall
 815 be segregated by individual consumers in order that the total amount of trust funds for each
 816 consumer can be readily ascertained and federal deposit insurance, if applicable, obtained.
 817 A third-party payment processor shall exercise due care to appropriately manage the trust
 818 funds in the account.

819 (d) An account administered or maintained by a provider or a third-party payment
 820 processor shall at all times be materially in balance with and reconciled to the consumers'
 821 accounts. Failure of a provider to maintain that balance in a provider administered or
 822 maintained account shall be cause for a summary suspension and revocation of the
 823 provider's license under Code Section 7-10-4.

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

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

840 7-10-17.

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

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

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

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

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

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

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

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

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

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

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

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

866 (1) A confession of judgment clause;

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

869 (3) A waiver of any provision of this chapter.

870 7-10-18.

871 A provider owes a duty to a consumer who receives debt resolution services from such
872 provider to ensure that any client money held by such provider is managed properly at all
873 times.

874 7-10-19.

875 Nothing in this chapter shall limit any statutory or common law right of any person to bring
876 any action in any court for any act related to debt resolution services or the right of the state
877 to punish any person for any violation of any law.

878 7-10-20.

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

881 7-10-21.

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

889 7-10-22.

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

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

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

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

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

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

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

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

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

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

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

935 7-10-23.

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

938 (b) A consumer shall be entitled to recover all fees paid, costs, actual damages, punitive
 939 damages, reasonable attorney's fees, and expenses of litigation to remedy a void agreement.

940 (c) In addition to any other remedies provided by this chapter, a consumer who is
 941 aggrieved by a violation of this chapter, a violation of a rule and regulation adopted by the
 942 department under this chapter, or by any unfair, unconscionable, or deceptive act or
 943 practice may recover damages as provided in Part 2 of Article 15 of Chapter 1 of Title 10,
 944 the 'Fair Business Practices Act of 1975.'

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

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

950 7-10-24.

951 Any person who:

952 (1) Shall violate the provisions of subsection (a) of Code Section 7-10-3, by the willfully
953 engaging in debt resolution services without being licensed or exempt, shall be guilty of
954 a felony punishable as provided in Code Section 7-1-845; or
955 (2) Shall willfully violate any of the other provisions of this chapter shall be guilty of a
956 misdemeanor and shall be punished by imprisonment for not more than one year or by
957 a fine or not more than \$1,000.00, or by both fine and imprisonment."

958 **SECTION 2.**

959 Title 18 of the Official Code of Georgia Annotated, relating to debtor and creditor, is
960 amended by repealing in its entirety Chapter 5, relating to debt adjustment.

961 **SECTION 3.**

962 This Act shall become effective on January 1, 2016; provided, however, that Code Section
963 7-10-20 in Section 1 of this Act shall become effective upon its approval by the Governor
964 or upon its becoming law without such approval.

965 **SECTION 4.**

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