

House Bill 465

By: Representatives Martin of the 49th, Morris of the 156th, Williamson of the 115th, and Kelley of the 16th

A BILL TO BE ENTITLED
AN ACT

1 To amend Title 18 of the Official Code of Georgia Annotated, relating to debtor and creditor,
2 so as to repeal Chapter 5, relating to debt adjustment; to enact a new Chapter 5, relating to
3 debt management services; to provide for a legislative purpose; to provide for definitions;
4 to provide for applicability; to provide for registration requirements for debt management
5 service providers; to provide for the keeping of records; to provide for minimum insurance
6 or bonding for debt management service providers; to provide for required disclosures and
7 practices by a debt management service provider; to provide for the collection of fees by a
8 debt management service provider; to provide for the establishment of trust accounts by debt
9 management service providers; to provide for prohibited acts by a debt management service
10 provider; to provide for the enforcement of rules by the Department of Banking and Finance;
11 to provide for private causes of action for violations of the chapter; to provide for related
12 matters; to repeal conflicting laws; and for other purposes.

13 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

14 **SECTION 1.**

15 Title 18 of the Official Code of Georgia Annotated, relating to debtor and creditor, is
16 amended by repealing Chapter 5, relating to debt adjustment, and enacting a new Chapter 5
17 to read as follows:

18 "CHAPTER 5

19 18-5-1.

20 (a) The purpose of this chapter is to protect consumers who contract for services with debt
21 management service providers.

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

23 18-5-2.

24 As used in this chapter, the term:

- 25 (1) 'Advertising' means information about a provider or about the provider's debt
26 management services, communicated in writing or orally to an individual consumer or
27 the public by telephone, television, Internet, radio, or other electronic medium, or by
28 written material sent by mail, posted publicly, or posted at the provider's business
29 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. For purposes of this chapter, 'control' shall mean the right to control 10
33 percent or more of the voting power of another person;
- 34 (B) An executive officer of or individual performing similar functions with respect to
35 the provider;
- 36 (C) A director of or individual performing similar functions with respect to the
37 provider; or
- 38 (D) An executive officer or director of or an individual performing similar functions
39 with respect to a person described in subparagraph (A) of this paragraph.
- 40 (3) 'Certified counselor' means an individual who:
- 41 (A) Is certified as a debt management counselor by an independent accreditation
42 organization; or
- 43 (B) If the individual has been employed for less than 12 months, is in the process of
44 being certified as a debt management counselor by an independent accreditation
45 organization.
- 46 (4) 'Commissioner' means the commissioner of banking and finance.
- 47 (5) 'Concession' means assent to repayment of a debt on terms more favorable to a
48 consumer than the terms of the agreement under which the consumer became indebted
49 to the creditor.
- 50 (6) 'Consumer' means an individual who resides in this state and seeks a debt
51 management service or enters a debt management service agreement.
- 52 (7) 'Creditor' means a person to whom a person owes money.
- 53 (8) 'Debt management service' means a service in which a provider obtains or seeks to
54 obtain a concession from one or more creditors on behalf of a consumer.
- 55 (9) 'Debt management service agreement' means a written agreement between a provider
56 and a consumer for the performance of a debt management service.
- 57 (10) 'Department' means the Department of Banking and Finance.
- 58 (11) 'Person' means an individual, partnership, corporation, limited liability company,
59 association, or organization.
- 60 (12) 'Principal amount of the debt' means the amount of a debt owed by a consumer at
61 the time the debt is added to a debt management service agreement.

62 (13) 'Provider' means a person that acts as an intermediary between a consumer and one
 63 or more creditors and that provides or offers to provide a debt management service to a
 64 consumer in this state. A person registered under this chapter and engaged in providing
 65 debt management services shall not be considered to be engaged in the practice of law,
 66 as defined in Code Section 15-19-50.

67 (14) 'Secured debt' means a debt for which a creditor has a mortgage, lien, or security
 68 interest in collateral.

69 (15) 'Trust account' means an account that is:

70 (A) Established in a federally insured financial institution;

71 (B) Separate from any account of the debt management service provider;

72 (C) Designated as a trust account or other appropriate designation indicating that the
 73 money in the account is not money of the provider's or its officers, employees, or
 74 agents;

75 (D) Unavailable to creditors of the provider; and

76 (E) Used exclusively to hold money paid by consumers to the provider for
 77 disbursement to creditors of the consumers and to the provider for the disbursement of
 78 fees and contributions earned and agreed to in advance.

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

80 18-5-3.

81 (a) Except as otherwise provided by this chapter, this chapter shall apply to a provider
 82 regardless of whether the provider charges a fee or receives consideration for a debt
 83 management service.

84 (b) The business of providing debt management services is conducted in this state if the
 85 debt management services provider solicits or contracts with consumers located in this
 86 state.

87 (c) This chapter shall not apply to:

88 (1) An attorney licensed to practice in this state, unless the attorney holds himself or
 89 herself out to the public as a provider or is employed, affiliated with, or otherwise
 90 working on behalf of a 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 (3) A judicial officer or person acting under a court order;

94 (4) A person who has legal authority under federal or state law to act as a representative
 95 payee for a consumer to the extent that person is paying bills or other debts on behalf of
 96 the consumer;

97 (5) A person who pays bills or other debts owed by a consumer and on behalf of a
 98 consumer, if the money used to make the payments belongs exclusively to the consumer
 99 and the person does not initiate any contact with individual creditors of the consumer to
 100 compromise a debt, arrange a new payment schedule, or otherwise change the terms of
 101 the debt;

102 (6) A financial institution, as defined by Code Section 7-1-4, or any agent thereof; or

103 (7) A certified public accountant licensed to practice in this state, unless the certified
 104 public accountant holds himself or herself out to the public as a provider or is employed,
 105 affiliated with, or otherwise working on behalf of a provider.

106 (d) The following are not debt management services for purposes of this chapter:

107 (1) An extension of credit, including consolidation or refinance of a loan; and

108 (2) Bankruptcy services provided by an attorney licensed to practice in this state.

109

110 18-5-4.

111 (a) A person, regardless of whether located in this state, shall not provide a debt
 112 management service to a consumer in this state unless the person is registered with the
 113 department.

114 (b) Registration shall expire on December 31 of the year in which the registration occurs
 115 and shall be renewed annually.

116 (c) A provider that seeks to be registered with the department shall file an application with
 117 the department which shall be in a form prescribed by the department through regulation
 118 and an application fee in an amount determined by the department to be used to defray the
 119 costs of the investigation and review of the application. Such application shall include the
 120 following:

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

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

125 (3) The address of each location in this state at which the applicant will provide debt
 126 management services, or if the applicant will have no such location, a statement to that
 127 effect;

128 (4) The name and home address of each executive officer and director of the applicant
 129 entity and each person that holds at least a 10 percent ownership interest in the applicant
 130 entity;

131 (5) If the applicant is a nonprofit or tax exempt organization, a detailed description of the
 132 ownership interest of any officer, director, agent, or employee of the applicant
 133 organization, or any member of the immediate family of an officer, director, agent, or

134 employee of the applicant organization who has an ownership interest in a for profit
135 affiliate or subsidiary of the applicant organization or in any other for profit business
136 entity that will provide debt management services to the applicant organization or to a
137 consumer in relation to the debt management business; and

138 (6) Evidence of a surety bond or insurance policy as required by Code Section 18-5-6.

139 (d) The department shall, by regulation, prescribe annual registration fees and supervision
140 fees to be paid by each debt management service provider doing business in this state. In
141 addition, the department may, by regulation, prescribe reasonable application and related
142 fees, special investigation fees, hearing fees, and fees to provide copies of any book,
143 account, report, or other paper filed in its office or for any certification thereof or for
144 processing any papers as required by this title. The department, in its discretion, may
145 require the payment of such fees in any manner deemed to be efficient, including collection
146 through automated clearing-house arrangements or other electronic means, so that the state
147 receives funds no later than the date the payment is required to be made.

148 (e) An officer or employee of a person registered under this chapter shall not be required
149 to be separately registered.

150 (f) Unless the commissioner notifies an applicant that a longer period is necessary, the
151 commissioner shall approve or deny an initial registration not later than 60 days after
152 receipt of a completed application. The commissioner shall inform the applicant in writing
153 of the reason for denial.

154 (g) A person may renew a registration by paying the appropriate fee and completing all
155 required documents.

156 (h) The department by rule may establish procedures to facilitate the registration and
157 collection of fees under this Code section, including rules providing for the staggering of
158 payment due date throughout a calendar year.

159 (i) The commissioner may refuse an initial application if the application contains material
160 errors or materially incomplete information. An application shall be deemed materially
161 incomplete if it does not include all of the information required by this Code section.

162 (j) The commissioner may deny an initial application if:

163 (1) The applicant or any principal of the applicant has been convicted of a crime or found
164 civily liable for an offense involving moral turpitude, including forgery, embezzlement,
165 obtaining money under false pretenses, larceny, extortion, conspiracy to defraud, or any
166 other similar offense or violation;

167 (2) The registration of the applicant or any principal of the applicant has been revoked
168 or suspended in this state or another state, unless the applicant provides information that
169 the commissioner finds sufficient to show that the grounds for the previous revocation

170 or suspension no longer exist and any problem cited in the previous revocation has been
 171 corrected or is no longer applicable; or

172 (3) The commissioner, based on specific evidence, reasonably finds that the applicant
 173 does not warrant the belief that the business will be operated lawfully and fairly and
 174 within the provisions and purposes of this chapter.

175 (k) On written request, the applicant shall be entitled to a hearing, in accordance with
 176 Chapter 13 of Title 50, the 'Georgia Administrative Procedures Act', on the question of the
 177 applicant's qualifications for initial registration if the commissioner has notified the
 178 applicant in writing that the initial application has been denied. A request for a hearing
 179 shall be made within 30 days of the postmark date on the notice to the applicant stating that
 180 the application has been denied and stating the reasons for the denial.

181 (l) In addition to the power to refuse an initial application as specified in this Code section,
 182 the commissioner may suspend or revoke a provider's registration after notice and hearing
 183 if the commissioner finds that any of the following conditions are met:

184 (1) A fact or condition exists that, if it had existed when the provider applied for
 185 registration, would have been grounds for denying registration;

186 (2) A fact or condition exists that the commissioner was not aware of when the provider
 187 applied for registration and would have been grounds for denying registration;

188 (3) The provider has violated this chapter or a rule or order of the commissioner;

189 (4) The provider is insolvent;

190 (5) The provider refuses to permit the commissioner to make an examination authorized
 191 by Code Section 18-5-5;

192 (6) The provider failed to respond within a reasonable time and in an appropriate manner
 193 to communications from the commissioner;

194 (7) The provider received money from or on behalf of a consumer for disbursement to
 195 a creditor under a debt management plan that provides for regular periodic payments to
 196 creditors in full repayment of the principal amount of the debts, and the provider failed
 197 to disburse money to the creditor on behalf of the consumer within 30 days;

198 (8) The commissioner determines that the provider's trust account is not materially in
 199 balance with and reconciled to the consumer's account; or

200 (9) The provider fails to warrant the belief that the business will be operated lawfully and
 201 fairly and within the provisions and purposes of this chapter.

202 (m) The commissioner's order revoking a registration shall include appropriate provisions
 203 to transfer existing clients of the provider to one or more registered providers to ensure the
 204 continued servicing of the clients' accounts.

205 (n) The commissioner shall maintain a list of registered providers and make the list
 206 available to interested persons and to the public.

207 18-5-5.

208 (a) A provider shall keep and use books, accounts, and other records that will enable the
 209 commissioner to determine if the provider is complying with this chapter and maintain any
 210 other records as required by the commissioner. The commissioner may examine the records
 211 at any reasonable time. The records of a consumer's debt management plan shall be kept
 212 for at least three years after the last date of the debt management service.

213 (b) Each provider shall file a report with the commissioner at each renewal of the
 214 provider's registration. The report shall, at a minimum, disclose in detail and under
 215 appropriate headings:

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

218 (2) The total number of debt management plans the provider has initiated on behalf of
 219 consumers in this state during that year; and

220 (3) Records of total and average fees charged to consumers, including all voluntary
 221 contributions received from consumers.

222 (c) The reports shall be verified by an oath or affirmation of the owner, manager,
 223 president, chief executive officer, or chairperson of the board of directors of the provider.

224 (d) A provider shall file with the commissioner a blank copy of the agreement described
 225 in Code Section 18-5-9 and blank copies of the written information required in subsection
 226 (a) of Code Section 18-5-8 with the initial registration and each renewal of registration.

227 (e) The commissioner shall make the information provided under this Code section
 228 available to interested parties and to the public.

229 18-5-6.

230 (a) At the time the provider files an initial or renewal registration application with the
 231 commissioner, a provider shall file a surety bond or evidence that the provider maintains
 232 an insurance policy in a form approved by the commissioner. Such bond or insurance
 233 shall:

234 (1) Run concurrently with the period of registration;

235 (2) Be available to pay damages and penalties to consumers directly harmed by a
 236 violation of this chapter;

237 (3) Be in favor of this state for the use of this state and the use of a person who has a
 238 cause of action under this chapter against the provider;

239 (4) Be issued by a bonding, surety, or insurance company that is authorized to do
 240 business in this state; and

241 (5) Be conditioned on the provider and its agents complying with all state and federal
 242 laws, including regulations, governing the business of debt management services.

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

244 (1) Be in an amount equal to the average daily balance of the provider's trust account
 245 servicing Georgia consumers over the six-month period preceding the issuance of the bond,
 246 or in the case of an initial application, in an amount determined by the commissioner, but
 247 not less than \$25 thousand or more than \$100 thousand, if the provider receives and holds
 248 money paid by or on behalf of a consumer for disbursement to the consumer's creditors;

249 or

250 (2) Be in the amount of \$50 thousand, if the provider does not receive and hold money
 251 paid by or on behalf of a consumer for disbursement to the consumer's creditors.

252 (c) An insurance policy filed as required under subsection (a) of this Code section shall:

253 (1) Provide coverage for professional liability, employee dishonesty, depositor's forgery,
 254 and computer fraud in an amount not less than \$100 thousand;

255 (2) Be issued by a company rated at least 'A-' or its equivalent by a nationally recognized
 256 rating organization; and

257 (3) Provide for 30 days advance written notice of termination of the policy to be
 258 provided to the commissioner.

259 (d) In lieu of a bond or insurance, the department, by rule, may establish alternative
 260 financial requirements to provide substantially equivalent protection to pay damages and
 261 penalties to consumers directly harmed by a violation under this chapter.

262 (e) The commissioner may adjust the amount of the provider's bond or insurance only
 263 when the provider applies for renewal of registration and requests a review of the bond or
 264 insurance amount.

265 18-5-7.

266 Advertisements for debt management services shall not be false, misleading, or deceptive.
 267 The department may promulgate rules, regulations, and policies to effectuate this Code
 268 section.

269 18-5-8.

270 (a) A provider that enrolls a consumer in a debt management plan shall:

271 (1) Provide the consumer individualized counseling and educational information that, at
 272 a minimum, addresses the topics of managing household finances, managing credit and
 273 debt, and budgeting if the provider accepts funds from the consumer and holds such funds
 274 for distribution to the consumer's creditors;

275 (2) Prepare an individualized financial analysis and an initial debt management plan for
 276 the consumer's debts with specific recommendations regarding actions the consumer

277 should take if the provider accepts funds from the consumer and holds such funds for
278 distribution to the consumer's creditors;

279 (3) Determine that the consumer has a reasonable ability to make payments under the
280 proposed debt management plan based on the information provided by the consumer;

281 (4) Reasonably expect that each creditor of the consumer listed as a participating creditor
282 in the plan will accept payment of the consumer's debts as provided in the initial plan,
283 provided that the consumer has provided accurate information to the provider, and the
284 proposed debt management plan does not provide for a reduction of principal as a
285 concession;

286 (5) Prepare a list for all creditors identified by the consumer or identified through
287 additional investigation, in a form the consumer can keep, of the creditors the provider
288 reasonably expects to participate in the plan; provided, however, that the debt
289 management plan shall not provide for a reduction of principal as a concession; and

290 (6) Provide a written document to the consumer in a form the consumer may keep that
291 clearly and conspicuously contains the following statements:

292 (A) That debt management services are not suitable for all consumers and that
293 consumers may request information about other ways, including bankruptcy, to deal
294 with indebtedness;

295 (B) If applicable, that if the provider is a nonprofit or tax-exempt organization, the
296 provider cannot require donations or contributions; and

297 (C) If applicable, that some of the provider's funding comes from contributions from
298 creditors who participate in debt management plans, except that a provider may
299 substitute for 'some' the actual percentage of creditor contributions it received during
300 the most recent reporting period.

301 (b) If the provider discusses its services with a consumer primarily in a language other
302 than English, the provider shall provide the debt management service agreement in that
303 language.

304 (c) A consumer shall give at least seven days' notice to the provider to cancel a debt
305 management service agreement. The provider shall cancel a debt management service
306 agreement within seven days after the date the provider receives the notice from the
307 consumer. The provider shall continue making disbursements to the consumer's creditors
308 if money has been paid to the provider under the agreement until the expiration of the
309 seven-day period, unless otherwise agreed in writing by the consumer and the provider.

310 (d) A provider may provide the information required by paragraphs (2),(5), and (6) of
311 subsection (a) of this Code section through its Internet website if the provider:

312 (1) Has complied with the federal Electronic Signatures in Global and National
313 Commerce Act, 15 U.S.C. Section 7001 et seq.;

- 314 (2) Informs the consumer that the provider will make available a paper copy or copies
 315 upon electronic, telephonic, or written request; and
 316 (3) Discloses on its Internet website:
 317 (A) The provider's name and each name under which it does business;
 318 (B) The provider's principal business address and telephone number; and
 319 (C) The names of the provider's principal officers.
 320 (e) A provider, including a provider that does business only or principally through the
 321 Internet, shall maintain a telephone system staffed at a level that reasonably permits a
 322 consumer to access a counselor during ordinary business hours.
 323 (f) A provider who receives and disburses money to creditors on behalf of consumers for
 324 debt management services shall provide to the consumer a written report accounting for:
 325 (1) The amount of money received from the consumer since the last report;
 326 (2) The amount and date of each disbursement made on the consumer's behalf to each
 327 creditor listed in the agreement since the last report;
 328 (3) Any amount deducted from amounts received from the consumer; and
 329 (4) Any amount held in reserve.
 330 (g) The provider shall provide the report under subsection (f) of this Code section:
 331 (1) At least once each calendar quarter; and
 332 (2) Within ten days of a request by a consumer.

333 18-5-9.

- 334 (a) A debt management services provider shall not prepare a debt management service
 335 agreement before the provider has fully complied with subsections (a) and (b) of Code
 336 Section 18-5-8.
 337 (b) Each debt management service agreement shall:
 338 (1) Be dated and signed by the consumer;
 339 (2) Include the name and address of the consumer and the name, address, and telephone
 340 number of the provider;
 341 (3) Describe the debt management services to be provided;
 342 (4) State all fees, individually itemized, to be paid by the consumer;
 343 (5) If the proposed debt management plan does not provide for a reduction of principal
 344 as a concession, list in the agreement or accompanying document, to the extent the
 345 information is available to the provider at the time the agreement is executed, each
 346 participating creditor of the consumer to which payments will be made and, based on
 347 information provided by the consumer, the amount owed to each creditor and the
 348 schedule of payments the consumer will be required to make to the creditor, including the
 349 amount and date on which each payment will be due;

- 350 (6) State the existence of a surety bond or insurance for consumer claims;
 351 (7) State that establishment of a debt management plan may impact the consumer's credit
 352 rating and credit score either favorably or unfavorably, depending on creditor policies and
 353 the consumer's payment history before and during participation in the debt management
 354 plan;
 355 (8) State that either party may cancel the agreement without penalty at any time on seven
 356 days' notice and that a consumer who cancels an agreement is entitled to a refund of all
 357 money that the consumer has paid to the provider that has not been disbursed; and
 358 (9) Be typed in at least ten-point font.
- 359 (c) A debt management service agreement may contain a consumer arbitration provision
 360 or a mediation provision.
- 361 (d) A provider may deliver the debt management service agreement through the Internet
 362 if the provider:
- 363 (1) Has complied with the federal Electronic Signatures in Global and National
 364 Commerce Act, 15 U.S.C. Section 7001 et seq.;
 365 (2) Sends the consumer a paper copy of the agreement within seven days of a request by
 366 a consumer; and
 367 (3) Discloses on a prominent page of its Internet website:
- 368 (A) The provider's name and each name under which it does business;
 369 (B) The provider's principal business address and telephone number; and
 370 (C) The names of the provider's principal officers.
- 371 (e) If the provider discusses its services or negotiates with a consumer primarily in a
 372 language other than English, the provider shall not begin performance of a debt
 373 management plan until the provider and consumer sign a copy of the written agreement,
 374 provided by the debt management services provider, in that language, and a copy is made
 375 available to the consumer.
- 376 18-5-10.
 377 If a provider or a consumer cancels a debt management service agreement, the provider
 378 shall immediately return any money held in trust by the provider for the consumer's benefit.
- 379 18-5-11.
 380 (a) No provider shall impose a fee or other charge on a consumer, or receive payment from
 381 a consumer or other person on behalf of a consumer, for a debt management service plan
 382 except as allowed under this Code section.
 383 (b) For purposes of this Code section, fees or charges include both voluntary contributions
 384 and any other fees charged to or collected from a consumer or on behalf of the consumer.

385 (c) No fee or charge shall be imposed on a consumer and no payment for debt management
386 services shall be accepted until the consumer has entered into a debt management service
387 agreement as provided for under Code Section 18-5-8.

388 (d) No fee or other charge for debt counseling or education services shall be accepted
389 except as authorized by this Code section. The commissioner may authorize a provider to
390 charge a fee based on the nature and extent of the counseling or education services
391 furnished by the provider.

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

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

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

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

400 (B) Fifty dollars.

401 (f) If a consumer is enrolled in a debt management plan that provides for settlement of
402 debts for amounts that are less than the principal amounts of the debts as a concession from
403 creditors, then the fees for the debt management services shall not be charged or collected
404 until the time a settlement agreement is reached with a creditor, and at least one payment
405 has been made toward the settlement agreement by or on behalf of the consumer. The fee
406 with respect to each debt included in such plan shall:

407 (1) Bear the same proportional relationship to the total fee for settling all debts included
408 in the debt management plan as the principal amount of the particular debt bears to the
409 total principal amount of the debt included in the plan; or

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

413 (g) A provider may impose fees or other charges under only one of subsection (e) or (f)
414 of this Code section.

415 (h) If a consumer does not enter into a debt management service agreement with a
416 provider, the provider may receive payment for debt counseling or education services
417 provided to the consumer in an amount not to exceed \$100.00; provided, however, that an
418 amount greater than \$100.00 may be collected upon approval of the commissioner if the
419 nature and extent of the educational and counseling services warrant the greater amount.

420 (i) If, within 90 days of the completion or cancellation of debt counseling or education
 421 services, a consumer enters into a debt management service agreement with a provider, the
 422 provider shall refund to the consumer any payments received under this Code section.

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

426 18-5-12.

427 (a) A provider shall use a trust account, either administered and maintained by the provider
 428 or a third party, for the management of all money paid by or on behalf of a consumer and
 429 received by the provider for disbursement to the consumer's creditor. A provider shall not
 430 commingle the money in a trust account established for the benefit of consumers with any
 431 operating funds of the provider. A provider or third party shall exercise due care to
 432 appropriately manage the funds in the trust account.

433 (b) A trust account administered and maintained by a provider shall at all times be
 434 materially in balance with and reconciled to the consumers' accounts. Failure to maintain
 435 that balance shall be cause for a summary suspension of registration under Code Section
 436 18-5-4.

437 (c) If a provider administered and maintained trust account does not contain sufficient
 438 money to cover the aggregate consumer balances, and the provider has not corrected the
 439 deficiency within 48 hours of discovery, the provider shall notify the commissioner by
 440 telephone, facsimile, e-mail, or other method approved by the commissioner and provide
 441 written notice, including a description, of the remedial action taken.

442 18-5-13.

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

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

445 (2) Receive or charge a fee in the form of a promissory note or other negotiable
 446 instrument other than a check or a draft;

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

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

450 (5) Offer, pay, or give a gift, bonus, premium, reward, or other compensation to a person
 451 for entering into a debt management service agreement;

452 (6) Represent that the provider is authorized or competent to furnish legal advice or
 453 perform legal services unless supervised by an attorney as required by State Bar of
 454 Georgia rules;

- 455 (7) Use an unconscionable means to obtain a contract with a consumer;
 456 (8) Engage in an unfair, deceptive, or unconscionable act or practice in connection with
 457 a debt management service provided to a consumer; or
 458 (9) Require or attempt to require payment of an amount that the provider states,
 459 discloses, or advertises to be a voluntary contribution from the consumer.
- 460 (b) A legal claim of action shall not be available against a consumer for breach of contract
 461 when an agreement is canceled pursuant to this chapter or for restitution when an
 462 agreement is void under this chapter.
- 463 (c) No disclosure related to debt management services or in a debt management service
 464 agreement shall include:
- 465 (1) A confession of judgment clause;
 466 (2) An assignment of or order for payment of wages or other compensation for debt
 467 management services; or
 468 (3) A waiver of any provision of this chapter.
- 469 18-5-14.
- 470 A provider owes a duty to a consumer who receives debt management services from the
 471 provider to ensure that any client money held by the provider is managed properly at all
 472 times.
- 473 18-5-15.
- 474 (a) The department may adopt rules to carry out this chapter.
- 475 (b) The commissioner may:
- 476 (1) Investigate the activities of a person subject to this chapter to determine compliance
 477 with this chapter, including examination of the books, accounts, and records of a
 478 provider; and
- 479 (2) Require or permit a person to file a statement under oath and otherwise subject to the
 480 penalties of perjury as to all the facts and circumstances of the matter to be investigated.
- 481 (c) Failure to comply with an investigation under subsection (b) of this Code section shall
 482 be grounds for issuance of a cease and desist order.
- 483 (d) The commissioner may receive and act on complaints, take action to obtain voluntary
 484 compliance with this chapter, and refer cases to the Attorney General for prosecution.
- 485 (e) The commissioner may enforce this chapter and rules adopted under this chapter by:
- 486 (1) Ordering the violator to cease and desist from the violation and any similar
 487 violations;
- 488 (2) Ordering the violator to take affirmative action to correct the violation, including the
 489 restitution of money or property to a person aggrieved by the violation;

490 (3) Imposing an administrative fine or penalty not to exceed \$1 thousand for each
 491 violation under this chapter; or

492 (4) Rejecting an initial application or revoking or suspending a registration as provided
 493 for in Code Section 18-5-4.

494 (f) In determining the amount of an administrative penalty to be imposed under this Code
 495 section, the commissioner shall consider the seriousness of the violation, the good faith of
 496 the violator, the violator's history of previous violations, the deleterious effect of the
 497 violation on the public, the assets of the violator, and any other factors the commissioner
 498 considers relevant.

499 (g) The Attorney General, upon complaint by the commissioner, may bring an action in
 500 the superior court in the name of the commissioner to enjoin a person from engaging in an
 501 act or continuing a course of action that violates this chapter. The court may order a
 502 preliminary or final injunction.

503 18-5-16.

504 (a) An agreement for debt management services between a consumer and a person
 505 required to be registered under this chapter that is not registered under this chapter shall be
 506 void.

507 (b) A consumer shall be entitled to recover all fees paid, costs, and reasonable attorney's
 508 fees under a void agreement.

509 (c) In addition to any other remedies provided by this chapter, a consumer who is
 510 aggrieved by a violation of this chapter, a rule adopted by the department under this
 511 chapter, or by any unfair, unconscionable, or deceptive act or practice may recover:

512 (1) Actual damages;

513 (2) Punitive damages for acts or practices under a void agreement; and

514 (3) The costs of the action, including reasonable attorney's fees based on the amount of
 515 time involved.

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

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

521 **SECTION 2.**

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