CHAPTER 13-11
DEBT-SETTLEMENT PROVIDERS

13-11-01. Definitions.

For the purposes of this chapter:

1. "Affiliate":
   a. With respect to an individual, means:
      (1) The spouse of the individual;
      (2) A sibling of the individual or the spouse of a sibling;
      (3) An individual or the spouse of an individual who is a lineal ancestor or lineal descendant of the individual or the individual's spouse;
      (4) An aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew, whether related by the whole or the half blood or adoption, or the spouse of any of them; or
      (5) Any other individual occupying the residence of the individual; and
   b. With respect to an entity, means:
      (1) A person that directly or indirectly controls, is controlled by, or is under common control with the entity;
      (2) An officer of, or an individual who performs similar functions with respect to, the entity;
      (3) A director of, or an individual who performs similar functions with respect to, the entity;
      (4) A person that receives or received more than twenty-five thousand dollars from the entity in either the current year or the preceding year or a person that owns more than ten percent of, or an individual who is employed by or is a director of, a person that receives or received more than twenty-five thousand dollars from the entity in either the current year or the preceding year;
      (5) An officer or director of, or an individual performing similar functions with respect to, a person described in paragraph 1;
      (6) The spouse of, or an individual occupying the residence of, an individual described in paragraphs 1 through 5; or
      (7) An individual who has the relationship specified in paragraph 4 of subdivision a to an individual or the spouse of an individual described in paragraphs 1 through 5.
2. "Commissioner" means the commissioner of the department of financial institutions.
3. "Consumer" means any person who purchases or contracts for the purchase of debt-settlement services.
4. "Consumer settlement account" means any account or other means or device in which payments, deposits, or other transfers from a consumer are arranged, held, or transferred by or to a debt-settlement provider for the accumulation of the consumer's funds in anticipation of proffering an adjustment or settlement of a debt or obligation of the consumer to a creditor on behalf of the consumer.
5. "Contract" means a contract or other legally binding agreement between a provider and an individual for the performance of debt-management services.
6. "Debt-settlement provider" means any person engaging in, or holding itself out as engaging in, the business of providing debt-settlement service in exchange for any fee or compensation, or any person who solicits for or acts on behalf of any person engaging in, or holding itself out as engaging in, the business of providing debt-settlement service in exchange for any fee or compensation. "Debt-settlement provider" does not include:
   a. An attorney licensed or otherwise authorized to practice in this state who is engaged in the practice of law;
   b. An escrow agent, accountant, broker-dealer in securities, or investment advisor in securities, when acting in the ordinary practice of the person's profession and through the entity used in the ordinary practice of the person's profession;

c. Any bank, agent of a bank, operating subsidiary of a bank, affiliate of a bank, trust company, savings and loan association, savings bank, credit union, farm credit system institution, crop credit association, development credit corporation, industrial development corporation, title insurance company, title insurance agent, independent escrowee or insurance company operating or organized under the laws of a state or the United States, or any other person authorized to make loans under state law while acting in the ordinary practice of that business;

d. Any person who performs credit services for that person's employer while receiving a regular salary or wage when the employer is not engaged in the business of offering or providing debt-settlement service;

e. A collection agency licensed pursuant to chapter 13-05 which is collecting a debt on the collection agency's own behalf or on behalf of a third party;

f. A public officer while acting in the officer's official capacity and any person acting under court order;

g. Any person while performing services incidental to the dissolution, winding up, or liquidating of a partnership, corporation, or other business enterprise; or

h. Any person currently licensed under any chapter administered by the department of financial institutions or registered with the attorney general's office when acting in the ordinary practice of that person's profession and not holding oneself out as a debt-settlement provider.

7. a. "Debt-settlement service" means:

(1) Offering to provide advice or service, or acting as an intermediary between or on behalf of a consumer and one or more of a consumer's creditors, where the primary purpose of the advice, service, or action is to obtain a settlement, adjustment, or satisfaction of the consumer's unsecured debt to a creditor in an amount less than the full amount of the principal amount of the debt or in an amount less than the current outstanding balance of the debt;

(2) Offering to provide services related to or providing services advising, encouraging, assisting, or counseling a consumer to accumulate funds for the primary purpose of proposing or obtaining or seeking to obtain a settlement, adjustment, or satisfaction of the consumer's unsecured debt to a creditor in an amount less than the full amount of the principal amount of the debt or in an amount less than the current outstanding balance of the debt; or

(3) Offering to provide advice or service, or acting as an intermediary between or on behalf of a person and a state or federal government agency where the primary purpose of the advice, service, or action is to obtain a settlement, adjustment, or satisfaction of the person's tax obligation to the government agency in an amount less than the current outstanding balance of the tax obligation.

b. "Debt-settlement service" does not include:

(1) Legal services provided in an attorney-client relationship by an attorney licensed or otherwise authorized to practice law in this state;

(2) Accounting services provided in an accountant-client relationship by a certified public accountant licensed to provide accounting services in this state;

(3) Financial planning services provided in a financial planner-client relationship by a member of a financial planning profession whose members the commissioner, by rule, determines are:

(a) Licensed by this state;

(b) Subject to a disciplinary mechanism;

(c) Subject to a code of professional responsibility; and

(d) Subject to a continuing education requirement; or

(4) A person engaged in consumer credit counseling services under chapter 13-07.

8. "Enrollment or setup fee" means any fee, obligation, or compensation paid or to be paid by the consumer to a debt-settlement provider in consideration of or in connection with establishing a contract or other agreement with a consumer related to the provision of debt-settlement service.
9. "Maintenance fee" means any fee, obligation, or compensation paid or to be paid by the consumer on a periodic basis to a debt-settlement provider in consideration of maintaining the relationship and services to be provided by a debt-settlement provider in accordance with a contract with a consumer related to the provision of debt-settlement service.
10. "Person" means an individual, corporation, limited liability company, partnership, trust, firm, association, or other legal entity. The term does not include a public corporation, government, or governmental subdivision, agency, or instrumentality.
11. "Principal amount of the debt" means the total amount or outstanding balance owed by a consumer to one or more creditors for a debt that is included in a contract for debt-settlement service at the time when the consumer enters a contract for debt-settlement service.
12. "Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.
13. "Savings" means the difference between the principal amount of the debt and the amount paid by the debt-settlement provider to the creditor or negotiated by the debt-settlement provider and paid by the consumer to the creditor pursuant to a settlement negotiated by the debt-settlement provider on behalf of the consumer as full and complete satisfaction of the creditor's claim with regard to that debt.
14. "Settlement fee" means any fee, obligation, or compensation paid or to be paid by the consumer to a debt-settlement provider in consideration of or in connection with a completed agreement or other arrangement on the part of a creditor to accept less than the principal amount of the debt as satisfaction of the creditor's claim against the consumer.
15. "Willfully" means the person acted intentionally in the sense that the person was aware of what the person was doing.

13-11-02. License required.

It is unlawful for any person to act as a debt-settlement provider except as authorized by this chapter and without first having obtained a license under this chapter. A person that engages in debt settlement is deemed to engage in debt settlement in this state if the debtor resides in this state.

13-11-03. Application for license.

1. Every application for a debt-settlement provider license, or for a renewal thereof, must be made in the form prescribed by the commissioner and must contain any information which the commissioner determines necessary and proper. The commissioner may require any applicant to provide additional information that is not requested on the application form. The applicant must register with the secretary of state if so required.
2. To fulfill the purposes of this chapter, the commissioner may establish relationships or contracts with a nationwide multistate licensing system and registry or other entities designated by a nationwide multistate licensing system and registry to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the chapter. The applicant shall pay directly to such nationwide multistate licensing system any additional fee relating to participation in such nationwide multistate licensing system.
3. In connection with an application for licensing as a debt-settlement provider, or any license renewals, the applicant shall furnish to the nationwide multistate licensing system information concerning the applicant's identity, which may include:
    a. Fingerprints for submission to the federal bureau of investigation, and any governmental agency or entity authorized to receive such information for a state, national, and international criminal history background check;

b. Personal history and experience in a form prescribed by the nationwide multistate licensing system, including the submission of authorization for the nationwide multistate licensing system and the commissioner to obtain:
   (1) An independent credit report obtained from a consumer reporting agency described in section 603(p) of the Fair Credit Reporting Act; and
   (2) Information related to any administrative, civil, or criminal findings by any governmental jurisdiction; and
c. Any other documents, information, or evidence the commissioner deems relevant to the application regardless of the location, possession, control, or custody of such documents, information, or evidence.

4. For the purposes of this section and in order to reduce the points of contact which the federal bureau of investigation may have to maintain for purposes of subsection 3, the commissioner may use the nationwide multistate licensing system and registry as a channeling agent for requesting information from and distributing information to the department of justice or any governmental agency.
5. For the purposes of this section and in order to reduce the points of contact which the commissioner may have to maintain for purposes of subsection 3, the commissioner may use the nationwide multistate licensing system and registry as a channeling agent for requesting and distributing information to and from any source so directed by the commissioner.

13-11-04. Fee and bond to accompany application for debt-settlement license.

The application for license must be in writing, under oath, and in the form prescribed by the commissioner. The application must give the location where the business is to be conducted and must contain any further information the commissioner requires, including the names and addresses of the partners, officers, directors, trustees, and the principal owners or members, as will provide the basis for the investigation and findings contemplated by section 13-11-03. At the time of making the application, the applicant shall include payment in the sum of four hundred dollars, which is not subject to refund, as a fee for investigating the application; the sum of four hundred dollars for the annual license fee; and provide a surety bond in the sum of fifty thousand dollars or an additional amount as required by the commissioner by rule. In addition, the applicant shall pay a fifty dollar annual fee for each branch location. Fees must be deposited in the financial institutions regulatory fund as provided under section 6-01-01.1.

13-11-05. Qualifications for license.

1. Upon the filing of the application, the approval of the bond, and the payment of the specified fees, the commissioner may issue a license if the commissioner finds all of the following:
   a. The financial responsibility, experience, character, and general fitness of the applicant, managers, partners, officers, and directors are such as to command the confidence of the community and to warrant belief that the business will be operated fairly, honestly, and efficiently within the purposes of this chapter.
   b. The applicant, managers, partners, officers, and directors:
      (1) Have not been convicted of a felony;
      (2) Have not been convicted of a misdemeanor involving dishonesty or untrustworthiness; or
      (3) Have not been the subject of an adverse finding or adjudication in a license disciplinary or other administrative proceeding concerning allegations involving dishonesty or untrustworthiness.
   c. The applicant, managers, partners, officers, and directors have not had a record of having defaulted in the payment of money collected for others, including the discharge of those debts through bankruptcy proceedings.
   d. The applicant or any managers, partners, officers, and directors previously have not violated any provision of this chapter or any rule adopted by the commissioner unless the commissioner determines the violation is not material.

e. The applicant has not made any false statement or representation to the commissioner in applying for a license under this chapter.

2. The commissioner shall deliver a license to the applicant to operate as a debt-settlement provider in accordance with this chapter at the location specified in the application. The license remains in full force and effect until it is surrendered by the debt-settlement provider or revoked by the commissioner as provided in this chapter; provided, however, that each license expires by its terms on December thirty-first next following its issuance unless renewed as provided in this chapter. A license may not be surrendered without the approval of the commissioner.

13-11-06. Expiration and renewal of license.

All licenses required under this chapter expire on December thirty-first of each year and may be renewed. Renewals are effective the succeeding January first. Applications for renewal must be submitted at least thirty days before the expiration of the license and must be accompanied by the required annual fees, which are not subject to refund. The form and content of renewal applications must be determined by the commissioner, and a renewal application may be denied upon the same grounds as would justify denial of an initial application. If a licensee has been delinquent in renewing the licensee's license, the commissioner may charge an additional fee of fifty dollars for the renewal of the license. A debt-settlement provider license is not transferable. If the commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a debt-settlement provider license, the commissioner may require a new application from the purchaser. The application must be filed at least thirty days before the date on which the change of ownership is consummated.

13-11-07. Applicant's obligation to update information.

An applicant or licensed provider shall notify the commissioner within ten days after a change in the information provided within the application.

13-11-08. Records - Annual reports.

1. Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the commissioner to determine whether the licensee is complying with this chapter. The records of a licensee may be maintained electronically provided all records can be reproduced upon request of the commissioner and within the required statutory time frame outlined in this section.
2. Before January first of each year, the parent company of each licensee shall file with the commissioner a composite annual report in the form prescribed by the commissioner relating to services provided by licensees.

13-11-09. Approval or denial of a license.

Any complete application for a license must be approved or denied within sixty days after the filing of the complete application with the commissioner.

13-11-10. Revocation of license - Suspension of license - Surrender of license.

1. If the commissioner has reason to believe that grounds for revocation of a license exist, the commissioner may send by certified mail to the licensee a notice of hearing stating the contemplated action and in general the grounds thereof and setting the time and place for a hearing thereon. Grounds for revocation of a license include:
   a. Any debt-settlement provider has failed to pay the annual license fee or to maintain in effect the bond required under this chapter;
   b. The debt-settlement provider has violated this chapter or any rule lawfully made by the commissioner implementing this chapter;

c. Any fact or condition exists that, if it had existed at the time of the original application for a license, would have warranted the commissioner in refusing its issuance; or
d. Any applicant has made any false statement or representation to the commissioner in applying for a license under this chapter.

2. If the commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of that license pending investigation, the commissioner, upon written notice, may enter an order suspending that license for a period not exceeding thirty days, pending the holding of a hearing as prescribed in this chapter.
3. Any licensee may surrender the licensee's license by delivering the license to the commissioner with written notice of its surrender; however, surrender of the license does not affect the licensee's civil or criminal liability for acts committed before the surrender of the license.

13-11-11. Suspension and removal of debt-settlement provider officers and employees.

1. The commissioner may issue and serve upon a debt-settlement provider officer or employee, and upon the licensee involved, a complaint stating the basis for the commissioner's belief that the officer or employee is willfully engaging or has willfully engaged in any of the following conduct:
   a. Violating a law, rule, order, or written agreement with the commissioner;
   b. Engaging in harassment or abuse, the making of false or misleading representations, engaging in unfair practices involving debt settlement, or engaging in prohibited acts and practices under section 13-11-23; or
   c. Performing an act of commission or omission or practice that is a breach of trust or a breach of fiduciary duty.
2. The complaint must contain a notice of opportunity for hearing.
3. If a hearing is not requested within twenty days of the date the complaint is served upon the officer or employee, or if a hearing is held and the commissioner finds that the record so warrants, the commissioner may enter an order suspending or temporarily removing the employee or officer from office for a period not exceeding three years from the effective date of the suspension or temporary removal.
4. A contested or default suspension or temporary removal order is effective immediately upon service of the order on the officer or employee and upon the licensee. A consent order is effective as agreed. An officer or employee suspended or temporarily removed from office pursuant to this section is not eligible, while under suspension, for reinstatement to a position with a debt-settlement provider.
5. When an officer or employee, or other person participating in the conduct of the affairs of a licensee, is charged with a felony in state or federal court which involves dishonesty or breach of trust, the commissioner immediately may suspend the person from office or prohibit the person from further participation in the affairs of the debt-settlement provider, or both. The order is effective immediately upon service of the order on the licensee and the person charged and remains in effect until the criminal charge is finally disposed of or until modified by the commissioner. If a judgment of conviction, federal pretrial diversion, or similar state order or judgment is entered, the commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the commissioner from pursuing administrative or civil remedies.

13-11-12. Advertising and marketing practices.

1. A debt-settlement provider may not represent, expressly or by implication, any results or outcomes of its debt-settlement services in any advertising, marketing, or other communication to consumers unless the debt-settlement provider possesses substantiation for the representation at the time the representation is made.

2. A debt-settlement provider may not make, expressly or by implication, any unfair or deceptive representations, or any omissions of material facts, in any of its advertising or marketing communications concerning debt-settlement services.
3. All advertising and marketing communications concerning debt-settlement services must disclose the following material information clearly and conspicuously: Debt-settlement services are not appropriate for everyone. Failure to pay your monthly bills in a timely manner will result in increased balances and will harm your credit rating. Not all creditors may agree to reduce principal balance, and they may pursue collection, including lawsuits.

13-11-13. Contracts, books, and records.

1. Upon request, each debt-settlement provider shall furnish to the commissioner a copy of the contract entered between the debt-settlement provider and the debtor. The debt-settlement provider shall furnish the debtor with a copy of the written contract at the time of execution which sets forth the charges, if any, agreed upon for the services of the debt-settlement provider.
2. Each debt-settlement provider shall maintain records and accounts that will enable any debtor contracting with the debt-settlement provider, at any reasonable time, to ascertain the status of all the debtor's accounts with the debt-settlement service provider, including the amount of any fees paid by the debtor, amount held in trust, if applicable, settlement offers made and received on each of the debtor's accounts, and legally enforceable settlements reached with the debtor's creditors. Within seven days after a request for that information by the debtor, the debt-settlement provider shall furnish a statement showing the total amount received and the total disbursements to each creditor to any individual. Each debt-settlement provider shall issue a receipt for each payment made by the debtor at a debt-settlement provider office. Each debt-settlement provider shall prepare and retain in the file of each debtor a written analysis of the debtor's income and expenses to substantiate that the plan of payment is feasible and practical.

13-11-14. Trust funds - Requirements and restrictions.

1. All funds received by a debt-settlement provider or the provider's agent from and for the purpose of paying bills, invoices, or accounts of a debtor constitute trust funds owned by and belonging to the debtor from whom the funds were received. All such funds received by the debt-settlement provider must be separated from the funds of the debt-settlement provider not later than the end of the business day following receipt by the debt-settlement provider. All such funds must be kept separate and apart at all times from funds belonging to the debt-settlement provider or any of its officers, employees, or agents and may be used for no purpose other than paying bills, invoices, or accounts of the debtor. On or before the close of the business day following receipt, all such trust funds received at the main or branch offices of a debt-settlement provider must be deposited in a bank in an account in the name of the debt-settlement provider-designated trust account, or by some other appropriate name indicating that the funds are not the funds of the debt-settlement provider or its officers, employees, or agents.
2. At least once every month, the debt-settlement provider shall render an accounting to the debtor that itemizes the total amount received from the debtor, the total amount paid each creditor, the amount of charges deducted, and any amount held in reserve, if applicable, and the status of each of the debtor's enrolled accounts. In addition, a debt-settlement provider shall provide such an accounting to a debtor within seven days after written demand, but not more than three times per six-month period.
3. This chapter does not require the establishment of a trust account if no consumer funds other than earned settlement fees are held or controlled by a debt-settlement provider.

13-11-15. Requirement of good faith.

A provider shall act in good faith in all matters under this chapter.

13-11-16. Customer service.

A provider that is required to be registered under this chapter shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a certified counselor or customer service representative, as appropriate, during ordinary business hours.

13-11-17. Required presale consumer disclosures and warnings.

1. Before the consumer signs a contract, the debt-settlement provider shall provide an oral and written notice to the consumer that clearly and conspicuously discloses all of the following:
   a. Debt-settlement services may not be suitable for all consumers.
   b. Using a debt-settlement service likely will harm the consumer's credit history and credit score.
   c. Using a debt-settlement service does not stop creditor collection activity, including creditor lawsuits and garnishments.
   d. Not all creditors may accept a reduction in the balance, interest rate, or fees a consumer owes.
   e. The consumer should inquire about other means of dealing with debt, including nonprofit credit counseling and bankruptcy.
   f. The consumer remains obligated to make periodic or scheduled payments to creditors while participating in a debt-settlement plan, and that the debt-settlement provider will not make any periodic or scheduled payments to creditors on behalf of the consumer.
   g. The failure to make periodic or scheduled payments to a creditor is likely to:
      (1) Harm the consumer's credit history, credit rating, or credit score;
      (2) Lead the creditor to increase lawful collection activity, including litigation, garnishment of the consumer's wages, and judgment liens on the consumer's property; and
      (3) Lead to the imposition by the creditor of interest charges, late fees, and other penalty fees, increasing the principal amount of the debt.
   h. The amount of time estimated to be necessary to achieve the represented results.
   i. The estimated amount of money or the percentage of debt the consumer must accumulate before a settlement offer will be made to each of the consumer's creditors.
   j. A statement indicating that debt-settlement providers are licensed and regulated by the North Dakota department of financial institutions and any complaints regarding the services of a debt-settlement provider should be directed to the North Dakota department of financial institutions, Bismarck, North Dakota.
2. The consumer shall sign and date an acknowledgment form entitled "Consumer Notice and Rights Form" that states: "I, the debtor, have received from the debt-settlement provider a copy of the form entitled 'Consumer Notice and Rights Form'." The debt-settlement provider or its representative also shall sign and date the acknowledgment form, which includes the name and address of the debt-settlement services provider. The acknowledgment form must be in duplicate and incorporated into the "Consumer Notice and Rights Form". The original acknowledgment form must be retained by the debt-settlement provider, and the duplicate copy must be retained within the form by the consumer. If the acknowledgment form is in electronic form, then the acknowledgment form must contain the consumer disclosures required by section 101(c) of the federal Electronic Signatures in Global and National Commerce Act [15 U.S.C. 7001(c)].
3. The requirements of this section are satisfied if the provider provides the following warning verbatim, both orally and in writing, with the caption "CONSUMER NOTICE

AND RIGHTS FORM" in at least twenty-eight-point font and the remaining portion in at least fourteen-point font to a consumer before the consumer signs a contract for the debt-settlement provider's services:

"CONSUMER NOTICE AND RIGHTS FORM

CAUTION

We CANNOT GUARANTEE that you successfully will reduce or eliminate your debt. If you stop paying your creditors, there is a strong likelihood some or all of the following may happen:

- CREDITORS MAY STILL CONTACT YOU AND TRY TO COLLECT.
- CREDITORS MAY STILL SUE YOU FOR THE MONEY YOU OWE.
- YOUR WAGES OR BANK ACCOUNTS STILL MAY BE GARNISHED.
- YOUR CREDIT RATING AND CREDIT SCORE LIKELY WILL BE HARMED.
- NOT ALL CREDITORS MAY AGREE TO ACCEPT A BALANCE REDUCTION.
- YOU SHOULD CONSIDER ALL YOUR OPTIONS FOR ADDRESSING YOUR DEBT, SUCH AS CREDIT COUNSELING AND BANKRUPTCY FILING.
- THE AMOUNT OF MONEY YOU OWE MAY INCREASE DUE TO CREDITOR IMPOSITION OF INTEREST CHARGES, LATE FEES, AND OTHER PENALTY FEES.
- EVEN IF WE DO SETTLE YOUR DEBT, YOU MAY STILL BE REQUIRED TO PAY TAXES ON THE AMOUNT FORGIVEN.

YOUR RIGHT TO CANCEL

If you sign a contract with a debt-settlement provider, you have the right to cancel at any time and receive a full refund of all unearned fees you have paid to the provider and all funds placed in your settlement fund that have not been paid to any creditors.

IF YOU ARE DISSATISFIED

OR YOU HAVE QUESTIONS

If you are dissatisfied with a debt-settlement provider or have any questions, please bring it to the attention of the North Dakota Department of Financial Institutions, Bismarck, North Dakota.

I, the debtor, have received from the debt-settlement provider a copy of the form entitled Consumer Notice and Rights Form.

Signed:_____

Printed name:_____"

13-11-18. Individualized financial analysis.

1. Before entering a written contract with a consumer, a debt-settlement provider shall prepare and provide to the consumer in writing and retain a copy of:
   a. An individualized financial analysis, including the individual's income, expenses, and debts; and
   b. A statement containing a good-faith estimate of the length of time it will take to complete the debt-settlement program, the total amount of debt owed to each creditor included in the debt-settlement program, the total savings estimated to be necessary to complete the debt-settlement program, and the monthly targeted savings amount estimated to be necessary to complete the debt-settlement program.
2. A debt-settlement provider may not enter a written contract with a consumer unless the debt-settlement provider makes written determinations, supported by the financial analysis, that:
   a. The consumer can reasonably meet the requirements of the proposed debt-settlement program, including the fees and the periodic savings amounts set forth in the savings goals; and
   b. The debt-settlement program is suitable for the consumer at the time the contract is to be signed.

13-11-19. Debt-settlement contract.

1. A debt-settlement provider may not provide debt-settlement service to a consumer without a written contract signed and dated by both the consumer and the debt-settlement provider.
2. Any contract for the provision of debt-settlement service entered in violation of this section is voidable.
3. A contract between a debt-settlement provider and a consumer for the provision of debt-settlement service must disclose all of the following clearly and conspicuously:
   a. The name and address of the consumer.
   b. The date of execution of the contract.
   c. The legal name of the debt-settlement provider, including any other business names used by the debt-settlement provider.
   d. The corporate address and regular business address, including a street address, of the debt-settlement provider.
   e. The telephone number at which the consumer may speak with a representative of the debt-settlement provider during normal business hours.
   f. A complete list of the consumer's accounts, debts, and obligations to be included in the provision of debt-settlement service, including the name of each creditor and principal amount of each debt.
   g. A description of the services to be provided by the debt-settlement provider, including the expected time frame for settlement for each account, debt, or obligation included in subdivision f.
   h. An itemized list of all fees to be paid by the consumer to the debt-settlement provider, and the date, approximate date, or circumstances under which each fee will become due.
   i. A good-faith estimate of the total amount of all fees and compensation, not to exceed the amounts specified in section 13-11-21, to be collected by the debt-settlement provider from the consumer for the provision of debt-settlement service contemplated by the contract.
   j. A statement of the proposed savings goals for the consumer, stating the amount to be saved per month or other period, time period over which savings goals extend, and the total amount of the savings expected to be paid by the consumer pursuant to the terms of the contract.
   k. The amount of money or the percentage of debt the consumer must accumulate before a settlement offer will be made to each of the consumer's creditors.
   l. The written individualized financial analysis required by section 13-11-18.
   m. The contents of the "Consumer Notice and Rights Form" provided in section 13-11-17.
   n. A written notice to the consumer that the consumer may cancel the contract at any time until after the debt-settlement provider has fully performed each service the debt-settlement provider contracted to perform or represented that the debt-settlement provider would perform, and upon that event:
      (1) The consumer is entitled to a full refund of all unearned fees and compensation paid by the consumer to the debt-settlement provider, and a full refund of all funds provided by the consumer to the debt-settlement provider for a consumer settlement account, except for funds actually paid to a creditor on behalf of the consumer, under the terms of the contract for debt-settlement service; and
      (2) All powers of attorney granted to the debt-settlement provider by the consumer must be considered revoked and voided.
   o. A form the consumer may use to cancel the contract pursuant to the provisions of section 13-11-20. The form must include the name and mailing address of the debt-settlement provider and shall disclose clearly and conspicuously how the consumer can cancel the contract, including applicable addresses, telephone numbers, facsimile numbers, and electronic mail addresses the consumer can use to cancel the contract.

4. If a debt-settlement provider communicates with a consumer primarily in a language other than English, then the debt-settlement provider shall furnish to the consumer a translation of all the disclosures and documents required by this chapter in that other language.

13-11-20. Cancellation of contract and right to fee and settlement fund refunds.

1. A consumer may cancel a contract with a debt-settlement provider at any time before the debt-settlement provider has performed fully each service the debt-settlement provider contracted to perform or represented that the debt-settlement provider would perform.
2. If a consumer cancels a contract with a debt-settlement provider, or at any time upon a material violation of this chapter on the part of the debt-settlement provider, the debt-settlement provider shall refund all fees and compensation, with the exception of the application fee and any earned settlement fee, as well as all funds paid by the consumer to the debt-settlement provider that have accumulated in a consumer settlement account and that the debt-settlement provider has not disbursed to creditors. Upon cancellation, all powers of attorney and direct debit authorizations granted to the debt-settlement provider by the consumer are considered revoked and voided.
3. A debt-settlement provider shall make any refund required under this section within seven days after the notice of cancellation and shall include with the refund a full statement of account showing fees received, fees refunded, savings held, payments to creditors, settlement fees earned, if any, and savings refunded.
4. Upon the cancellation of a contract under this section, the debt-settlement provider shall provide timely notice of the cancellation of the contract to each of the creditors with whom the debt-settlement provider has had any prior communication on behalf of the consumer in connection with the provision of any debt-settlement service.

13-11-21. Fees.

1. A debt-settlement provider may not charge fees of any type or receive compensation from a consumer in a type, amount, or timing other than fees or compensation permitted in this section.
2. A debt-settlement provider may not charge or receive from a consumer any enrollment fee, setup fee, upfront fee of any kind, or any maintenance fee.
3. A debt-settlement provider may charge a settlement fee that may not exceed an amount greater than thirty percent of the savings. If the amount paid by the debt-settlement provider to the creditor or negotiated by the debt-settlement provider and paid by the consumer to the creditor pursuant to a settlement negotiated by the debt-settlement provider on behalf of the consumer as full and complete satisfaction of the creditor's claim with regard to that debt is greater than the principal amount of the debt, the debt-settlement provider is not entitled to any settlement fee.
4. A debt-settlement provider may not collect any settlement fee from a consumer until a creditor enters into a legally enforceable agreement to accept funds in a specific dollar amount as full and complete satisfaction of the creditor's claim with regard to that debt and those funds are provided by the debt-settlement provider on behalf of the consumer or are provided directly by the consumer to the creditor pursuant to a settlement negotiated by the debt-settlement provider.

13-11-22. Voluntary contributions.

A provider may not solicit a voluntary contribution from an individual or an affiliate of the individual for any service provided to the individual.

13-11-23. Prohibited acts and practices.

1. A provider directly or indirectly may not:
   a. Misappropriate or misapply money held in trust;

b. Settle a debt on behalf of an individual for more than fifty percent of the principal amount of the debt owed a creditor, unless the individual assents to the settlement after the creditor has assented;
c. Take a power of attorney that authorizes the provider to settle a debt;
d. Exercise or attempt to exercise a power of attorney after an individual has terminated a contract;
e. Initiate a transfer from an individual's account at a bank or with another person unless the transfer is:
   (1) A return of money to the individual; or
   (2) Before termination of a contract, properly authorized by the contract and this chapter, and for:
      (a) Payment to one or more creditors pursuant to a plan; or
      (b) Payment of a fee;
f. Offer a gift or bonus, premium, reward, or other compensation to an individual for executing a contract;
g. Offer, pay, or give a gift or bonus, premium, reward, or other compensation to a person for referring a prospective customer, if the person making the referral has a financial interest in the outcome of debt-management services provided to the customer, unless neither the provider nor the person making the referral communicates to the prospective customer the identity of the source of the referral;
h. Receive a bonus, commission, or other benefit for referring an individual to a person;
i. Structure a plan in a manner that would result in a negative amortization of any of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt;
j. Compensate the provider's employees on the basis of a formula that incorporates the number of individuals the employee induces to enter contracts;
k. Settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification by the creditor that the payment is in full settlement of the debt or is part of a payment plan, the terms of which are included in the certification, that upon completion, will lead to full settlement of the debt;
l. Make a representation that:
   (1) The provider will furnish money to pay bills or prevent attachments;
   (2) Payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or
   (3) Participation in a plan will or may prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment;
m. Misrepresent that the provider is authorized or competent to furnish legal advice or perform legal services;
n. Represent that it is a not-for-profit entity unless the provider is organized and properly operating as a not-for-profit under the law of the state in which it was formed or that it is a tax-exempt entity unless the provider has received certification of tax-exempt status from the internal revenue service;
o. Take a confession of judgment or power of attorney to confess judgment against an individual; or
p. Employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information.

2. If a provider furnishes debt-management services to an individual, the provider may not, directly or indirectly:
   a. Purchase a debt or obligation of the individual;
   b. Receive from or on behalf of the individual:
      (1) A promissory note or other negotiable instrument other than a check or a demand draft; or

(2) A postdated check or demand draft;

c. Lend money or provide credit to the individual, except as a deferral of a settlement fee at no additional expense to the individual;

d. Obtain a mortgage or other security interest from any person in connection with the services provided to the individual;

e. Except as permitted by federal law, disclose the identity or identifying information of the individual or the identity of the individual's creditors, except to:

(1) The commissioner, upon proper demand;

(2) A creditor of the individual, to the extent necessary to secure the cooperation of the creditor in a plan; or

(3) The extent necessary to administer the plan;

f. Except as otherwise provided in section 13-11-21, provide the individual less than the full benefit of a compromise of a debt arranged by the provider;

g. Charge the individual for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the internet, or any other matter not directly related to debt-management services or educational services concerning personal finance; or

h. Furnish legal advice or perform legal services, unless the person furnishing that advice to or performing those services for the individual is licensed to practice law in this state.

3. This chapter does not authorize any person to engage in the practice of law.

4. A provider may not receive a gift or bonus, premium, reward, or other compensation, directly or indirectly, for advising, arranging, or assisting an individual in connection with obtaining an extension of credit or other service from a lender or service provider, except for educational or counseling services required in connection with a government-sponsored program.

5. Unless a person supplies goods, services, or facilities generally and supplies them to the provider at a cost no greater than the cost the person generally charges to others, a provider may not purchase goods, services, or facilities from the person if an employee or a person that the provider should reasonably know is an affiliate of the provider:

a. Owns more than ten percent of the person; or

b. Is an employee or affiliate of the person.

13-11-24. Notice of litigation.

Within thirty days after a provider has been served with notice of a civil action for violation of this chapter by or on behalf of an individual who resides in this state at either the time of a contract or the time the notice is served, the provider shall notify the commissioner in a record that it has been sued.

13-11-25. Liability for the conduct of other persons.

If a provider delegates any of its duties or obligations under a contract or this chapter to another person, including an independent contractor, the provider is liable for conduct of the person which, if done by the provider, would violate the contract or this chapter.

13-11-26. Powers of the commissioner.

Insofar as consistent with other provisions of law, the commissioner may:

1. Determine the qualifications of all applicants based on financial responsibility, financial condition, business experience, character, and general fitness which must reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification is met, and for the purpose of investigating compliance with this chapter, the commissioner may review and consider the relevant business records and capital adequacy of the applicant and the competence, experience, integrity, and financial ability of a person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant.

2. Conduct investigations and make an examination of any person, whether licensed or not, who is engaged in the debt-settlement services business, including all records of such business, and to subpoena witnesses anytime the commissioner has reason to believe such is necessary. The licensee shall pay an examination or visitation fee and must be charged by the commissioner at an hourly rate to be set by the commissioner, sufficient to cover all reasonable expenses of the department associated with the examination or visitation provided for by this section. Fees must be deposited in the financial institutions regulatory fund.
3. Issue and serve upon any person or licensed debt-settlement provider an order to cease and desist to take corrective action when the commissioner has reason to believe the person or agency is violating, has violated, or is about to violate the provisions of this chapter. An interested party may appeal issuance of a cease and desist order under chapter 28-32 by filing written notice of appeal within twenty days after service of the order.
4. Deny, suspend, revoke, condition, or decline to renew a license for a violation of this chapter, rules or regulations issued under this chapter, or an order or directive entered under this chapter.
5. Deny, suspend, revoke, condition, or decline to renew a license if an applicant or licensee withholds information or makes a material misstatement in an application for a license or renewal of a license.

13-11-27. Enforcement authorities, violations, and penalties.

1. Any person that violates this chapter is guilty of a class C felony.
2. The commissioner may impose a civil money penalty not to exceed five thousand dollars per violation upon a person or agency that willfully violates a law, rule, written agreement, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.
3. The attorney general also may enforce this chapter. The attorney general, in enforcing this chapter, has all the powers provided in this chapter or chapter 51-15 and may seek all remedies in this chapter or chapter 51-15. A violation of this chapter is deemed a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties under chapter 51-15, or otherwise provided by law.

13-11-28. Void contracts.

1. If a provider imposes a fee or other charge or receives money or other payments not authorized by sections 13-11-21 and 13-11-22, the contract is void and the individual may recover as provided in section 13-11-20.
2. If a provider is not licensed as required by this chapter when an individual assents to a contract, the contract is void.
3. For a void contract under subsection 2, the provider does not have a claim against the individual for breach of contract or for restitution.

13-11-29. Private enforcement.

Any person that is aggrieved by a violation of this chapter may bring an action to enjoin the violation, or for restitution, or both. The court may award the plaintiff the plaintiff's actual restitution or a sum up to two thousand dollars, whichever is greater. The court may award the plaintiff costs, expenses, and reasonable attorney's fees. This section does not limit any other claims the person may have against the debt-settlement provider or any third party subject to this chapter.

13-11-30. Confidentiality.

To promote more effective regulation and reduce regulatory burden through supervisory information sharing, the commissioner or commissioner's designee may furnish information to or receive information from a nationwide multistate licensing system for the purpose of regulation of the financial services industry. Information furnished by the commissioner to any third party which is confidential or privileged in the commissioner's possession remains confidential or privileged in the possession of the third party. Information received by the commissioner from any third party which is confidential or privileged in the third-party's possession remains confidential or privileged in the commissioner's possession.

13-11-31. Disclosure of customer information.

Except for provisions of chapter 6-08.1 which are inconsistent with this chapter, chapter 6-08.1 applies to all debt-settlement providers licensed under this chapter.