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HOUSE BILL NO. 2196

AMENDMENT IN THE NATURE OF A SUBSTITUTE
(Proposed by the House Committee on Commerce and Labor
on January 31, 2019)

(Patron Prior to Substitute—Delegate Rodman)

A BILL to amend and reenact §§ 6.2-2000, 6.2-2001, 6.2-2002, 6.2-2005, 6.2-2012, 6.2-2014, 6.2-2015, and 6.2-2021 of the Code of Virginia and to amend the Code of Virginia by adding a section numbered 6.2-2014.1, relating to agencies providing debt settlement services; civil penalties.

Be it enacted by the General Assembly of Virginia:

1. That §§ 6.2-2000, 6.2-2001, 6.2-2002, 6.2-2005, 6.2-2012, 6.2-2014, 6.2-2015, and 6.2-2021 of the Code of Virginia are amended and reenacted and that the Code of Virginia is amended by adding a section numbered 6.2-2014.1 as follows:

CHAPTER 20.

AGENCIES PROVIDING DEBT MANAGEMENT PLANS OR DEBT SETTLEMENT SERVICES.

§ 6.2-2000. Definitions.

As used in this chapter, unless the context requires a different meaning:

"Agency" means any person that provides or offers to provide debt management plans, *debt settlement services*, or *both*, for consumers.

"Consumer" means an individual residing in the Commonwealth who owes money to one or more creditors, for personal, family, or household purposes, including an individual who owes money jointly with one or more other individuals.

"Credit counselor" means an employee or agent of an agency who designs a debt management plan, provides consumer budget and basic financial planning services, or engages in debt settlement *services* or debt pooling and distribution services on a consumer's behalf. "Credit counselor" does not include licensed certified public accountants or licensed certified public accounting firms engaging in usual and customary services performed on behalf of clients.

"Creditor" or "credit-granting organization" does not include (i) doctors, lawyers, or other professionals who receive payment for their services in installments or (ii) persons whose only participation in a credit transaction is to honor a credit card.

"Debt collector" means a person defined as a debt collector under 15 U.S.C. § 1692a of the federal Fair Debt Collection Practices Act (15 U.S.C. § 1692 et seq.).

"Debt management plan" or "DMP" means a program whereby a person agrees to engage in debt pooling and distribution services on behalf of a consumer, or multiple consumers if a joint account.

"Debt pooling and distribution service" means an arrangement whereby a consumer gives money or control of his funds to a person for distribution to the consumer's creditors.

"Debt settlement *services*" means any action or negotiation initiated or taken ~~by or~~ *for compensation* on behalf of any consumer with any creditor of the consumer for the purpose of obtaining debt forgiveness of a portion of the credit extended by the creditor to the consumer or reduction of payments, charges, or fees payable by the consumer.

"Duplicate original" means an exact copy with signatures created by the same impression as the original, or an exact copy bearing an original signature, or in the case of an electronic transaction, an electronic version with electronic signatures.

"Electronic signature" means a signature as defined in § 59.1-480.

"Licensee" means a person licensed under this chapter.

"Maintenance fee" means a fee paid by a consumer to an agency for the administration of a DMP.

"Principal" means any person who, directly or indirectly, owns or controls (i) 10 percent or more of the outstanding stock of a stock corporation or (ii) a 10 percent or greater interest in a person.

"Set-up fee" means a fee paid by a consumer to an agency for the establishment of a DMP.

§ 6.2-2001. License requirement; exceptions.

A. No person shall engage in the business of providing or offering to provide a DMP, *debt settlement services*, or *both*, to any consumer, whether or not the person has an office, facility, agent, or other physical presence in the Commonwealth, unless such person obtains from the Commission a license issued pursuant to this chapter. The provisions of this chapter shall not apply to a person licensed to practice law in the Commonwealth.

B. This chapter shall be construed by the Commission to promote sound personal financial advice and management, and protect against financial loss consumers who place money or control of their funds or credit into the custody of an agency for transmission to such consumers' creditors.

C. A person may apply for, and receive from the Commission, a license to engage in the business of providing or offering to provide a DMP, *debt settlement services*, or *both*, to any consumer, but any

60 *person providing both shall comply with §§ 6.2-2014 and 6.2-2014.1 as they relate to the provision of*
61 *DMPs and debt settlement services, respectively.*

62 D. A person licensed under this chapter is not required to be licensed as a money transmitter under
63 Chapter 19 (§ 6.2-1900 et seq.), if the person's money transmission activities are limited to providing
64 debt pooling and distribution services in accordance with this chapter.

65 **§ 6.2-2002. Application for license; form; content; fee.**

66 A. An application for a license under this chapter shall be made in writing, under oath, and on a
67 form provided by the Commissioner.

68 B. The application shall include:

69 1. The name and address of the applicant; and (i) if the applicant is a partnership, firm, or
70 association, the name and address of each partner or member; (ii) if the applicant is a corporation or
71 limited liability company, the name and address of each director, member, registered agent, and
72 principal; or (iii) if the applicant is a business trust, the name and address of each trustee and
73 beneficiary;

74 2. The name and address of each manager and officer;

75 3. The addresses of the locations of the business to be licensed;

76 4. Financial statements for the applicant as of the most recent fiscal year;

77 5. ~~A~~ *If the applicant seeks to engage in the business of providing DMPs, a current copy of the*
78 *agency's standard DMP agreement;*

79 6. *If the applicant seeks to engage in the business of providing debt settlement services, a current*
80 *copy of the agency's standard debt settlement services agreement;*

81 7. Such other information concerning the financial responsibility, background, experience, and
82 activities of the applicant and the persons referred to in this section as the Commissioner may require;

83 ~~7.~~ 8. Any other pertinent information as the Commissioner may require; and

84 ~~8.~~ 9. Payment of an application fee of \$500.

85 C. The application fee shall not be refundable in any event. The fee shall not be abated by surrender,
86 suspension, or revocation of the license.

87 **§ 6.2-2005. Qualifications.**

88 A. Upon the filing and investigation of an application for a license, and compliance by the applicant
89 with the provisions of §§ 6.2-2002 and 6.2-2003, the Commission shall issue and deliver to the applicant
90 the license to engage in business under this chapter at the locations specified in the application if it
91 finds that:

92 1. The financial responsibility, character, reputation, experience, and general fitness of the applicant
93 and its members, senior officers, directors, trustees, and principals are such as to warrant belief that the
94 business will be operated efficiently and fairly, in the public interest, and in accordance with law;

95 2. The applicant has made acceptable provision for the avoidance of conflicts of interest;

96 3. ~~The~~ *If the applicant seeks to engage in the business of providing or offering to provide a DMP to*
97 *any consumer, the applicant maintains a separate trust account with an FDIC-insured depository*
98 *institution for the handling of customers' funds;*

99 4. The applicant's credit counselors are certified through a bona fide third-party certification provider
100 unaffiliated with the applicant that authenticates the competence of counselors providing consumer
101 assistance;

102 5. No more than one-third of the board of directors or managing members are employees, officers,
103 members, principals, trustees, directors, agents, or other representatives of organizations that grant credit
104 to consumers;

105 6. ~~The~~ *If the applicant seeks to engage in the business of providing or offering to provide a DMP to*
106 *any consumer, the applicant is accredited by the International Standards Organization or the Council on*
107 *Accreditation or any other organization approved by the Commission;*

108 7. The applicant has fidelity bond coverage in such principal amount as may be determined by the
109 Commission;

110 8. The applicant *has disclosed whether it* (i) is ~~not~~ the subject of any current material administrative
111 or regulatory proceedings by any governmental authority, *as determined by the Commission*, and (ii) has
112 ~~not~~ received a material adverse determination in any past administrative or regulatory proceedings by
113 any governmental authority, *as determined by the Commission*; and

114 9. The applicant has filed with the Commission a form, that shall be provided to each consumer prior
115 to his execution of a DMP, *or a debt settlement services agreement*, that contains the following
116 disclosures to the consumer: (i) all fees charged by the applicant or contributions solicited by the
117 applicant from the consumer; (ii) whether the applicant is a for-profit entity or nonprofit entity; and (iii)
118 whether the applicant received financial support from creditors during the preceding calendar year.

119 B. If the Commission fails to make such findings, no license shall be issued and the Commissioner
120 shall notify the applicant of the denial and the reasons for such denial.

121 C. A license shall not be issued to a collection agency, or to any creditor or association of creditors,

or to any credit-granting organization or association of such organizations.

§ 6.2-2012. Annual fees.

A. To defray the costs of the examination, supervision, and regulation of licensees, every licensee under this chapter shall pay an annual fee calculated in accordance with a schedule set by the Commission. The schedule shall bear a reasonable relationship to the total number of DMPs *and agreements to provide debt settlement services* maintained by licensees in the Commonwealth, the actual costs of their examinations, and to other factors relating to their supervision and regulation. All such fees shall be assessed on or before June 1 for every calendar year. All such fees shall be paid by the licensee to the State Treasurer on or before July 1 following each assessment.

B. In addition to the annual fee prescribed in subsection A, when it becomes necessary to examine or investigate the books and records of a licensee under this chapter at a location outside the Commonwealth, the licensee shall be liable for and shall pay to the Commission within 30 days of the presentation of an itemized statement, the actual travel and reasonable living expenses incurred on account of its examination, supervision, and regulation, or shall pay at a reasonable per diem rate approved by the Commission.

§ 6.2-2014. Licensees providing debt management plans; required and prohibited business methods.

Each licensee *engaged in the business of providing or offering to provide a DMP to any consumer* shall comply with the following requirements:

1. Each DMP shall be evidenced by an agreement, which shall be maintained in either a hard copy, including a faxed copy, or electronic version and which shall be signed by the consumer and a person authorized by the licensee to sign such agreements ~~and dated the same day the DMP is executed by the consumer~~. The agreement may be signed by the parties either originally or by electronic signature. The agreement shall set forth, at a minimum: (i) the name and address of both the consumer and the licensee; (ii) a full description of all services to be performed for the consumer by the licensee; (iii) a clear explanation, highlighted in bold type, of the costs to the consumer; (iv) a statement that the DMP agreement can be terminated for any reason by the consumer and that the consumer has no obligation to continue the arrangement unless satisfied with the services provided; (v) a statement that in the event of termination of the agreement, the consumer shall be entitled to a refund of all funds that have not been disbursed to creditors and either (a) all fees paid if terminated within five days of the date the DMP agreement is executed by the consumer or (b) all fees paid less the set-up fee if terminated more than five but less than 31 days after execution by the consumer; (vi) an explanation of the method of dispute resolution under the agreement; (vii) an explanation of the obligations of the consumer and the licensee that are subject to the agreement; (viii) notification of privacy policies in compliance with state and federal laws and regulations; and (ix) a statement that participating in a DMP may have a derogatory effect upon the consumer's credit report;

2. A licensee shall give to the consumer a duplicate original of the agreement executed by the consumer and licensee upon full execution;

3. At the time of execution of the DMP, a licensee shall have a good faith belief that the creditors listed in the DMP will participate in the DMP. A licensee shall advise the consumer of any changes by a creditor in accepting payments under the DMP promptly upon learning of such changes;

4. A licensee shall provide a consumer enrolled in a DMP with periodic statements, no less often than quarterly, accounting for the funds received from the consumer for payments to the consumer's creditors and disbursements made to each such creditor on the consumer's behalf since the last report;

5. A licensee shall not purchase any debt or obligation of a consumer;

6. A licensee shall not lend money or provide credit to any consumer;

7. A licensee shall not obtain a mortgage or any other security interest in the property of a consumer;

8. A licensee shall not operate as a debt collector;

9. A licensee shall not structure an agreement for the consumer that, at the conclusion of the DMP, would knowingly result in negative amortization of any of the consumer's obligations to creditors;

10. A licensee shall not give legal advice to a consumer or perform legal services on behalf of a consumer;

11. A licensee shall have an established practice of disbursing to creditors funds received from a consumer under a DMP within eight business days of receipt and shall provide consumers its disbursement practices in writing, including any circumstances that would establish an exception to the eight-day practice;

12. A licensee shall maintain appropriate safeguards against conflicts of interest in the conduct of its DMP activities;

13. A licensee shall not employ any person who is employed at the same time by a creditor or collection agency;

14. A licensee shall keep (i) its operating funds separate from the funds entrusted to the licensee by consumers for disbursement to creditors and (ii) consumers' funds in a trust account, held in the name of the licensee by an insured depository institution;

15. A licensee shall upon request give a consumer signed, dated receipts for funds received from a consumer under a DMP, or provide a means whereby the consumer may view the status of his account electronically; and

16. A licensee shall not obtain any agreement from a consumer (i) giving the licensee or any third person power of attorney or authority to confess judgment for the consumer; (ii) authorizing the licensee or any third party to bring suit against the consumer in a court outside the Commonwealth; or (iii) waiving any right the consumer has under this chapter; and

17. A licensee shall be accredited by the International Standards Organization or the Council on Accreditation or any other organization approved by the Commission.

§ 6.2-2014.1. Licensees providing debt settlement services; required and prohibited business methods.

Each licensee engaged in the business of providing or offering to provide debt settlement services to any consumer shall comply with the following requirements:

1. Each debt settlement services agreement shall be evidenced by a written agreement, which shall be maintained in either a hard copy, including a faxed copy, or an electronic version and which shall be signed by the consumer and a person authorized by the licensee to sign such agreements. The debt settlement services agreement may be signed by the parties either originally or by electronic signature. The debt settlement services agreement shall set forth, at a minimum, (i) the name and address of both the consumer and the licensee; (ii) a full description of all services to be performed for the consumer by the licensee; (iii) a clear explanation, highlighted in bold type, of the costs to the consumer; (iv) a statement that the debt settlement services agreement may be terminated for any reason by the consumer at any time, and without penalty or cost, and that the consumer has no obligation to continue the arrangement unless satisfied with the services provided; (v) an explanation of the method of dispute resolution under the debt settlement services agreement; (vi) an explanation of the obligations of the consumer and the licensee that are subject to the debt settlement services agreement; and (vii) notification of privacy policies in compliance with state and federal laws and regulations;

2. A licensee shall give to the consumer a duplicate original of the agreement executed by the consumer and licensee upon full execution;

3. A licensee shall not request or receive payment or consideration for any debt settlement services until and unless:

a. The licensee has negotiated, settled, reduced, or otherwise altered the terms of at least one debt pursuant to the debt settlement services agreement executed by the consumer;

b. The consumer has made at least one payment to a creditor following the licensee's negotiation, reduction, or other alteration of at least one debt owed by the consumer to that creditor; and

c. To the extent that debts enrolled in a debt settlement services agreement are negotiated, settled, reduced, or otherwise altered individually, the fee or consideration for such individual services either:

(1) Bears the same proportional relationship to the total fee for negotiating, settling, reducing, or altering the terms of the entire debt balance as the individual debt amount bears to the entire debt amount. The "individual debt amount" and the "entire debt amount" mean those amounts owed at the time the debt was enrolled in the service; or

(2) Is a percentage of the amount saved as a result of the negotiation, settlement, reduction, or alteration of an individual debt, which percentage charged does not change from one individual debt to another. As used in this subsection, "amount saved" means the difference between the amount owed at the time the debt was enrolled in the service and the amount actually paid to satisfy the debt;

4. Prior to the execution of a debt settlement services agreement with a consumer, a licensee shall disclose to the consumer in writing, and retain a copy of, the following:

a. The estimated amount of time necessary to achieve the represented results and, to the extent that the services may include a settlement offer to any of the consumer's creditors or debt collectors, the estimated time by which the debt settlement services provider will make a bona fide settlement offer to each of them;

b. To the extent that the services may include a settlement offer to any of the consumer's creditors or debt collectors, the amount of money or the percentage of each outstanding debt that the customer is required to accumulate before the debt settlement services provider will make a bona fide settlement offer to any of them; and

c. To the extent that any aspect of the debt settlement services relies upon or results in the consumer's failure to make timely payments to creditors or debt collectors, that the failure or inability to make regularly scheduled payments to creditors or debt collectors may result in the consumer being subject to collections or sued by creditors or debt collectors, and may increase the amount of money the consumer owes due to the accrual of fees and interest;

245 5. A licensee may request or require a consumer for whom it is providing debt settlement services to
 246 place funds in an account to be used for payments to creditors or debt collectors in connection with the
 247 negotiation, settlement, reduction, or other alteration of the terms of payment or other terms of a debt,
 248 provided that:

249 a. The funds are held in an account at an FDIC-insured financial institution;

250 b. The consumer owns the funds held in the account and is paid accrued interest on the account, if
 251 any;

252 c. The entity administering the account is not owned or controlled by, or in any way affiliated with,
 253 the debt settlement services provider;

254 d. The entity administering the account does not give or accept any money or other compensation in
 255 exchange for referrals of business involving the debt settlement services provider; and

256 e. The consumer may withdraw from the debt settlement service at any time without penalty, and
 257 must receive all funds in the account, other than the fees that have been earned by the debt settlement
 258 service provider for completed services, subject to the limitations imposed in subsection B of § 6.2-2015
 259 and subdivision 3 c;

260 6. A licensee shall not operate as a debt collector; and

261 7. A licensee shall not obtain any agreement from a consumer (i) giving the licensee or any third
 262 person power of attorney for any reason other than the limited purpose of establishing a bank account
 263 in the consumer's name with funds that remain in the consumer's control, or authority to confess
 264 judgment for the consumer; (ii) authorizing the licensee or any third party to bring suit against the
 265 consumer in a court outside the Commonwealth; or (iii) waiving any right the consumer has under this
 266 chapter.

267 **§ 6.2-2015. Fees and contributions.**

268 A. For establishing and maintaining a DMP, a licensee may charge or receive fees or contributions in
 269 an amount not to exceed the following: (i) \$75 for a set-up fee; and (ii) a monthly maintenance fee of
 270 15 percent of the total amount disbursed, but in no event more than \$60 per month.

271 B. For providing debt settlement services and negotiating with any creditor of a consumer for
 272 purposes of obtaining debt forgiveness of a portion of the credit extended by the creditor to the
 273 consumer or a reduction of payments, charges, or fees payable by the consumer, a licensee may charge
 274 or receive fees or contributions not to exceed the amount calculated pursuant to subdivision 3 c of
 275 § 6.2-2014.1.

276 **§ 6.2-2021. Civil penalties.**

277 A. In addition to the authority conferred under §§ 6.2-2018 and 6.2-2019, the Commission may
 278 impose a civil penalty not exceeding \$1,000 upon any person who it determines, in proceedings
 279 commenced in accordance with the Commission's Rules, has violated any of the provisions of this
 280 chapter. For the purposes of this section, each separate violation shall be subject to the civil penalty
 281 herein prescribed. In the case of a violation of § 6.2-2001, each DMP and debt settlement services
 282 agreement entered into shall constitute a separate violation.

283 B. The Commission shall have jurisdiction to impose civil penalties upon any person, regardless of
 284 whether such person is present in the Commonwealth, who obtains money or funds from a consumer for
 285 transmission to the consumer's creditors or who enters into a debt settlement services agreement with a
 286 consumer.

287 2. That the provisions of the first enactment of this act shall become effective on October 1, 2019.

288 3. That the State Corporation Commission shall establish a procedure, to be in effect by August 1,
 289 2019, for any person to apply, prior to October 1, 2019, for a license to be issued on or after
 290 October 1, 2019, pursuant to Chapter 20 (§ 6.2-2000 et seq.) of Title 6.2 of the Code of Virginia as
 291 amended by the first enactment of this act.