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State of Minnesota

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HOUSE OF REPRESENTATIVES

**EIGHTY-FIFTH
SESSION**

HOUSE FILE No. 3287

February 20, 2008

Authored by Davnie

The bill was read for the first time and referred to the Committee on Commerce and Labor

March 17, 2008

Committee Recommendation and Adoption of Report:

To Pass

Read Second Time

1.1 A bill for an act

1.2 relating to commerce; regulating debt management services; repealing an

1.3 obsolete criminal provision; amending Minnesota Statutes 2007 Supplement,

1.4 sections 332A.02, subdivision 2; 332A.04, subdivisions 1, 2, 4; 332A.06;

1.5 332A.12, by adding a subdivision; repealing Minnesota Statutes 2006, section

1.6 609B.163.

1.7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.8 Section 1. Minnesota Statutes 2007 Supplement, section 332A.02, subdivision 2,

1.9 is amended to read:

1.10 Subd. 2. **Accreditation.** "Accreditation" means certification as an accredited

1.11 credit counseling provider by the Council on Accreditation, the Bureau Veritas Quality

1.12 International N.A., or BSI Management Systems America, Inc.

1.13 Sec. 2. Minnesota Statutes 2007 Supplement, section 332A.04, subdivision 1, is

1.14 amended to read:

1.15 Subdivision 1. **Form.** Application for registration to operate as a debt management

1.16 services provider in this state must be made in writing to the commissioner, under oath, in

1.17 the form prescribed by the commissioner, and must contain:

- 1.18 (1) the full name of each principal of the entity applying;
- 1.19 (2) the address, which must not be a post office box, and the telephone number and,
- 1.20 if applicable, e-mail address, of the applicant;
- 1.21 (3) identification of the trust account required under section 332A.13;
- 1.22 (4) consent to the jurisdiction of the courts of this state;

2.1 (5) the name and address of the registered agent authorized to accept service of
2.2 process on behalf of the applicant or appointment of the commissioner as the applicant's
2.3 agent for purposes of accepting service of process;

2.4 (6) disclosure of:

2.5 (i) whether any controlling or affiliated party has ever been convicted of a crime
2.6 or found civilly liable for an offense involving moral turpitude, including forgery,
2.7 embezzlement, obtaining money under false pretenses, larceny, extortion, conspiracy to
2.8 defraud, or any other similar offense or violation, or any violation of a federal or state law
2.9 or regulation in connection with activities relating to the rendition of debt management
2.10 services or involving any consumer fraud, false advertising, deceptive trade practices, or
2.11 similar consumer protection law;

2.12 (ii) any judgments, private or public litigation, tax liens, written complaints,
2.13 administrative actions, or investigations by any government agency against the applicant
2.14 or any officer, director, manager, or shareholder owning more than five percent interest
2.15 in the applicant, unresolved or otherwise, filed or otherwise commenced within the
2.16 preceding ten years;

2.17 (iii) whether the applicant or any person employed by the applicant has had a record
2.18 of having defaulted in the payment of money collected for others, including the discharge
2.19 of debts through bankruptcy proceedings; and

2.20 (iv) whether the applicant's license or registration to provide debt management
2.21 services in any other state has ever been revoked or suspended;

2.22 (7) a copy of the applicant's standard debt management services agreement that the
2.23 applicant intends to execute with debtors;

2.24 (8) proof of accreditation, unless the applicant was licensed in Minnesota as a debt
2.25 prorater immediately before August 1, 2007; and

2.26 (9) any other information and material as the commissioner may require.

2.27 The commissioner may, for good cause shown, temporarily waive any requirement
2.28 of this subdivision.

2.29 Sec. 3. Minnesota Statutes 2007 Supplement, section 332A.04, subdivision 2, is
2.30 amended to read:

2.31 Subd. 2. **Term and scope of registration.** ~~The A registration must remain in full~~
2.32 ~~force and effect for one year~~ is effective until midnight on December 31 of the year for
2.33 which the application for registration is filed or until it is surrendered by the registrant
2.34 or revoked or suspended by the commissioner. The registration is limited solely to the
2.35 business of providing debt management services.

3.1 Sec. 4. Minnesota Statutes 2007 Supplement, section 332A.04, subdivision 4, is
3.2 amended to read:

3.3 Subd. 4. **Bond.** The registration application must be accompanied by ~~payment of~~
3.4 ~~the premium for~~ a surety bond in which the applicant shall be the obligor, in a sum to be
3.5 determined by the commissioner but not less than \$5,000, and in which an insurance
3.6 company, which is duly authorized by the state of Minnesota to transact the business of
3.7 fidelity and surety insurance, shall be a surety. However, the commissioner may accept
3.8 a deposit in cash, or securities that may legally be purchased by savings banks or for
3.9 trust funds of an aggregate market value equal to the bond requirement, in lieu of the
3.10 surety bond. The cash or securities must be deposited with the commissioner of finance.
3.11 The commissioner may also require a fidelity bond in an appropriate amount covering
3.12 employees of any applicant. Each branch office or additional place of business in this state
3.13 of an applicant must be bonded as provided in this subdivision. In determining the bond
3.14 amount necessary for the maintenance of any office, whether it is a surety bond, fidelity
3.15 bond, or both, the commissioner shall consider the financial responsibility, experience,
3.16 character, and general fitness of the debt management services provider and its operators
3.17 and owners; the volume of business handled or proposed to be handled; the location of the
3.18 office and the geographical area served or proposed to be served; and other information the
3.19 commissioner may deem pertinent based upon past performance, previous examinations,
3.20 annual reports, and manner of business conducted in other states.

3.21 Sec. 5. Minnesota Statutes 2007 Supplement, section 332A.06, is amended to read:

3.22 **332A.06 RENEWAL OF REGISTRATION.**

3.23 Each year, each registrant under the provisions of this chapter must, not more than
3.24 60 nor less than 30 days before its registration is to expire, apply to the commissioner for
3.25 renewal of its registration on a form prescribed by the commissioner. The application must
3.26 be signed by the registrant under penalty of perjury, contain current information on all
3.27 matters required in the original application, and be accompanied by a payment of \$250.
3.28 The registrant must maintain a continuous surety bond that satisfies the requirements of
3.29 section 332A.04, subdivision 4, provided that the commissioner may require a different
3.30 amount that is at least equal to the largest amount that has accrued in the registrant's trust
3.31 account during the previous year. The renewal is effective for one year. The commissioner
3.32 may, for good cause shown, temporarily waive any requirement of this section.

3.33 Sec. 6. Minnesota Statutes 2007 Supplement, section 332A.12, is amended by adding a
3.34 subdivision to read:

4.1 Subd. 1a. **Annual report.** On or before March 15 of each calendar year, each
4.2 registrant must file a report with the commissioner containing such information as the
4.3 commissioner may require about the preceding calendar year. The report must be in a
4.4 form the commissioner prescribes.

4.5 **Sec. 7. REPEALER.**

4.6 Minnesota Statutes 2006, section 609B.163, is repealed.

4.7 **Sec. 8. EFFECTIVE DATE.**

4.8 Sections 1 to 7 are effective the day following final enactment.