



1 ~~in the business of debt pooling in this state without a license issued in accordance with the~~  
2 ~~provisions of this chapter. Any bona fide nonprofit organization desiring to obtain a license files~~  
3 ~~with the department of business regulation an application, in writing, under oath, providing any~~  
4 ~~information that may be required by the director. The director may propound interrogatories to an~~  
5 ~~applicant for a license under this chapter relating to qualifications, residence, prospective place of~~  
6 ~~business, plan of business operation and any matters which are necessary in order to protect the~~  
7 ~~public and ascertain the qualifications of the applicant. The director may conduct an inquiry or~~  
8 ~~investigation to determine the applicant's fitness to be licensed or continue to be licensed. Failure~~  
9 ~~by the applicant to secure approval by the director does not preclude him or her from applying as~~  
10 ~~many times as he or she desires, but no application is made within six (6) months subsequent to~~  
11 ~~the date upon which the director denied the last application. A license issued under this chapter is~~  
12 ~~effective for two (2) years; provided, that the licensee remains in the business of debt pooling,~~  
13 ~~unless revoked prior to this by the director; provided, that nothing in this chapter is construed to~~  
14 ~~apply to an attorney at law admitted to the practice and in good standing before the supreme court~~  
15 ~~of this state while holding him or herself out as an attorney.~~

16 ~~**5-66-3. Grounds for denial or revocation of license.** --- (a) The director may deny,~~  
17 ~~revoke, or suspend any license under this chapter for cause upon ten (10) days' notice, in writing,~~  
18 ~~sent by certified mail to the principal place of business of the licensee or residence of the~~  
19 ~~applicant, stating the contemplated action and reason for the action but only after allowing the~~  
20 ~~licensee a reasonable opportunity to be heard. The director may deny, revoke, or suspend any~~  
21 ~~license for the following causes:~~

- 22 ~~(1) Conviction of a crime involving moral turpitude;~~
- 23 ~~(2) Violation of or inability to meet any provision of this chapter;~~
- 24 ~~(3) Fraud or deceit or, if the licensee was not at the time of application and is still not~~  
25 ~~entitled to obtain a license under this chapter;~~
- 26 ~~(4) The licensee no longer meets the requirements necessary to obtain a license under~~  
27 ~~this chapter;~~
- 28 ~~(5) Maintenance of a continuous course of unfair conduct; or~~
- 29 ~~(6) Insolvency, any past or present proceeding of bankruptcy, receivership or assignment~~  
30 ~~for the benefit of creditors by any licensee or applicant for a license under this chapter.~~

31 ~~(b) Any person aggrieved by an order or decision of the director may appeal to the~~  
32 ~~superior court for the county in which he or she resides within twenty (20) days after the order or~~  
33 ~~decision is mailed by certified mail to the applicant or licensee, as the case may be. No order or~~  
34 ~~decision is stayed on appeal except by order of the superior court.~~

1           ~~**5-66-4. Bond required.**— The applicant files a bond with the director, to be approved by~~  
2 ~~him or her, in the sum equal to the amount of moneys received from debtors and on hand at any~~  
3 ~~time but not less than twenty thousand dollars (\$20,000) with one or more insurers, approved by~~  
4 ~~the director, which does not exceed the sum in the aggregate. The bond runs to the state for the~~  
5 ~~use of the state and of any person or persons who may have a cause of action against the obligor~~  
6 ~~of bond under the provisions of this chapter. The bond is conditioned that the obligor faithfully~~  
7 ~~conforms to and abides by the provisions of this chapter and all of the rules and regulations of the~~  
8 ~~director made under this chapter, and pays to the state and any person or persons any and all~~  
9 ~~moneys that may become due or owing to the state or to the person or persons from the obligor~~  
10 ~~under and by virtue of this chapter.~~

11           ~~**5-66-5. Penalty for violation.**— Any person, partnership, association, or corporation~~  
12 ~~violating any of the provisions of this chapter is, upon conviction, fined not more than one~~  
13 ~~thousand dollars (\$1,000) for each offense.~~

14           ~~**5-66-6. Posting of license -- Business of licensee.**— Each license or a copy is posted~~  
15 ~~conspicuously in each office of the licensee. No license is transferable or assignable. The licensee~~  
16 ~~is limited solely to the business of debt pooling, credit counseling, and credit education.~~

17           ~~**5-66-7. Separate bank account for benefit of debtors -- Books and records.**— Each~~  
18 ~~licensee maintains a separate bank account for the benefit of debtors in which all payments~~  
19 ~~received from debtors for the benefit of creditors are deposited and in which all payments remain~~  
20 ~~until a remittance is made to either a debtor or a creditor. Every licensee maintains books,~~  
21 ~~accounts, and records which are open to the director to enable him or her to determine whether~~  
22 ~~the licensee is complying with the provisions of this chapter and with the regulations of the~~  
23 ~~director. Every licensee preserves the books, accounts, and records for at least seven (7) years~~  
24 ~~after making the final entry on any transaction record therein.~~

25           ~~**5-66-8. Licensee's duties.**— Each licensee:~~

26           ~~(1) Keeps complete and adequate records during the term of the contract with the debtor~~  
27 ~~and for a period of seven (7) years from the date of cancellation or completion of the contract~~  
28 ~~with each debtor, and these records contain complete information regarding the contract,~~  
29 ~~extensions of the contract, payments, disbursements and charges, and are open to inspection by~~  
30 ~~the director and his or her appointed agents during normal business hours;~~

31           ~~(2) Makes remittances to creditors within a reasonable period of time after receipt of any~~  
32 ~~funds, less prorated fees and costs, unless the reasonable payment of one or more of the debtor's~~  
33 ~~obligations requires that funds be held for a longer period so as to accumulate a sum certain; and~~

34           ~~(3) Furnishes the debtor with a written statement of his or her account within a~~

1 ~~reasonable time after the debtor requests it and within ninety (90) days after the completion of the~~  
2 ~~pooling of the debtor's debts, and furnishes the debtor a verbal accounting at any time the debtor~~  
3 ~~requests it during normal business hours.~~

4 ~~**5-66-9. Prohibited acts.** -- No licensee:~~

5 ~~(1) Purchases from a creditor any obligation of a debtor;~~

6 ~~(2) Operates as a collection agent and as a licensee as to the same debtor's account;~~

7 ~~(3) Executes any contract or agreement to be signed by the debtor unless the contract or~~  
8 ~~agreement is fully and completely filled in and finished;~~

9 ~~(4) Pays any bonus or consideration to any person for the referral of a debtor to his or her~~  
10 ~~business or accepts or receives any bonus, commission or consideration for referring any debtor~~  
11 ~~to any person for any reason; or~~

12 ~~(5) Advertises, displays, distributes, broadcasts, or televises his or her services, rates, or~~  
13 ~~terms in any manner where any false, misleading or deceptive statements or representations are~~  
14 ~~made with regard to the services to be performed by the licensee or the charges to be made.~~

15 ~~**5-66-10. [Repealed.]** --~~

16 SECTION 2. Title 5 of the General Laws entitled "Businesses and Professions" is hereby  
17 amended by adding thereto the following chapter:

18 CHAPTER 66.1

19 NONPROFIT CREDIT COUNSELING SERVICES ACT

20 **5-66.1-1. Short title.** – This chapter shall be known as the “Nonprofit Credit Counseling  
21 Services Act.”

22 **5-66.1-2. Exclusions.** – This chapter shall not apply to the following:

23 (a) Banks, trust companies, building and savings associations, personal property brokers,  
24 credit unions, industrial loan companies, escrow agents or title companies;

25 (b) The services of a person licensed to practice law in this state;

26 (c) Any transaction in which money or other property is paid through a “joint control  
27 agent;”

28 (d) A merchant-owned credit or creditors association;

29 (e) A Certified Public Accountant (CPA), when services are rendered in the course of his  
30 or her practice as a CPA and fees for such services are not in excess of those stated in this  
31 chapter.

32 **5-66.1-3. Definitions.** – As used in this chapter the following words and phrases are  
33 construed as follows:

34 (a) Credit Counseling Service” means a person or corporation that provides DMP service

1 to consumers, usually for a fee, contribution or other consideration.

2 (b) “Debt management plan (DMP)” means a program whereby money is received from a  
3 consumer by the agency for the purpose of distributing that money to one or more creditors of the  
4 consumer in full or partial payment of the consumer’s obligation.

5 (c) “Director” means the director of business regulation or his or her designee.

6 (d) “Nonprofit organization” means a corporation qualifying as a 26 U.S.C. section  
7 501(c)(3) nonprofit organization, in the operation of which no member, director, officer, partner,  
8 employee, agent, or other affiliated person profits financially other than receiving reasonable  
9 salaries if applicable, and which provides debt counseling services for individuals at no cost or a  
10 cost not exceeding that required to defray bona fide expenses in order to provide the services.

11 (e) “Person” means an individual or an organization.

12 **5-66.1-4. Scope.** – This chapter shall apply to all persons who initiate debt management  
13 plans for residents of this state.

14 **5-66.1-5. Licensing requirements.** – (a) No person or nonprofit organization shall  
15 engage in business of providing DMP in this state without a license issued in accordance with this  
16 section.

17 (b) Any nonprofit organization desiring to obtain a license shall file with the department  
18 of business regulation an application in writing under oath providing the following information:

19 (1) Proof of nonprofit status as determined by being designated under the United states  
20 Internal Revenue Code as Section 501 (-c-)(-3-).

21 (2) Proof of a separate Trust Account with an FDIC-insured financial institution for the  
22 handling of client funds.

23 (3) Proof of counselor certification through a bona fide third-party certification provider  
24 that demonstrates the competence of counselors providing consumer assistance.

25 (4) Proof of a board of directors, a majority of which does not include individuals for  
26 whom such a position could pose a conflict with the mission of the organization, such a creditors  
27 and creditors’ representatives; bankruptcy attorneys; and others who would have a direct stake in  
28 the outcome of the counseling process. The board should have a working majority that is not  
29 comprised of officers of the company or their relatives.

30 (5) Proof of agency accreditation provided by a bona fide third-party accreditation body  
31 such as the International Standards Organization (ISO) or the Council on Accreditation (COA).  
32 Such accreditation should include sector certification that insures compliance to industry  
33 standards and best practices.

34 (6) Proof that it is audited annually by an independent Certified Public Accountant, with

1 such audit taking place within six months of the close of the agency's fiscal year.

2 (c) A license issued under this chapter is effective for two (2) years; provided that the  
3 licensee remains in the business of credit counseling, unless revoked prior to this by the director.

4 (d) The director may conduct an inquiry or investigation to determine the applicant's  
5 fitness to be licensed or continue to be licensed.

6 (e) Failure by the applicant to secure approval by the director does not preclude him or  
7 her from applying as many times as he or she desires, but no application may be made within six  
8 (6) months of any license denial.

9 (f) Licensees must keep the cost to the consumer for the credit counseling services as low  
10 as possible. In no event shall the cost to the consumer, including voluntary contributions, exceed  
11 seventy-five dollars (\$75.00) to begin the program or fifty dollars (\$50.00) per month to maintain  
12 the program. No one should be denied access to a DMP because of an unwillingness or inability  
13 to pay a fee.

14 (g) Any licenses issued under the provisions of former section 5-66-2 shall remain in full  
15 force and effect until its expiration.

16 **5-66.1-6. Licensee's duties.** – (a) All DMPs must be evidenced by a written agreement  
17 between the credit counseling agency and the consumer, clearly acknowledged by both parties. A  
18 copy of the agreement must be provided to the consumer.

19 (b) All DMP agreements must contain the following:

20 (1) the name and address of both the consumer and the credit counseling agency;

21 (2) a full description of all services to be performed for the consumer;

22 (3) a clear indication of the costs to the consumer, including contributions or fees,  
23 highlighted in bold type;

24 (4) a statement that the agreement can be terminated for any reason by the consumer and  
25 that the consumer has no obligation to continue the arrangement unless satisfied with the services  
26 provided;

27 (5) an indication of how to resolve disputes under the agreement;

28 (6) a complete list of the consumer's and agency's obligations that are subject to the  
29 agreement.

30 (c) Licensees shall:

31 (1) Keep complete and adequate records during the term of the contract with the  
32 consumer and for a period of seven (7) years from the date of cancellation or completion of the  
33 contract with each debtor, and these records contain complete information regarding the contract,  
34 extensions of the contract, payments, disbursements and charges, and are open to inspection by

1 the director and his or her appointed agents during normal business hours;

2 (2) Make remittances to creditors within a reasonable period of time after receipt of any  
3 funds, less prorated fees and costs, unless the reasonable payment of one or more of the debtor's  
4 obligations requires that funds be held for a longer period so as to accumulate a sum certain; and

5 (3) Furnish the consumer with a written statement of his or her account within a  
6 reasonable time after the consumer requests it and within ninety (90) days after the completion of  
7 the credit counseling agreement, and furnishes the consumer a verbal accounting at any time the  
8 consumer requests it during normal business hours.

9 **5-66.1-7. Bond required.** -- The applicant shall file a bond with the director, to be  
10 approved by him or her, in the sum equal to the amount of moneys received from debtors and on  
11 hand at any time but not less than twenty thousand dollars (\$20,000) with one or more insurers,  
12 approved by the director, which does not exceed the sum in the aggregate. The bond runs to the  
13 state for the use of the state and of any person or persons who may have a cause of action against  
14 the obligor of bond under the provisions of this chapter. The bond is conditioned that the obligor  
15 faithfully conforms to and abides by the provisions of this chapter and all of the rules and  
16 regulations of the director made under this chapter, and pays to the state and any person or  
17 persons any and all moneys that may become due or owing to the state or to the person or persons  
18 from the obligor under and by virtue of this chapter.

19 **5-66.1-8. Penalty for violation.** -- Any person, organization, partnership, association, or  
20 corporation violating any of the provisions of this chapter is, upon conviction, fined not more  
21 than one thousand dollars (\$1,000) for each offense.

22 **5-66.1-9. Posting of license -- Business of licensee.** -- Each license or a copy is posted  
23 conspicuously in each office of the licensee. No license is transferable or assignable. The licensee  
24 is limited solely to the business of DMP, credit counseling, and credit education.

25 **5-66.1-10. Grounds for denial or revocation of license.** -- (a) The director may deny,  
26 revoke, or suspend any license under this chapter for cause upon ten (10) days' notice, in writing,  
27 sent by certified mail to the principal place of business of the licensee or residence of the  
28 applicant, stating the contemplated action and reason for the action but only after allowing the  
29 licensee a reasonable opportunity to be heard. The director may deny, revoke, or suspend any  
30 license for the following causes:

31 (1) Conviction of a crime involving moral turpitude;

32 (2) Violation of or inability to meet any provision of this chapter;

33 (3) Fraud or deceit or, if the licensee was not at the time of application and is still not  
34 entitled to obtain a license under this chapter;

1           (4) The licensee no longer meets the requirements necessary to obtain a license under  
2 this chapter;

3           (5) Maintenance of a continuous course of unfair conduct; or

4           (6) Insolvency, any past or present proceeding of bankruptcy, receivership or assignment  
5 for the benefit of creditors by any licensee or applicant for a license under this chapter.

6           (b) Any person aggrieved by an order or decision of the director may appeal to the  
7 superior court for the county in which he or she resides within twenty (20) days after the order or  
8 decision is mailed by certified mail to the applicant or licensee, as the case may be. No order or  
9 decision is stayed on appeal except by order of the superior court.

10           **5-66.1-11. Prohibited acts. -- No licensee:**

11           (a) Purchases from a creditor any obligation of a consumer;

12           (b) Operates as a collection agent and as a licensee as to the same consumer's account;

13           (c) Executes any contract or agreement to be signed by the consumer unless the contract  
14 or agreement is fully and completely filled in and finished;

15           (d) Pays any bonus or consideration to any person for the referral of a debtor to his or her  
16 business or accepts or receives any bonus, commission or consideration for referring any  
17 consumer to any person for any reason;

18           (e) Advertises, displays, distributes, broadcasts, or televises his or her services, rates, or  
19 terms in any manner where any false, misleading or deceptive statements or representations are  
20 made with regard to the services to be performed by the licensee or the charges to be made.

21           (f) Lend money or provide credit to any consumer; or

22           (g) Obtain a mortgage or any other security interest in property of a consumer.

23           SECTION 3. This act shall take effect upon passage.

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EXPLANATION  
BY THE LEGISLATIVE COUNCIL  
OF  
A N A C T  
RELATING TO BUSINESSES AND PROFESSIONS -- CREDIT COUNSELORS

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1           This act would create a new chapter regulating consumer credit counseling agencies and  
2 their consumers. It would provide for increased scrutiny over their actions and more protection  
3 for the consumers.

4           This act would also acknowledge debt pooling licenses issued pursuant to the repealed  
5 debt pooling law, and would provide that said licenses would remain effective until their  
6 expiration date.

7           This act would take effect upon passage.

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