

DEBT RESOLUTION SERVICES INDUSTRY  
MODEL LEGISLATION  
SEPTEMBER 2022

**Section 1. Short title.** This Act shall be known and may be cited as the “Debt Resolution Services Act.”

**Section 2. Definitions.** As used in this Act:

- (A) “Agreement” means a contract between a Licensee and a Consumer that meets the requirements of Section 9 of this Act;
- (B) “Bank” means a financial institution, including a commercial bank, savings bank, savings and loan association, credit union, mortgage bank, or trust company, in each case engaged in the business of banking, that is chartered under federal or State law and regulated by a federal or State banking regulatory agency;
- (C) “Business Address” means the designation of the physical location of a business, including the name and number of a street;
- (D) “Business Day” means a calendar day, except for Saturdays, Sundays, and legal holidays;
- (E) “Commissioner” means the [REGULATOR], or the commissioner’s designee;
- (F) “Consumer” means an individual who has executed an Agreement with a Licensee;
- (G) “Creditor” means a Person that has extended credit to a Consumer, including any agent or assignee of the Person;
- (H) “Debt Resolution Services” means any program or service represented, directly or by implication, to renegotiate, settle, or in any way alter the terms of payment or other terms of the debt between a Consumer and one or more unsecured Creditors, including, but not limited to, a reduction in the balance, interest rate, or fees owed by a Consumer to an unsecured Creditor;
- (I) “Dedicated Account” means an account that meets the criteria set forth in Section 9(A)(1) – (5);
- (J) “Dedicated Account Service Provider” means an entity that facilitates transactions authorized by the Consumer, pursuant to the terms of 16 C.F.R. § 310.4(a)(5)(ii);
- (K) “Licensee” means a provider of Debt Resolution Services that possesses a valid license issued pursuant to this Act;
- (L) “Person” means any individual, group, unincorporated association, limited or general partnership,

corporation, or other business entity; and

- (M) “State” means any state of the United States, the District of Columbia, Puerto Rico, the Northern Mariana Islands, and any other territory, possession, or protectorate of the United States.

**Section 3. License required.**

- (A) No Person shall provide or offer to provide Debt Resolution Services in this State unless the Person first obtains a Debt Resolution Services license from the Commissioner.
- (B) A Licensee shall obtain a license for the Licensee's primary Business Address.
- (C) A license may not be transferred or assigned.
- (D) A Licensee shall file a surety bond in favor of this State in an amount and form that the Commissioner determines before the Licensee may provide or offer to provide Debt Resolution Services in this State, but in no event shall the amount of the bond be greater than fifty thousand dollars (\$50,000).
- (E) A Licensee shall not provide Debt Resolution Services in this State under a business name other than the business name that is listed on the Licensee's license; provided however, a Licensee may do business under a fictitious business name, if the Licensee registers the fictitious business name with the secretary of state and provides evidence of the registration to the Commissioner.
- (F) The Commissioner may promulgate rules for the licensing of Licensees and may require a reasonable license and investigation fee in connection with the issuance or renewal of any license required by this Act.

**Section 4. Exempt Persons.**

- (A) The following Persons are exempt from this Act:
- (1) A Person organized under § 501(c) or § 501(q) of the Internal Revenue Code;
  - (2) Judicial officers, including individuals acting under the direction of a court;
  - (3) Banks and their agents and their employees;
  - (4) Attorneys licensed to practice law in this State who provide Debt Resolution Services within an attorney-client relationship;
  - (5) Creditors or their employees who negotiate debt resolutions with Consumers or

with Licensees acting on behalf of Consumers;

- (6) Assignees for the benefit of Creditors;
  - (7) Officers or employees of the United States or any State who perform Debt Resolution Services on behalf of the federal government, a State, a municipality, or a State agency, and who receive compensation solely from the governmental entity;
  - (8) Certified public accountants licensed in this State who provide Debt Resolution Services within an accountant-client relationship;
  - (9) Dedicated Account Service Providers that do not otherwise provide Debt Resolution Services for Consumers; and
  - (10) Persons, to the extent that the Person provides or agrees to provide Debt Resolution Services to an individual who the Person has no reason to know resides in this State at the time the Person agrees to provide the services.
- (B) The following Persons are exempt from the licensing requirement established in Section (3) of this Act:
- (1) A Licensee's employees; and
  - (2) Persons who market on behalf of Licensees and do not otherwise provide Debt Resolution Services.

**Section 5. Application for licensure.**

- (A) The application for a license and the application for a license renewal shall be in a form prescribed by the Commissioner, signed under oath, and shall contain such information as the Commissioner reasonably requires. A license to provide Debt Resolution Services is for a period of two (2) years from the date of issuance.
- (B) The following items are required in any application for a license under this Act:
- (1) Proof of compliance with [INSERT STATUTORY REFERENCE], and any other requirement imposed by the secretary of state for an entity to engage in business in this State;
  - (2) The applicant's name, principal Business Address, and telephone number; all Business Addresses in this state; the principal email address for the business;

and the principal website address to be used for the business;

- (3) The name and Business Address of each executive officer and member of the board of directors (or equivalent leadership structure) of the applicant;
  - (4) A statement describing, to the extent it is known or should be known by the applicant, any material civil or criminal judgment in any jurisdiction, or any enforcement action against the applicant, or any of its executive officers or members of its board of directors (or equivalent leadership structure) by any local, State, or federal governmental agency, in each case relating to debt adjusting, debt pooling, prorating, activity as a credit services organization, unfair and deceptive trade practices, false advertising, consumer deception law or regulation, or any other similar law or regulation;
  - (5) A copy of each form of Agreement and the schedule of fees and charges that the applicant will use with Consumers who reside in this State; and
  - (6) Income statements and balance sheets from the applicant for the two (2) fiscal years preceding the date of the application. Notwithstanding any other requirement in this Act or elsewhere, material submitted pursuant to this Section 5(B)(6) shall be held confidential by the Commissioner.
- (C) In connection with any application for license renewal, the Licensee shall provide access to the Licensee's books and records with respect to Consumers in this State that are being or have been serviced by the Licensee.
- (D) The Commissioner may participate in a multi-state licensing system for the sharing of regulatory information and for the licensing and application, by electronic or other means, of Persons engaged in the business of Debt Resolution Services. The Commissioner may establish requirements for participation by an applicant in a multi-state licensing system, which may vary from the provisions in this Act. The applicant shall pay directly to a multi-state licensing system any additional fee relating to participation in a multi-state licensing system.
- (E)
- (1) The Commissioner may require each applicant applying for initial licensure under this Act to submit a full set of fingerprints of each of the applicant's executive officers in order for the Commissioner to obtain and receive national

criminal history records from the federal bureau of investigation criminal justice information services division. Unless the Commissioner, as authorized by paragraph (2), contracts, or makes use of any existing contract, the Commissioner may submit each executive officer's fingerprints and the fee required to perform the criminal history record checks to the [INSERT STATE AGENCY] and the federal bureau of investigation for state and national criminal history record checks. The Commissioner may require any fingerprints submitted pursuant to this subsection be provided in an electronic format.

- (2) The Commissioner may contract, or make use of any existing contract with this State, for the collection and transmission of fingerprints authorized under this section. If the Commissioner contracts, or makes use of an existing contract, the Commissioner may order the applicant to pay the fee for collecting and transmitting fingerprints to the contractor. The Commissioner may agree to a reasonable fingerprinting fee to be charged by the contractor to the applicant.
- (3) The Commissioner shall treat and maintain any executive officer's fingerprints and any criminal history record information obtained under this section as confidential and limit the use of records solely to the purposes authorized in this section. The fingerprints and any criminal history record information are not subject to subpoena, other than a subpoena issued in a criminal action or investigation, and are confidential by law and privileged, and are not subject to discovery or admissible in evidence in any civil action.
- (4) The Commissioner shall refuse to issue an initial license to an applicant who does not provide fingerprints in compliance with this subsection.

(F) An applicant or Licensee shall notify the Commissioner within thirty (30) days after a material change in any of the information submitted in connection with any application or renewal application for a license under this Act, including, but not limited to:

- (1) A change in the Licensee's principal place of business;
- (2) A merger or dissolution related to the license; and
- (3) A Licensee pleading guilty to or being convicted of any felony in a court of competent jurisdiction.

**Section 6. Licensure issuance or denial.**

- (A) The Commissioner may deny a license if:
- (1) The applicant does not satisfy the criteria set forth in Section 5 of this Act;
  - (2) The application contains information that is materially erroneous or materially incomplete;
  - (3) The applicant fails to provide in a timely manner such information as the Commissioner reasonably requests;
  - (4) An executive officer or member of the board of directors (or equivalent leadership structure) of the applicant has been convicted of or pled nolo contendere to:
    - (a) a felony; or
    - (b) an act involving fraud, deceit, or dishonesty; or
  - (5) An executive officer or member of the board of directors (or equivalent leadership structure) of the applicant has had a professional license revoked, suspended, or subjected to enforcement action in any State, and the license has not been reinstated.
- (B) Not later than the twentieth day after a license application denial, the Commissioner shall provide to the applicant a written decision and findings containing the reasons supporting a license denial. Not later than the thirtieth day after the date of the notice, the applicant may appeal the denial to the [INSERT APPROPRIATE JURISDICTION] court.

**Section 7. Licensure suspension, revocation, or denial of renewal.**

- (A) The Commissioner may suspend, revoke, or deny renewal of a license if:
- (1) The Commissioner asserts that the Licensee has materially violated this Act or any rule adopted pursuant to this Act or any other law applicable to the conduct of the Licensee's business and the Licensee has failed to cure the violation after notice and a reasonable opportunity to cure the violation;
  - (2) A fact or condition exists that, if it had existed when the Licensee applied for a license, would have warranted the Commissioner refusing to issue the license;
  - (3) The Licensee does not satisfy the criteria for licensure set out in Section 5 of this Act;

- (4) The Licensee has refused to permit the Commissioner to examine the Licensee's books and records, failed to comply with Section 12 of this Act, or made a material misrepresentation or omission in complying with Section 12 of this Act; or
  - (5) The Licensee has not responded within a reasonable time and in an appropriate manner to the Commissioner's communications.
- (B) If the Commissioner suspends, revokes, or denies renewal of a license, the Commissioner may require the Licensee to make available the Licensee's books and records with respect to any Consumers in this State that are being or have been serviced by the Licensee.
- (C) Except as provided in Section 8 of this Act, a Licensee shall receive notice and a hearing before the Commissioner revokes or suspends a license.
- (D) A Licensee may deliver a written notice to the Commissioner to surrender the Licensee's license. However, if a Licensee surrenders the Licensee's license, the Licensee's civil or criminal liability for acts committed before the surrender is not affected.
- (E) Upon submission of a renewal application for a license and until such time as a renewal application is approved or denied, the Licensee may continue to provide or offer to provide Debt Resolution Services, but a suspension or denial of a license terminates any right to provide or offer to provide Debt Resolution Services in this State unless continuation is approved by the Commissioner.

**Section 8. Powers of the Commissioner.**

- (A) [RESERVED] – ADD REFERENCE TO The Uniform Administrative Procedures Act, governs all matters and procedures respecting the hearing and judicial review of any violation or contested case arising under this Act.
- (B) If the Commissioner finds that a delay in issuing an order under Subsection (A) will irreparably harm the public interest, the Commissioner may summarily suspend the license immediately.
- (C) Any order issued pursuant to this section is subject to review by appeal to the [INSERT JURISDICTION] court.
- (D) The Commissioner may investigate the books, accounts, records, and files of a Licensee



or any other Person that the Commissioner has reason to believe is providing or offering to provide Debt Resolution Services in this State.

**Section 9. Prerequisites and permitted practices for providing Debt Resolution Services.**

- (A) A Licensee may request or require a Consumer, as a condition to the provision of Debt Resolution Services, to establish and place funds into a Dedicated Account administered by a Dedicated Account Service Provider, provided that:
- (1) The funds are held in an FDIC-insured bank;
  - (2) The Consumer owns the funds held in the account, including all accrued interest on the account, if any;
  - (3) The Dedicated Account Service Provider is not owned or controlled by, or affiliated with, the Debt Resolution Services provider. For purposes of this paragraph (3), (a) “affiliated with” means a Dedicated Account Service Provider that controls, is controlled by, or is under common control with a Licensee, and (b) “control” means the direct or indirect possession of the power to direct or cause the direction of the management of a Licensee, whether by contract or through ownership of more than twenty percent (20%) of the voting securities of the Licensee;
  - (4) The Dedicated Account Service Provider does not give or accept any money or other compensation in exchange for referrals of business involving the Debt Resolution Services;
  - (5) The Consumer may terminate the Debt Resolution Services at any time without penalty by giving notice as required in Section 10(A), and thereafter, the Licensee shall notify the Dedicated Account Service Provider of the Consumer’s termination within five (5) Business Days of the Consumer’s notice; and
  - (6) The Agreement must disclose each of the criteria set forth in the preceding paragraphs (1) – (5).
- (B) A Licensee shall, at the time an Agreement is executed by a Consumer, or as shortly thereafter as practical, distribute or otherwise make available to the Consumer a copy of the executed Agreement. For purposes of this Act, electronic distribution of an executed Agreement is permitted if the Consumer agrees.

(C) The Agreement must disclose:

- (1) The services that the Licensee will perform;
- (2) The methodology that the Licensee will use to calculate fees to be charged for Debt Resolution Services and, if reasonably available at the time the Agreement is executed, the fees that the Licensee will charge;
- (3) The amount of time estimated on a good-faith basis to be necessary to achieve the resolution of all enrolled debts, and to the extent that the service may include a resolution offer to any of the Consumer's Creditors, the time estimated on a good-faith basis when the Debt Resolution Services provider will make a bona fide resolution offer to each of them;
- (4) To the extent that the Debt Resolution Services may include a resolution offer to any of the Consumer's Creditors, the amount of money or the percentage of each outstanding debt that the Consumer must accumulate before the Debt Resolution Services provider will make a bona fide resolution offer to each of them;
- (5) That Debt Resolution Services may not be suitable for all individuals;
- (6) To the extent that any aspect of the Debt Resolution Services relies upon or results in the Consumer's failure to make timely payments to Creditors, that the failure to pay one's debts will likely adversely affect the Consumer's creditworthiness, may result in the Consumer being subject to collections efforts, including lawsuits by Creditors, and may increase the amount of money the Consumer owes due to the accrual of fees and interest;
- (7) That, unless the Consumer is insolvent, if a Creditor resolves a debt for less than its full amount, the resolution may result in the creation of taxable income to the Consumer, even though the Consumer does not receive any money;
- (8) That specific results cannot be predicted or guaranteed and the Licensee cannot require a Creditor to negotiate or resolve a debt;
- (9) That Debt Resolution Services programs require that individuals meet regular savings goals in order to enable resolutions;
- (10) That the Licensee does not provide tax, accounting, or legal advice to individuals, unless the Licensee is licensed in this State to provide such advice;

- (11) That the Licensee is the Consumer's advocate and does not receive compensation of any sort from Creditors for providing Debt Resolution Services to the Consumer;
  - (12) That the Licensee does not make monthly or other payments to the Consumer's Creditors;
  - (13) The list of debts that the Agreement covers; and
  - (14) That, if applicable, the Consumer's rights are subject to mandatory arbitration of any and all disputes with the Debt Resolution Services provider.
- (D) A Licensee shall maintain a toll-free telecommunications system, staffed at a level that has adequate capacity to accept requests from the reasonably anticipated volume of Consumers contacting the Licensee during ordinary business hours.
- (E) A Licensee may extend credit to a Consumer in the form of a deferral of some or all of the Licensee's fee for resolving the Consumer's debts, at no additional expense to the Consumer. A Licensee may assist in arranging credit to the Consumer if such credit is extended to the Consumer by or through a Person that is either separately licensed or authorized to perform lending in this State or exempt from such licensure.

**Section 10. Consumer's right to terminate Agreements.**

- (A) A Consumer may terminate an Agreement at any time without penalty by notifying the Licensee electronically, in writing, or telephonically on a recorded line.
- (B) Upon receipt of a Consumer's notice of termination, a Licensee shall, as soon as possible but in all instances within two (2) business days, advise the Consumer of the effect, if any, a termination of the Consumer's Debt Resolution Services program would have on previously negotiated installment resolution agreements and pending resolution negotiations. Not later than five (5) business days following the delivery of such advice, and absent further instruction from the Consumer, a Licensee shall notify the Dedicated Account Service Provider of the Consumer's termination and request that the Dedicated Account Service Provider communicate with the Consumer regarding disposition of all funds held in the Dedicated Account.
- (C) Notwithstanding the Consumer's right to terminate as set forth in Subsection (A), the Licensee is entitled to recover all fees earned prior to the receipt of any termination

notice, provided that the fee is requested or received in compliance with Section 13.

**Section 11. Licensee's right to terminate Agreements.**

If a Consumer fails to honor the Consumer's contractual obligations on or before the sixtieth day after the Consumer was required to perform them, then the Licensee may terminate its Agreement with the Consumer electronically or in writing. If the Licensee terminates the Agreement as permitted in this section, the Consumer will not owe any further payment to the Licensee as of the date the Licensee terminates the Agreement, other than for fees previously earned by the Licensee. Notwithstanding this section, if a Consumer refuses to pay any fee to a Licensee after the payment has been earned by the Licensee, then the Licensee may, upon proper notice to the Consumer either electronically or in writing, terminate the Licensee's Agreement with the Consumer immediately.

**Section 12. Annual reports.**

A Licensee shall file with the Commissioner an annual report in writing, under oath, that includes the following information for the calendar year reporting period: total number of active Consumers in this State, total number of enrolled Consumers in this State, and total fees collected in this State. If a Licensee neglects to file an annual report or fails to amend the same on or before the thirtieth day after the Commissioner provides notice to the Licensee, then the Commissioner may assess civil penalties and suspend, revoke, or refuse to renew any license under this Act.

**Section 13. Fees for Debt Resolution Services.**

- (A) A Licensee shall not impose, directly or indirectly, a fee or other charge on a Consumer or receive payment from or on behalf of a Consumer for performing Debt Resolution Services except as provided in this section.
- (B) A Licensee may not request or receive payment of any fee or consideration for any Debt Resolution Services until and unless:
  - (1) The Licensee has renegotiated, resolved, reduced, or otherwise altered the terms of at least one debt pursuant to a resolution agreement or other such valid contractual agreement executed by the Consumer and the Creditor;
  - (2) The Consumer has made at least one payment pursuant to that resolution agreement or other valid contractual agreement between the Consumer and the

Creditor; and

- (3) To the extent that debts enrolled in a service are renegotiated, resolved, reduced, or otherwise altered individually, the fee or consideration either: (a) Bears the same proportional relationship to the total fee for renegotiating, resolving, 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 are those owed at the time the debt was enrolled in the service; or (b) Is a percentage of the amount saved as a result of the renegotiation, resolution, reduction, or alteration. The percentage charged cannot change from one individual debt to another. The amount saved is 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.
- (C) A Licensee shall not impose charges or receive payment for Debt Resolution Services until the Licensee and the Consumer have signed an Agreement that complies with Section 9 of this Act.
- (D) Any fee or other charge imposed by or on behalf of a Dedicated Account Service Provider in connection with the administration of a Dedicated Account shall not be considered a fee or other charge imposed for performing Debt Resolution Services for purposes of this Act.
- (E) Any fee or other charge imposed by or on behalf of a third-party legal service provider shall not be considered a fee or other charge imposed by a Licensee for performing Debt Resolution Services for purposes of this Act.

**Section 14. Prohibitions.**

- (A) A Licensee, a Person who markets Debt Resolution Services on behalf of a Licensee, or a Person described in Section 4(B)(2) shall not:
  - (1) Take or exercise a power of attorney that authorizes the Licensee to resolve a debt. For purposes of the foregoing, “resolve” means entering into a binding agreement to discharge in full a debt in exchange for a payment of a sum certain of money;
  - (2) Send to Creditors cease and desist notices, or require Consumers to notify Creditors of changes of address or phone number, meant to divert communication

from the Creditor to the Debt Resolution Services provider rather than the Consumer;

- (3) Exercise or attempt to exercise any authority of the Consumer after a Licensee has received notice under Section 10 that the Consumer has terminated the Consumer's Agreement with the Licensee;
- (4) Initiate, or request that a Dedicated Account Service Provider initiate, a transfer from a Consumer's bank account unless the transfer is:
  - (a) A return of money to the Consumer;
  - (b) Before any termination of an Agreement and properly authorized by the Agreement and this Act for payment of a fee; or
  - (c) At the express direction of the Consumer, to a Consumer's Creditor to fund a negotiated resolution with that Creditor;
- (5) Receive Consumer funds or control Consumer funds, other than to receive funds in payment of fees earned by the Debt Resolution Services provider;
- (6) Resolve a debt or lead a Consumer to believe that a payment to a Creditor is in resolution of a debt to the Creditor unless, at the time of resolution, the Creditor confirms that the payment is in full resolution of the debt or is part of a payment plan that, upon completion, will be in full resolution of the debt;
- (7) Make any representation that:
  - (a) The Licensee will furnish money to pay bills or prevent attachments; or
  - (b) Participation in a program will prevent litigation, garnishment, attachment, repossession, foreclosure, eviction, or loss of employment;
- (8) Misrepresent that the Licensee is able to furnish legal advice or perform legal services;
- (9) Misrepresent, directly or by implication, any material aspect of any Debt Resolution Services program, including, but not limited to, the amount of money or the percentage of the debt amount that a Consumer may save by using such service; the amount of time necessary to achieve the represented results; the amount of money or the percentage of each outstanding debt that the Consumer

must accumulate before the provider of the Debt Resolution Services will initiate attempts with the Consumer's Creditors or make a bona fide offer to negotiate, resolve, or modify the terms of the Consumer's debt; the effect of the service on a Consumer's creditworthiness; the effect of the service on collection efforts of the Consumer's Creditors; the percentage or number of Consumers who attain the represented results; and whether Debt Resolution Services are offered or provided by a non-profit entity;

- (10) Take a confession of judgment or power of attorney to confess judgment against a Consumer;
- (11) Purchase a debt or obligation of the Consumer, or obtain a mortgage or other security interest from any Person in connection with the services provided to the Consumer;
- (12) Receive from or on behalf of a Consumer a promissory note or other negotiable instrument other than a check or a demand draft or a post-dated check or demand draft; or
- (13) Except as permitted by federal law or by order of a court of competent jurisdiction, disclose the identity or identifying information of a Consumer or the identity of the Consumer's Creditors, except to the Commissioner, upon proper demand, or to the extent necessary or appropriate to administer the program, including, but not limited to, a Dedicated Account Service Provider or to a Creditor of the Consumer.

(B) An Agreement must not:

- (1) Provide for the application of the law of any jurisdiction other than the United States and this State;
- (2) Except as otherwise permitted by the laws of this State and the Federal Arbitration Act (9 U.S.C. § 1 et seq.), contain a provision that restricts an individual's remedies under this Act or any other law of this State; or
- (3) Contain a provision that limits or releases the liability of any Person for not performing the Agreement or for violating this Act.

**Section 15. Information requirements.**

- (A) A Licensee shall distribute or arrange to be distributed a statement of accounting to a Consumer:
- (1) While a Debt Resolution Services Agreement is in effect:
    - (a) At least once per month; and
    - (b) On or before the fifth Business Day after a Consumer requests a statement of accounting from a Licensee. However, this Act does not require a Licensee to provide more than one (1) statement of accounting per month per Consumer in response to the Consumer's request; and
  - (2) Within five (5) Business Days from the date on which a Consumer or a Licensee terminates an Agreement.
- (B) A statement of accounting shall contain the following information to the extent applicable:
- (1) The amount of money that the Consumer has deposited into the Consumer's Dedicated Account, and all withdrawals therefrom, from initiation of the Consumer's Debt Resolution Services program;
  - (2) The amounts, dates, and Creditors associated with each resolution obtained by the Licensee on behalf of the Consumer;
  - (3) The fees that the Licensee has charged to and collected from the Consumer in connection with each of the Consumer's resolutions;
  - (4) The amount of money that the Consumer holds in the Consumer's Dedicated Account; and
  - (5) With respect to each resolution obtained by the Licensee for the Consumer:
    - (a) The total amount of money that the Consumer paid to the Creditor in full discharge or satisfaction of the Consumer's debt;
    - (b) The amount of the debt at the time the Licensee and the Consumer entered into their Agreement;
    - (c) The amount of the debt at the time the Creditor agreed to resolve the debt; and



- (d) The amount of compensation that the Licensee received or will receive to resolve the debt.
- (C) Notwithstanding the requirements set forth in paragraphs (A)(1) and (2), a Licensee that enables, or arranges to enable, twenty-four (24) hours per day, seven (7) days per week, electronic access by a Consumer to all of the Consumer's deposit account transaction information, including all deposit and withdrawal activity, and electronic access by a Consumer to account activity, including, but not limited to, resolution information, account status, resolution dates, resolution amounts, and fees paid, is deemed to have satisfied the content requirements in Subsection (B) and the distribution requirements in Subsection (A).

**Section 16. Prohibition on false and misleading advertising.**

- (A) A Licensee shall not, directly or through a Person who markets Debt Resolution Services on behalf of a Licensee or a Person described in Section 4(B)(2), advertise, announce, broadcast, display, distribute, print, publish, televise, or permit any other Person to advertise, announce, broadcast, display, distribute, print, publish, or televise on the Licensee's behalf a statement or representation related to Debt Resolution Services that is deceptive, false, or misleading.
- (B) A Licensee shall not directly or indirectly provide anything of value in exchange for favorable treatment in reviews or favorable placement on rankings.
- (C) Neither a Licensee nor any affiliate of a Licensee shall directly or indirectly own or operate a website or other public-facing resource presenting rankings or consumer reviews of the Licensee.
- (D) A Licensee shall not make any statement or take any action that is likely to mislead consumers regarding whether reviews the Licensee uses to advertise its business accurately reflect all reviews consumers have submitted to the Licensee.
- (E) A Licensee shall comply with 16 C.F.R. Part 255 and with CFPB Bulletin 2022-05: Unfair and Deceptive Acts or Practices That Impede Consumer Reviews.

**Section 17. Records.**

- (A) At the time of providing to a Consumer any materials or Agreements required by this Act, a Licensee shall inform the Consumer that upon electronic, telephonic, or written request, the Licensee shall send the Consumer a copy of the materials and shall comply with a request as provided in Subsection (B).

- (B) If a Consumer submits a request to a Licensee, before the expiration of ninety (90) days after a program is completed or terminated, to send a copy of the materials required by this Act, the Licensee shall send them to the Consumer at no charge within five (5) Business Days after the request, but the Licensee is not required to comply with a request more than once per calendar month or if it reasonably believes the request is made for purposes of harassment. If a request is made more than ninety (90) days and less than two years after a program is completed or terminated, the Licensee must send within a reasonable time a copy of the materials requested. The Licensee is not required to comply with any request from a Consumer made more than the later of (1) two (2) years after a program is completed or terminated or (2) the expiration of the statute of limitations governing contracts in this State.
- (C) A Licensee that maintains a website shall disclose on the home page or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals its contents:
- (1) The Licensee's name and all names under which the Licensee does business in this State; and
  - (2) The Licensee's principal Business Address, telephone number, and email address, if any.
- (D) Any Licensee shall keep, for a period of two years from the date the record is produced, the following records:
- (1) All substantially different advertising, brochures, telemarketing scripts, promotional materials, and supportive data;
  - (2) The name and last known address of each Consumer, the goods or services purchased, the date such goods or services were first provided or the Consumer signed an Agreement for the provision of goods or services, and the amount paid by the Consumer for the goods or services; and
  - (3) The name, any fictitious name used, the last known home address and telephone number, and the job title(s) for all current and former employees directly involved in sales or solicitations; provided, however, that if the Licensee permits fictitious names to be used by employees, each fictitious name must be traceable to only one specific employee.

- (E) In addition to the records required by Subsection (D), the Licensee must keep a copy of each signed Agreement with any Consumer for not less than five years from the date that the Consumer either graduates or terminates the Debt Resolution Services program.
- (F) A Licensee may keep the records required by Subsections (D) and (E) in any form, and in the same manner, format, or place as they keep such records in the ordinary course of business. Failure to keep all records required by Subsections (D) and (E) shall be a violation of this Act.
- (G) In the event of any dissolution or termination of the Licensee's business, the principal of that Licensee shall maintain all records as required under Subsections (D) and (E). In the event of any sale, assignment, or other change in ownership of the Licensee's business, the successor business shall maintain all records required under Subsections (D) and (E).

**Section 18. Penalty for violation.**

- (A) If the Commissioner finds that a Person has violated any material provision of this Act, a rule adopted pursuant to this Act, or any other law applicable to the conduct of a Licensee, the Commissioner may, after notice and opportunity to cure, order or impose a penalty upon the Person, which must not exceed one thousand dollars (\$1,000) per violation of law or rule, up to a maximum of one hundred thousand dollars (\$100,000), plus the costs of investigation. Notwithstanding anything to the contrary herein or elsewhere, a continuing violation shall be deemed to be a singular violation and not be given multiple effect.
- (B) A finding or order that the Commissioner issues under this section is reviewable by appeal to the [INSERT JURISDICTION].

**Section 19. Statute of limitations.**

An action or proceeding brought by the Commissioner under this Act must be commenced within the longer of the following:

- (A) Three (3) years after the conduct that underlies the complaint is discovered by the Commissioner or the harmed Consumer; or
- (B) The applicable statute of limitations set out in [INSERT REFERENCE], if the violation also constitutes a criminal offense.

**Section 20. Transitional provisions.**

Transactions entered into before this Act takes effect, and the rights, duties, and interests resulting from them, may be completed, terminated, or enforced as required or permitted by a law amended, repealed, modified, or preempted by this Act as though the amendment, repeal, modification, or preemption had not occurred.

**Section 21. Effective Date.**

For purposes of rulemaking, this act shall take effect on the date of enactment, and for all other purposes, this act shall take effect no less than twelve months after enactment.

NOTE: A state with an existing Credit Services Organizations Act will have a section detailing the exemptions from that Act. In order to avoid both inconsistent regulation or conflicts, the CSOA exemptions should be expanded to include, “ANY PERSON WHO IS EITHER LICENSED, OR EXEMPT FROM LICENSURE, UNDER THE DEBT RESOLUTION SERVICES ACT.”

NOTE: For states that have an existing law regulating Debt Resolution Services providers, the Debt Resolution Services Act should clarify that this Act supersedes prior related legislation. “Upon the effective date of the Debt Resolution Services Act, any other statute or regulation in this State that specifically regulates the offering of debt resolution services to consumers in this State is hereby repealed as of the effective date of this Act.”