



# State of Tennessee

## PUBLIC CHAPTER NO. 287

HOUSE BILL NO. 743

By Representatives Keisling, Garrett

Substituted for: Senate Bill No. 1078

By Senators Johnson, Yager

AN ACT to amend Tennessee Code Annotated, Title 47, Chapter 18, relative to debt resolution services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following as a new part:

**47-18-5801. Short title.**

This part is known and may be cited as the "Debt Resolution Services Act."

**47-18-5802. Part definitions.**

As used in this part:

(1) "Active consumer" means a consumer for which an agreement to resolve the consumer's debts has been accepted and who is actively making payments to resolve the debt;

(2) "Affiliated with" means a dedicated account service provider that controls, is controlled by, or is under common control with a licensee;

(3) "Agreement" means a contract between a licensee and a consumer that meets the requirements of § 47-18-5809;

(4) "Bank" means a financial institution, including a commercial bank, savings bank, savings and loan association, credit union, mortgage bank, or a trust company, engaged in the business of banking, that is chartered under federal or state law and regulated by a federal or state banking regulatory agency;

(5) "Business address" means the designation of the physical location of a business, including the name and number of a street;

(6) "Business day" means a calendar day, except for Saturdays, Sundays, and legal holidays;

(7) "Commissioner" means the commissioner of commerce and insurance, or the commissioner's designee;

(8) "Consumer" means an individual who has executed an agreement with a licensee;

(9) "Creditor" means a person that has extended credit to a consumer, including an agent or assignee of the person;

(10) "Debt resolution services" means a program or service represented, directly or by implication, to negotiate, settle, or in any way alter the terms of payment or other terms of the debt between a consumer and one (1) or more unsecured creditors, including a reduction in the balance, interest rate, or fees owed by a consumer to an unsecured creditor;

(11) "Dedicated account" means an account that meets the criteria set forth in § 47-18-5809(a)(1)-(5);

(12) "Dedicated account service provider" means an entity that facilitates transactions authorized by the consumer pursuant to the terms of 16 CFR 310.4(a)(5)(ii);

(13) "Enrolled consumer" means a consumer who is saving in a dedicated account, but whose creditors have not accepted a reduced amount to resolve the consumer's debt with the credits;

(14) "Licensee" means a provider of debt resolution services that possesses a valid license issued pursuant to this part;

(15) "Person" means an individual, group, unincorporated association, limited or general partnership, corporation, or other business entity;

(16) "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; and

(17) "State" means a state of the United States, including this state, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or possession subject to the jurisdiction of the United States.

**47-18-5803. License required.**

(a) A person shall not provide or offer to provide debt resolution services in this state unless the person first obtains a license from the commissioner.

(b) A licensee shall obtain a license for the licensee's primary business address.

(c) A license must not be transferred or assigned.

(d) A licensee shall file a surety bond in favor of this state in an amount the commissioner determines before the licensee may provide or offer to provide debt resolution services in this state; provided, that the amount of the bond must not be greater than fifty thousand dollars (\$50,000). The surety bond must be in effect during the period of licensure and for two (2) years after the date the licensee ceases providing debt resolution services to individuals in this state. The surety bond must have payment conditioned upon noncompliance with this part by the licensee or the licensee's agent.

(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, that a licensee may do business under an assumed name as long as the licensee registers the assumed name with the secretary of state and provides evidence of the registration with the commissioner.

**47-18-5804. Exempt persons.**

(a) The following persons are exempt from this part:

(1) A person organized under § 501(c) or § 501(q) of the Internal Revenue Code (26 U.S.C. § 501);

(2) Judicial officers, including an individual acting under the direction of a court;

(3) Banks and the employees of banks;

(4) Attorneys licensed to practice law in this state who provide debt resolution services within an attorney-client relationship;

(5) Creditors or the employees of creditors 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 requirements established in § 47-18-5803:

(1) A licensee's employees; and

(2) A person who:

(A) Markets on behalf of a licensee; and

(B) Does not otherwise provide debt resolution services.

**47-18-5805. Application for licensure.**

(a)

(1) An application for a license or license renewal must:

(A) Be in a form prescribed by the commissioner;

(B) Contain information as the commissioner reasonably requires;

(C) Be accompanied by a reasonable fee established by the commissioner; and

(D) Be signed under oath.

(2) A license to provide debt resolution services is valid for a period of two (2) years from the date of issuance.

(b) The following items are required in an application for a license under this part:

(1) Proof of compliance with the Business Tax Act, compiled in title 67, chapter 4, part 7, 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 the applicant's executive officers or members of the applicant's 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, this state's consumer protection law, 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;

(6) Income statements and balance sheets from the applicant for the two (2) fiscal years preceding the date of the application; and

(7) Evidence of accreditation or certification by an independent accrediting or certifying organization approved by the commissioner or by a national trade group for debt resolution services providers to certify that regular audits have been completed to assure compliance with federal and state regulations and with industry best practices.

(c) In connection with an 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 multistate licensing system for the sharing of regulatory information and for the licensing and application, by electronic or other means, of entities engaged in the business of debt resolution services. The commissioner may establish requirements for participation by an applicant in a multistate licensing system that varies from this part. The applicant shall pay directly to a multistate licensing system any additional fees relating to participation in the multistate licensing system.

(e)

(1) The commissioner may require each applicant applying for initial licensure under this part 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 criminal justice information services division of the federal bureau of investigation. Unless the commissioner contracts to obtain criminal history records, or makes use of an existing contract to obtain criminal history records, pursuant to subdivision (e)(2), the commissioner may submit each executive officer's fingerprints and the fee required to perform the criminal history record check to the Tennessee bureau of investigation 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 (e) be provided in an electronic format.

(2) The commissioner may contract, or make use of an 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, then 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 under 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 private 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 (e).

(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 an application for a license or license renewal submitted pursuant to this part, including:

(1) A change in the applicant's or licensee's principal place of business;

(2) A merger or dissolution related to the licensee; or

(3) An applicant or licensee pleading guilty to or being convicted of a felony in a court of competent jurisdiction.

**47-18-5806. License issuance or denial.**

(a) The commissioner may deny a license if:

(1) The applicant does not satisfy the requirements of § 47-18-5805;

(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) The commissioner shall provide to the applicant a written decision and findings containing the reasons supporting a denial of license issuance or renewal no later than twenty (20) days after the date of the denial. The applicant may appeal the denial to the chancery court of Davidson County no later than thirty (30) days after the applicant's receipt of the written decision denying the license issuance or renewal.

**47-18-5807. License suspension, revocation, or denial of renewal.**

(a) The commissioner may suspend, revoke, or deny renewal of a license if:

(1) A licensee has violated this part or any rule adopted pursuant to this part, or another law applicable to the conduct of the licensee's business;

(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 required under § 47-18-5805(b);

(4) The licensee has refused to permit the commissioner to examine the licensee's books and records, failed to comply with § 47-18-5812, or made a material misrepresentation or omission in complying with § 47-18-5812; 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, then 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 § 47-18-5808, a licensee must 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 a licensee's submission of an application for license renewal and until such time as an application for license renewal 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.

**47-18-5808. Powers of the commissioner -- Enforcement.**

(a) The commissioner may promulgate rules to administer this part, including rules to establish reasonable fees to be paid by the applicants and licensees for the expenses of administering this part. The rules must be promulgated in accordance with the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

(b) The Uniform Administrative Procedures Act, compiled in title 4, chapter 5, governs all matters and procedures regarding the hearing and judicial review of any violation or contested case arising under this part.

(c) If the commissioner finds that a delay in issuing an order under subsection (b) will irreparably harm the public interest, then the commissioner may summarily suspend the license pursuant to § 4-5-320(d).

(d) Any order issued pursuant to this section is subject to review by appeal to the chancery court of Davidson County.

(e) The commissioner may:

- (1) Act on the commissioner's own initiative or in response to complaints;
- (2) Receive complaints;
- (3) Take action to obtain voluntary compliance with this part;
- (4) Refer cases to the attorney general and reporter, a district attorney general, or another appropriate law enforcement official; and
- (5) Seek and provide remedies as provided in this part.

(f) 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.

**47-18-5809. 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 services provider; provided, that:

- (1) The funds are held in a federal deposit insurance corporation 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 subdivision (a)(3), "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 § 47-18-5810(a), and thereafter, the licensee shall notify the dedicated account services provider of the consumer's termination within five (5) business days of receipt of the consumer's notice of intent to terminate debt resolution services; and

(6) The agreement discloses the criteria set forth in subdivisions (a)(1)-(5).

(b) A licensee shall, at the time an agreement is executed by a consumer, or as shortly thereafter as practicable, distribute or otherwise make available to the consumer a copy of the executed agreement. For purposes of this part, electronic distribution of an executed agreement is permitted if the consumer agrees.

(c) The agreement with the consumer must disclose:

(1) The services that the licensee will perform;

(2) The methodology the licensee will use to calculate fees to be charged for debt resolution services and, if known or if the information to calculate the fee is 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 creditor;

(4) To the extent that the debt resolution services provider 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 creditor;

(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 consumer's failure to pay the consumer's debts will likely adversely affect the consumer's creditworthiness, may result in the consumer being subject to collection 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 an individual to meet regular savings goals in order to enable resolutions;

(10) That the licensee does not provide tax, accounting, or legal advice to an individual, 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 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 the 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 licensure.

**47-18-5810. Consumer's right to terminate agreement.**

(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) Within two (2) business days of receipt of a consumer's notice of termination, a licensee shall advise the consumer of the effect, if any, a termination of the consumer's debt resolution services program would have on a previously negotiated installment resolution agreement and any pending resolution negotiations. Not later than five (5) business days following the delivery of the 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 under subsection (a), the licensee is entitled to recover all fees earned prior to the receipt of a termination notice; provided, that the fee is requested or received in compliance with § 47-18-5813.

**47-18-5811. Licensee's right to terminate agreement.**

If a consumer fails to fulfill the consumer's contractual obligations on or before the sixth day after the consumer was required to fulfill the obligations, then the licensee may terminate its agreement with the consumer in writing, including electronically. If the licensee terminates the agreement in accordance with this section, then the consumer does not owe any further payment to the licensee as of the date the licensee terminates the agreement, other than for the fees previously earned by the licensee. Notwithstanding this part, 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 in writing, which may be provided electronically, terminate the licensee's agreement with the consumer immediately.

**47-18-5812. Annual reports.**



(a) A licensee shall file with the commissioner an annual report, under oath, that includes the following information for the calendar year reporting period:

- (1) Total number of active consumers in this state;
- (2) Total number of enrolled consumers in this state; and
- (3) The total fees collected in this state.

(b) If a licensee does not file an annual report as required under subsection (a), or does not amend a filed report on or before the thirtieth day after the commissioner provides notice to the licensee that the licensee's filed annual report requires amendment, then the commissioner may assess civil penalties against the licensee and suspend, revoke, or refuse to renew the licensee's license.

**47-18-5813. 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 shall not request or receive payment of any fee or consideration for any debt resolution services unless:

(1) The licensee and the consumer have signed an agreement that complies with § 47-18-5809;

(2) The licensee has renegotiated, resolved, reduced, or otherwise altered the terms of at least one (1) debt pursuant to a resolution agreement or other such valid contractual agreement executed by the consumer and the creditor;

(3) The consumer has made at least one (1) payment pursuant to the resolution agreement or other valid contractual agreement between the consumer and the creditor; and

(4) 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 (1) 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) 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 is not a fee or other charge imposed for performing debt resolution services for purposes of this part.

(d) Any fee or other charge imposed by or on behalf of a third-party legal service provider is not a fee or other charge imposed by a licensee for performing debt resolution services for purposes of this part.

**47-18-5814. Prohibitions.**

(a) A licensee, a person who markets debt resolution services on behalf of a licensee, or a person described in § 47-18-5804(b)(2) shall not:

(1) Take or exercise a power of attorney that authorizes the licensee to resolve a debt. For purposes of this subdivision (a)(1), "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 a creditor a cease and desist notice, or require a consumer to notify a creditor of changes of address or phone number in order 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 § 47-18-5810 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 part 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 a 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 a debt resolution services program, including the amount of money or the percentage of the debt amount that a consumer may save by using the 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; or whether debt resolution services are offered or provided by a nonprofit entity;

(10) Take a confession of judgment or power of attorney to confess a 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 postdated 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 to a dedicated account services provider or a creditor of the consumer.

(b) An agreement must not:

(1) Provide for the application of law of any jurisdiction, other federal law, or the law of a state of the United States;

(2) Except as otherwise permitted by the law of this state and the Federal Arbitration Act (9 U.S.C. § 1 et seq.), restrict an individual's remedies under this part or another law of this state; or

(3) Limit or release the liability of a person for failing to perform the obligations of the agreement or for violating this part.

**47-18-5815. 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; provided, that a licensee is not required 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 must 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 from the dedicated account, from the 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 the 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 subdivisions (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 resolution information, account status, resolution dates, resolution amounts, and fees paid, satisfies the requirements of subsections (a) and (b).

**47-18-5816. 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 § 47-18-5804(b)(2), advertise, announce, broadcast, display, distribute, print, publish, televise, or permit another 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 in rankings.

(c) A licensee, or an affiliate of a licensee, shall not 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 CFR Part 255 and with CFPB Bulletin 2022-05: Unfair and Deceptive Acts or Practices that Impede Consumer Reviews.

**47-18-5817. Records.**

(a) At the time of providing to a consumer any materials or agreements required by this part, a licensee shall inform the consumer that upon electronic, telephonic, or written request, the licensee must send the consumer a copy of the materials and must 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 section, then the licensee must send the materials to the consumer at no cost to the consumer within five (5) business days after the request; provided, however, that the licensee is not required to comply with more than one (1) request for materials from the same consumer per calendar month, or if the licensee reasonably believes the request is made for purposes of harassment. If a request is made more than ninety (90) days and less than two (2) years after a program is completed or terminated, then 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 applicable statute of limitations governing the contract.

(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) A licensee shall keep, for a period of two (2) 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 the goods or services were first provided or the consumer signed an agreement for the provision of the 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 titles 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 (1) 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 (5) years from the date that the consumer either graduates or terminates the debt resolution 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 the licensee keeps such records in the ordinary course of business. Failure to keep all records required by subsections (d) and (e) is a violation of this part.

(g) In the event of any dissolution or termination of the licensee's business, the principal of the licensee must 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 must maintain all records required under subsections (d) and (e).

**47-18-5818. Penalty for violation.**

(a) If the commissioner finds that a person has violated a provision of this part, a rule adopted pursuant to this part, or any other law applicable to the conduct of a licensee, then the commissioner may order or impose a penalty upon the person, which must not exceed five thousand dollars (\$5,000) per violation, up to a maximum of one hundred thousand dollars (\$100,000), plus costs of investigation. Each day a violation occurs may be considered a separate offense.

(b) A finding or order by the commissioner that a violation under this part has occurred is reviewable pursuant to the Uniform Administrative Procedures Act, compiled in title 4, chapter 5.

**47-18-5819. Statute of limitations.**

An action or proceeding brought by the commissioner under this part must be commenced within the later of the following:

(1) Four (4) years after the conduct that underlies the complaint is discovered by the commissioner or the harmed consumer; or

(2) The applicable statute of limitations for any applicable criminal offense.

**47-18-5820. Transition.**

## HB743

(a) Transactions for licensees whose licenses were issued pursuant to part 55 of this chapter that were entered into prior to January 1, 2026, and the rights, duties, and interests resulting from such transactions, may be completed, terminated, or enforced as required or permitted by a law amended, repealed, modified, or preempted by this part as though the amendment, repeal, modification, or preemption had not occurred.

(b) Licenses issued pursuant to part 55 of this chapter prior to January 1, 2026, and the rights, duties, and interests resulting from the issuance of such licenses, may be completed, terminated, or enforced as required or permitted by a law amended, repealed, modified, or preempted by this part as though the amendment, repeal, modification, or preemption had not occurred.

(c) Businesses offering services other than debt resolution services whose licenses were issued pursuant to part 55 of this chapter may continue to operate under such license without transition to this part.

SECTION 2. The headings to sections in this act are for reference purposes only and do not constitute a part of the law enacted by this act. However, the Tennessee Code Commission is requested to include the headings in any compilation or publication containing this act.

SECTION 3. For purposes of rulemaking, this act takes effect July 1, 2025, the public welfare requiring it. For all other purposes, this act takes effect January 1, 2026, and applies to conduct occurring and licenses applied for or renewed on or after that date.

HOUSE BILL NO. 743

PASSED: April 10, 2025



CAMERON SEXTON, SPEAKER  
HOUSE OF REPRESENTATIVES



RANDY MCNALLY  
SPEAKER OF THE SENATE

APPROVED this 24<sup>th</sup> day of April 2025



BILL LEE, GOVERNOR