

1 AN ACT concerning certain financial services.

2 Be it enacted by the People of the State of Illinois,
3 represented in the General Assembly:

4 Section 5. The Transmitters of Money Act is amended by
5 changing Sections 5, 20, 25, 30, 40, and 45 and adding
6 Section 92 as follows:

7 (205 ILCS 657/5)

8 Sec. 5. Definitions. As used in this Act, unless the
9 context otherwise requires, the words and phrases defined in
10 this Section have the meanings set forth in this Section.

11 "Authorized seller" means a person not an employee of a
12 licensee who engages in the business regulated by this Act on
13 behalf of a licensee under a contract between that person and
14 the licensee.

15 "Bill payment service" means the business of transmitting
16 money on behalf of an Illinois resident for the purpose of
17 paying the resident's bills.

18 "Controlling person" means a person owning or holding the
19 power to vote 25% or more of the outstanding voting
20 securities of a licensee or the power to vote the securities
21 of another controlling person of the licensee. For purposes
22 of determining the percentage of a licensee controlled by a
23 controlling person, the person's interest shall be combined
24 with the interest of any other person controlled, directly or
25 indirectly, by that person or by a spouse, parent, or child
26 of that person.

27 "Department" means the Department of Financial
28 Institutions.

29 "Director" means the Director of Financial Institutions.

30 "Licensee" means a person licensed under this Act.

31 "Location" means a place of business at which activity

1 regulated by this Act occurs.

2 "Material litigation" means any litigation that,
3 according to generally accepted accounting principles, is
4 deemed significant to a licensee's financial health and would
5 be required to be referenced in a licensee's annual audited
6 financial statements, reports to shareholders, or similar
7 documents.

8 "Money" means a medium of exchange that is authorized or
9 adopted by a domestic or foreign government as a part of its
10 currency and that is customarily used and accepted as a
11 medium of exchange in the country of issuance.

12 "Money transmitter" means a person who is located in or
13 doing business in this State and who directly or through
14 authorized sellers does any of the following in this State:

15 (1) Sells or issues payment instruments.

16 (2) Engages in the business of receiving money for
17 transmission or transmitting money.

18 (3) Engages in the business of exchanging, for
19 compensation, money of the United States Government or a
20 foreign government to or from money of another
21 government.

22 "Outstanding payment instrument" means, unless otherwise
23 treated by or accounted for under generally accepted
24 accounting principles on the books of the licensee, a payment
25 instrument issued by the licensee that has been sold in the
26 United States directly by the licensee or has been sold in
27 the United States by an authorized seller of the licensee and
28 reported to the licensee as having been sold, but has not
29 been paid by or for the licensee.

30 "Payment instrument" means a check, draft, money order,
31 traveler's check, or other instrument or memorandum, written
32 order or written receipt for the transmission or payment of
33 money sold or issued to one or more persons whether or not
34 that instrument or order is negotiable. Payment instrument

1 does not include an instrument that is redeemable by the
 2 issuer in merchandise or service, a credit card voucher, or a
 3 letter of credit. A written order for the transmission or
 4 payment of money that results in the issuance of a check,
 5 draft, money order, traveler's check, or other instrument or
 6 memorandum is not a payment instrument.

7 "Person" means an individual, partnership, association,
 8 joint stock association, corporation, or any other form of
 9 business organization.

10 "Transmitting money" means the transmission of money by
 11 any means, including transmissions to or from locations
 12 within the United States or to and from locations outside of
 13 the United States by payment instrument, facsimile or
 14 electronic transfer, courier or otherwise, and includes bill
 15 payment services.

16 (Source: P.A. 88-643, eff. 1-1-95.)

17 (205 ILCS 657/20)

18 Sec. 20. Qualifications for a license.

19 (a) In order to obtain a license under this Act, an
 20 applicant must prove to the satisfaction of the Director all
 21 of the following:

22 (1) That the applicant has and maintains the net
 23 worth specified in Column A, computed according to
 24 generally accepted accounting principles, corresponding
 25 to the number of locations in this State at which the
 26 applicant is conducting business or proposes to conduct
 27 business by itself and by any authorized sellers
 28 specified in Column B:

29	Column A	Column B
30	\$35,000	1
31	50,000	2-3
32	100,000	4-5
33	150,000	6-9

1	200,000	10-14
2	300,000	15-19
3	400,000	20-24
4	500,000	25 or more

5 (2) That the applicant is in good standing and in
6 statutory compliance in the state or country of
7 incorporation or when the applicant is an entity other
8 than a corporation, is properly registered under the laws
9 of this State or another state or country, and if
10 required, the corporation or entity is authorized to do
11 business in the State of Illinois.

12 (3) That the applicant has not been convicted
13 within the 10 years preceding the application of a felony
14 under the laws of this State, another state, the United
15 States, or a foreign jurisdiction.

16 (4) That no officer, director, controlling person,
17 or principal of the applicant has been convicted within
18 the 10 years preceding the application of a felony under
19 the laws of this State, another state, the United States,
20 or a foreign jurisdiction.

21 (5) That the financial responsibility, financial
22 condition, business experience, character, and general
23 fitness of the applicant and its management are such as
24 to justify the confidence of the public and that the
25 applicant is fit, willing, and able to carry on the
26 proposed business in a lawful and fair manner.

27 (b) The Director may, for good cause shown, waive the
28 requirement of items (3) and (4) of subsection (a) of this
29 Section.

30 (Source: P.A. 88-643, eff. 1-1-95.)

31 (205 ILCS 657/25)

32 Sec. 25. Application for license.

33 (a) An application for a license must be in writing,

1 under oath, and in the form the Director prescribes. The
2 application must contain or be accompanied by all of the
3 following:

4 (1) The name of the applicant and the address of
5 the principal place of business of the applicant and the
6 address of all locations and proposed locations of the
7 applicant in this State.

8 (2) The form of business organization of the
9 applicant, including:

10 (A) a copy of its articles of incorporation
11 and amendments thereto and a copy of its bylaws,
12 certified by its secretary, if the applicant is a
13 corporation;

14 (B) a copy of its partnership agreement,
15 certified by a partner, if the applicant is a
16 partnership; or

17 (C) a copy of the documents that control its
18 organizational structure, certified by a managing
19 official, if the applicant is organized in some
20 other form.

21 (3) The name, business and home address, and a
22 chronological summary of the business experience,
23 material litigation history, and felony convictions over
24 the preceding 10 years of:

25 (A) the proprietor, if the applicant is an
26 individual;

27 (B) every partner, if the applicant is a
28 partnership;

29 (C) each officer, director, and controlling
30 person, if the applicant is a corporation; and

31 (D) each person in a position to exercise
32 control over, or direction of, the business of the
33 applicant, regardless of the form of organization of
34 the applicant.

1 (4) Financial statements, not more than one year
2 old, prepared in accordance with generally accepted
3 accounting principles and audited by a licensed public
4 accountant or certified public accountant showing the
5 financial condition of the applicant and an unaudited
6 balance sheet and statement of operation as of the most
7 recent quarterly report before the date of the
8 application, certified by the applicant or an officer or
9 partner thereof. If the applicant is a wholly owned
10 subsidiary or is eligible to file consolidated federal
11 income tax returns with its parent, however, unaudited
12 financial statements for the preceding year along with
13 the unaudited financial statements for the most recent
14 quarter may be submitted if accompanied by the audited
15 financial statements of the parent company for the
16 preceding year along with the unaudited financial
17 statement for the most recent quarter.

18 (5) Filings of the applicant with the Securities
19 and Exchange Commission or similar foreign governmental
20 entity (English translation), if any.

21 (6) A list of all other states in which the
22 applicant is licensed as a money transmitter and whether
23 the license of the applicant for those purposes has ever
24 been withdrawn, refused, canceled, or suspended in any
25 other state, with full details.

26 (7) A list of all money transmitter locations and
27 proposed locations in this State.

28 (8) A sample of the contract for authorized
29 sellers.

30 (9) A sample form of the proposed payment
31 instruments to be used in this State.

32 (10) The name and business address of the clearing
33 banks through which the applicant intends to conduct any
34 business regulated under this Act.

1 (11) A surety bond ~~or-ether-security~~ as required by
2 Section 30 of this Act.

3 (12) The applicable fees as required by Section 45
4 of this Act.

5 (13) A written consent to service of process as
6 provided by Section 100 of this Act.

7 (14) A written statement that the applicant is in
8 full compliance with and agrees to continue to fully
9 comply with all state and federal statutes and
10 regulations relating to money laundering.

11 (15) All additional information the Director
12 considers necessary in order to determine whether or not
13 to issue the applicant a license under this Act.

14 (b) The Director may, for good cause shown, waive, in
15 part, any of the requirements of this Section.

16 (Source: P.A. 88-643, eff. 1-1-95.)

17 (205 ILCS 657/30)

18 Sec. 30. Surety bond.

19 (a) An applicant for a license shall post and a licensee
20 must maintain with the Director a bond or bonds issued by
21 corporations qualified to do business as surety companies in
22 this State.

23 (b) The applicant or licensee shall post a bond in the
24 amount of the greater of \$100,000 or an amount equal to the
25 daily average of outstanding payment instruments for the
26 preceding 12 months or operational history, whichever is
27 shorter, up to a maximum amount of \$2,000,000. When the
28 amount of the required bond exceeds \$1,000,000, the applicant
29 or licensee may, in the alternative, post a bond in the
30 amount of \$1,000,000 plus a dollar for dollar increase in the
31 net worth of the applicant or licensee over and above the
32 amount required in Section 20, up to a total amount of
33 \$2,000,000.

1 (c) The bond must be in a form satisfactory to the
 2 Director and shall run to the State of Illinois for the
 3 benefit of any claimant against the applicant or licensee
 4 with respect to the receipt, handling, transmission, and
 5 payment of money by the licensee or authorized seller in
 6 connection with the licensed operations. A claimant damaged
 7 by a breach of the conditions of a bond shall have a right to
 8 action upon the bond for damages suffered thereby and may
 9 bring suit directly on the bond, or the Director may bring
 10 suit on behalf of the claimant.

11 (d) (Blank). ~~Instead of the bond and net worth~~
 12 ~~requirements required in this Section, the applicant or~~
 13 ~~licensee may pledge to the Director cash or securities that~~
 14 ~~bear a rating of one of the 3 highest grades by Moody's~~
 15 ~~Investor's Service, Inc. or Standard and Poor's Corporation~~
 16 ~~in an amount equal to the bond and net worth requirements set~~
 17 ~~forth in subsection (b). The Director may provide for the~~
 18 ~~custody of the securities by a trust company or bank located~~
 19 ~~in this State and qualified to do business under the~~
 20 ~~Corporate Fiduciary Act. The compensation, if any, of the~~
 21 ~~custodian must be paid by the pledging applicant or licensee.~~

22 (e) (Blank). ~~The bonds and securities so pledged may,~~
 23 ~~with the approval of the Director, be exchanged for other~~
 24 ~~bonds or securities. No bond or security may be sold or~~
 25 ~~transferred by the Director except on order of the circuit~~
 26 ~~court or as otherwise provided. As long as the applicant or~~
 27 ~~licensee pledging the bonds or securities remains solvent and~~
 28 ~~in good standing under this Act, it shall be permitted to~~
 29 ~~receive from the Director the interest and dividends on the~~
 30 ~~deposit.~~

31 (f) After receiving a license, the licensee must
 32 maintain the required bond plus net worth (if applicable) or
 33 securities until 5 years after it ceases to do business in
 34 this State unless all outstanding payment instruments are

1 eliminated or the provisions under the Uniform Disposition of
2 Unclaimed Property Act have become operative and are adhered
3 to by the licensee. Notwithstanding this provision, however,
4 the amount required to be maintained may be reduced to the
5 extent that the amount of the licensee's payment instruments
6 outstanding in this State are reduced.

7 (g) If the Director at any time reasonably determines
8 that the required bond ~~or deposit of securities~~ is insecure,
9 deficient in amount, or exhausted in whole or in part, he may
10 in writing require the filing of a new or supplemental bond
11 ~~or other security~~ in order to secure compliance with this Act
12 and may demand compliance with the requirement within 30 days
13 following service on the licensee.

14 (Source: P.A. 88-643, eff. 1-1-95.)

15 (205 ILCS 657/40)

16 Sec. 40. Renewals of license. As a condition for renewal
17 of a license, a the licensee must submit to the Director, and
18 the Director must receive, on or before December 1 of each
19 year, an application for renewal made, in writing and under
20 oath, on a form prescribed by the Director. A licensee whose
21 failing--to-submit-an application for renewal is not received
22 by the Department on or before December 31 shall not have its
23 license renewed and shall be required to submit to the
24 Director an application for a new license in accordance with
25 Section 25. Upon a showing of good cause, the Director may
26 extend the deadline for the filing of an application for
27 renewal. The application for renewal of a license shall
28 contain or be accompanied by all of the following:

29 (1) The name of the licensee and the address of the
30 principal place of business of the licensee.

31 (2) A list of all locations where the licensee is
32 conducting business under its license and a list of all
33 authorized sellers through whom the licensee is conducting

1 business under its license, including the name and business
2 address of each authorized seller.

3 (3) Audited financial statements covering the past year
4 of operations, prepared in accordance with generally accepted
5 accounting principles, showing the financial condition of the
6 licensee. The licensee shall submit the audited financial
7 statement after the application for renewal has been
8 approved. The audited financial statement must be received
9 by the Department no later than 120 days after the end of the
10 licensee's fiscal year, but before April 30 of the year of
11 the renewed license. If the licensee is a wholly owned
12 subsidiary or is eligible to file consolidated federal income
13 tax returns with its parent, the licensee may submit
14 unaudited financial statements if accompanied by the audited
15 financial statements of the parent company for its most
16 recently ended year.

17 (4) A statement of the dollar amount and number of money
18 transmissions and payment instruments sold, issued,
19 exchanged, or transmitted in this State by the licensee and
20 its authorized sellers for the past year.

21 (5) A statement of the dollar amount of uncompleted
22 money transmissions and payment instruments outstanding or in
23 transit, in this State, as of the most recent quarter
24 available.

25 (6) The annual license renewal fees and any penalty fees
26 as provided by Section 45 of this Act.

27 (7) Evidence sufficient to prove to the satisfaction of
28 the Director that the licensee has complied with all
29 requirements under Section 20 relating to its net worth,
30 under Section 30 relating to its surety bond or other
31 security, and under Section 50 relating to permissible
32 investments.

33 (8) A statement of a change in information provided by
34 the licensee in its application for a license or its previous

1 applications for renewal including, but not limited to, new
2 directors, officers, authorized sellers, or clearing banks
3 and material changes in the operation of the licensee's
4 business.

5 (Source: P.A. 88-643, eff. 1-1-95.)

6 (205 ILCS 657/45)

7 Sec. 45. Fees.

8 (a) The Director shall charge and collect fees, which
9 shall be nonrefundable unless otherwise indicated, in
10 accordance with the provisions of this Act as follows:

11 (1) For applying for a license, an application fee
12 of \$100 and a license fee, which shall be refunded if the
13 application is denied or withdrawn, of \$100 plus \$10 for
14 each location at which the applicant and its authorized
15 sellers are conducting business or propose to conduct
16 business excepting the applicant's principal place of
17 business.

18 (2) For renewal of a license, a fee of \$100 plus
19 \$10 for each location at which the licensee and its
20 authorized sellers are conducting business, except the
21 licensee's principal place of business.

22 (3) For an application to add an authorized seller
23 location, \$10 for each authorized seller location.

24 (4) For service of process or other notice upon the
25 Director as provided by Section 100, a fee of \$10.

26 (5) For an application for renewal of a license
27 received by the Department submitted after December 1, a
28 penalty fee of \$10 per day for each day after December 1
29 in addition to any other fees required under this Act
30 unless an extension of time has been granted by the
31 Director.

32 (6) For failure to submit financial statements as
33 required by Section 40 ~~on or before April 30~~, a penalty

1 fee of \$10 per day for each day the statement is late
2 ~~after--April--30~~ unless an extension of time has been
3 granted by the Director.

4 (b) Beginning one year after the effective date of this
5 Act, the Director may, by rule, amend the fees set forth in
6 this Section.

7 (c) All moneys received by the Department under this Act
8 shall be deposited into the Financial Institutions Fund.

9 (Source: P.A. 88-643, eff. 1-1-95.)

10 (205 ILCS 657/92 new)

11 Sec. 92. Receivership.

12 (a) If the Director determines that a licensee is
13 insolvent or is violating this Act, he or she may appoint a
14 receiver. Under the direction of the Director, the receiver
15 shall, for the purpose of receivership, take possession of
16 and title to the books, records, and assets of the licensee.
17 The Director may require the receiver to provide security in
18 an amount the Director deems proper. Upon appointment of the
19 receiver, the Director shall have published, once each week
20 for 4 consecutive weeks in a newspaper having a general
21 circulation in the community, a notice informing all persons
22 who have claims against the licensee to present them to the
23 receiver. Within 10 days after the receiver takes possession,
24 the licensee may apply to the Circuit Court of Sangamon
25 County to enjoin further proceedings. The receiver may
26 operate the business until the Director determines that
27 possession should be restored to the licensee or that the
28 business should be liquidated.

29 (b) If the Director determines that a business in
30 receivership should be liquidated, he or she shall direct the
31 Attorney General to file a complaint in the Circuit Court of
32 the county in which the business is located, in the name of
33 the People of the State of Illinois, for the orderly

1 liquidation and dissolution of the business and for an
2 injunction restraining the licensee and its officers and
3 directors from continuing the operation of the business.
4 Within 30 days after the day the Director determines that the
5 business should be liquidated, the receiver shall file with
6 the Director and with the clerk of the court that has charge
7 of the liquidation a correct list of all creditors, as shown
8 by the licensee's books and records, who have not presented
9 their claims. The list shall state the amount of the claim
10 after allowing all just credits, deductions, and set-offs as
11 shown by the licensee's books. These claims shall be deemed
12 proven unless some interested party files an objection within
13 the time fixed by the Director or court that has charge of
14 the liquidation.

15 (c) The General Assembly finds and declares that debt
16 management services provide important and vital services to
17 Illinois citizens. It is therefore declared to be the policy
18 of this State that customers who receive these services must
19 be protected from interruptions of services. To carry out
20 this policy and to insure that customers of a licensee are
21 protected if it is determined that a business in receivership
22 should be liquidated, the Director shall make a distribution
23 of moneys collected by the receiver in the following order of
24 priority:

25 (1) Allowed claims for the actual necessary
26 expenses of the receivership of the business being
27 liquidated, including:

28 (A) reasonable receiver's fees and receiver's
29 attorney's fees approved by the Director;

30 (B) all expenses of any preliminary or other
31 examinations into the condition of the receivership;

32 (C) all expenses incurred by the Director that
33 are incident to possession and control of any
34 property or records of the licensee's business; and

1 (D) reasonable expenses incurred by the
2 Director as the result of business agreements or
3 contractual arrangements necessary to insure that
4 the services of the licensee are delivered to the
5 community without interruption. These business
6 agreements or contractual arrangements may include,
7 but are not limited to, agreements made by the
8 Director, or by the receiver with the approval of
9 the Director, with banks, bonding companies, and
10 other types of financial institutions.

11 (2) Allowed unsecured claims for wages or salaries,
12 excluding vacation, severance, and sick leave pay earned
13 by employees within 90 days before the appointment of a
14 receiver.

15 (3) Allowed unsecured claims of any tax, and
16 interest and penalty on the tax.

17 (4) Allowed unsecured claims, other than a kind
18 specified in items (1), (2), and (3) of this subsection,
19 filed with the Director within the time the Director
20 fixes for filing claims.

21 (5) Allowed unsecured claims, other than a kind
22 specified in items (1), (2), and (3) of this subsection,
23 filed with the Director after the time fixed for filing
24 claims by the Director.

25 (6) Allowed creditor claims asserted by an owner,
26 member, or stockholder of the business in liquidation.

27 (7) After one year from the final dissolution of
28 the licensee's business, all assets not used to satisfy
29 allowed claims shall be distributed pro rata to the
30 owner, owners, members, or stockholders of the business.

31 The Director shall pay all claims of equal priority
32 according to the schedule established in this subsection and
33 shall not pay claims of lower priority until all higher
34 priority claims are satisfied. If insufficient assets are

1 available to meet all claims of equal priority, those assets
2 shall be distributed pro rata among those claims. All
3 unclaimed assets of a licensee and the licensee's business
4 shall be deposited with the Director to be paid out when
5 proper claims are presented to the Director.

6 (d) Upon the order of the circuit court of the county in
7 which the business being liquidated is located, the receiver
8 may sell or compound any bad or doubtful debt, and on like
9 order may sell the personal property of the business on such
10 terms as the court approves. The receiver shall succeed to
11 whatever rights or remedies the unsecured creditors of the
12 business may have against the owner or owners, operators,
13 stockholders, directors, members, managers, or officers,
14 arising out of their claims against the licensee's business,
15 but nothing contained in this Section shall prevent those
16 creditors from filing their claims in the liquidation
17 proceeding. The receiver may enforce those rights or remedies
18 in any court of competent jurisdiction.

19 (e) At the close of a receivership, the receiver shall
20 turn over to the Director all books of account and ledgers of
21 the business for preservation. The Director shall hold all
22 records of receiverships received at any time for a period of
23 2 years after the close of the receivership. The records may
24 be destroyed at the termination of the 2-year period. All
25 expenses of the receivership including, but not limited to,
26 reasonable receiver's and attorney's fees approved by the
27 Director, all expenses of any preliminary or other
28 examinations into the condition of the licensee's business or
29 the receivership, and all expenses incident to the possession
30 and control of any property or records of the business
31 incurred by the Director shall be paid out of the assets of
32 the licensee's business. These expenses shall be paid before
33 all other claims.

34 (f) Upon the filing of a complaint by the Attorney

1 General for the orderly liquidation and dissolution of a
2 licensee's business, as provided in this Act, all pending
3 suits and actions upon unsecured claims against the business
4 shall abate. Nothing contained in this Act, however, prevents
5 these claimants from filing their claims in the liquidation
6 proceeding. If a suit or an action is instituted or
7 maintained by the receiver on any bond or policy of insurance
8 issued pursuant to the requirements of this Act, the bonding
9 or insurance company sued shall not have the right to
10 interpose or maintain any counterclaim based upon
11 subrogation, upon any express or implied agreement of, or
12 right to, indemnity or exoneration, or upon any other express
13 or implied agreement with, or right against, the licensee's
14 business. Nothing contained in this Act prevents the bonding
15 or insurance company from filing this type of claim in the
16 liquidation proceeding.

17 (g) A licensee may not terminate its affairs and close
18 up its business unless it has first deposited with the
19 Director an amount of money equal to all of its debts,
20 liabilities, and lawful demands against it including the
21 costs and expenses of a proceeding under this Section,
22 surrendered to the Director its license, and filed with the
23 Director a statement of termination signed by the licensee
24 containing a pronouncement of intent to close up its business
25 and liquidate its liabilities and containing a sworn list
26 itemizing in full all of its debts, liabilities, and lawful
27 demands against it. Corporate licensees must attach to, and
28 make a part of the statement of termination, a copy of a
29 resolution providing for the termination and closing up of
30 the licensee's affairs, certified by the secretary of the
31 licensee and duly adopted at a shareholders' meeting by the
32 holders of at least two-thirds of the outstanding shares
33 entitled to vote at the meeting. Upon the filing with the
34 Director of a statement of termination, the Director shall

1 cause notice of that action to be published once each week
2 for 3 consecutive weeks in a public newspaper of general
3 circulation published in the city or village where the
4 business is located, and if no newspaper is published in that
5 place, then in a public newspaper of general circulation
6 nearest to that city or village. The publication shall give
7 notice that the debts, liabilities, and lawful demands
8 against the business will be redeemed by the Director upon
9 demand in writing made by the owner thereof, at any time
10 within 3 years after the date of first publication. After the
11 expiration of the 3-year period, the Director shall return to
12 the person or persons designated in the statement of
13 termination to receive repayment, and in the proportion
14 specified in that statement, any balance of money remaining
15 in his or her possession after first deducting all unpaid
16 costs and expenses incurred in connection with a proceeding
17 under this Section. The Director shall receive for his or her
18 services, exclusive of costs and expenses, 2% of any amount
19 up to \$5,000 and 1% of any amount in excess of \$5,000
20 deposited with him or her under this Section by any business.
21 Nothing contained in this Section shall affect or impair the
22 liability of any bonding or insurance company on any bond or
23 insurance policy issued under this Act relating to the
24 business.

25 Section 10. The Debt Management Service Act is amended
26 by changing Sections 2, 4, and 6 and adding Section 20.5 as
27 follows:

28 (205 ILCS 665/2) (from Ch. 17, par. 5302)

29 Sec. 2. Definitions. As used in this Act:

30 "Debt management service" means the planning and
31 management of the financial affairs of a debtor for a fee and
32 the receiving of money from the debtor for the purpose of

1 distributing it to the debtor's creditors in payment or
2 partial payment of the debtor's obligations or soliciting
3 financial contributions from creditors. The business of debt
4 management is conducted in this State if the debt management
5 business, its employees, or its agents are located in this
6 State or if the debt management business solicits or
7 contracts with debtors located in this State.

8 This term shall not include the following when engaged in
9 the regular course of their respective businesses and
10 professions:

11 (a) Attorneys at law.

12 (b) Banks, fiduciaries, credit unions, savings and loan
13 associations, and savings banks as duly authorized and
14 admitted to transact business in the State of Illinois and
15 performing credit and financial adjusting service in the
16 regular course of their principal business.

17 (c) Title insurers and abstract companies, while doing
18 an escrow business.

19 (d) Judicial officers or others acting pursuant to court
20 order.

21 (e) Employers for their employees.

22 (f) Bill payment services, as defined in the
23 Transmitters of Money Act.

24 "Director" means Director of Financial Institutions.

25 "Debtor" means the person or persons for whom the debt
26 management service is performed.

27 "Person" means an individual, firm, partnership,
28 association, limited liability company, corporation, or
29 not-for-profit corporation.

30 "Licensee" means a person licensed under this Act.

31 "Director" means the Director of the Department of
32 Financial Institutions.

33 (Source: P.A. 90-545, eff. 1-1-98.)

1 (205 ILCS 665/4) (from Ch. 17, par. 5304)

2 Sec. 4. Application for license. Application for a
3 license to engage in the debt management service business in
4 this State shall be made to the Director and shall be in
5 writing, under oath, and in the form prescribed by the
6 Director.

7 Each applicant, at the time of making such application,
8 shall pay to the Director the sum of \$30.00 as a fee for
9 investigation of the applicant, and the additional sum of
10 \$100.00 as a license fee.

11 Every applicant shall submit to the Director, at the time
12 of the application for a license, a bond to be approved by
13 the Director in which the applicant shall be the obligor, in
14 the sum of \$25,000 or such additional amount as required by
15 the Director based on the amount of disbursements made by the
16 licensee in the previous year, and in which an insurance
17 company, which is duly authorized by the State of Illinois,
18 to transact the business of fidelity and surety insurance
19 shall be a surety~~;-provided,-however,-the-Direector-may-accept~~
20 ~~in-lieu-of-the-surety-bond,-a-deposit-in--cash,-a--certified~~
21 ~~check--payable--to-the-Director-of-Financial-Institutions,-or~~
22 ~~United-States-Government-Bonds-in--the--amount--of--at--least~~
23 \$25,000.

24 The bond shall run to the Director for the use of the
25 Department or of any person or persons who may have a cause
26 of action against the obligor in said bond arising out of any
27 violation of this Act or rules by a license. Such bond shall
28 be conditioned that the obligor will faithfully conform to
29 and abide by the provisions of this Act and of all rules,
30 regulations and directions lawfully made by the Director and
31 will pay to the Director or to any person or persons any and
32 all money that may become due or owing to the State or to
33 such person or persons, from said obligor under and by virtue
34 of the provisions of this Act.

1 (Source: P.A. 90-545, eff. 1-1-98.)

2 (205 ILCS 665/6) (from Ch. 17, par. 5306)

3 Sec. 6. Renewal of license. Each licensee under the
4 provisions of this Act may ~~en--er--before--December--1~~ make
5 application to the Director for renewal of its license, which
6 application for renewal shall be on the form prescribed by
7 the Director and shall be accompanied by a fee of \$100.00
8 together with a bond or other surety as required, in a
9 minimum amount of \$25,000 or such an amount as required by
10 the Director based on the amount of disbursements made by the
11 licensee in the previous year. The application must be
12 received by the Department no later than December 1 of the
13 year preceding the year for which the application applies.

14 (Source: P.A. 90-545, eff. 1-1-98.)

15 (205 ILCS 665/20.5 new)

16 Sec. 20.5. Receivership.

17 (a) If the Director determines that a licensee is
18 insolvent or is violating this Act, he or she may appoint a
19 receiver. Under the direction of the Director, the receiver
20 shall, for the purpose of receivership, take possession of
21 and title to the books, records, and assets of the licensee.
22 The Director may require the receiver to provide security in
23 an amount the Director deems proper. Upon appointment of the
24 receiver, the Director shall have published, once each week
25 for 4 consecutive weeks in a newspaper having a general
26 circulation in the community, a notice informing all persons
27 who have claims against the licensee to present them to the
28 receiver. Within 10 days after the receiver takes possession,
29 the licensee may apply to the Circuit Court of Sangamon
30 County to enjoin further proceedings. The receiver may
31 operate the business until the Director determines that
32 possession should be restored to the licensee or that the

1 business should be liquidated.

2 (b) If the Director determines that a business in
3 receivership should be liquidated, he or she shall direct the
4 Attorney General to file a complaint in the Circuit Court of
5 the county in which the business is located, in the name of
6 the People of the State of Illinois, for the orderly
7 liquidation and dissolution of the business and for an
8 injunction restraining the licensee and its officers and
9 directors from continuing the operation of the business.
10 Within 30 days after the day the Director determines that the
11 business should be liquidated, the receiver shall file with
12 the Director and with the clerk of the court that has charge
13 of the liquidation a correct list of all creditors, as shown
14 by the licensee's books and records, who have not presented
15 their claims. The list shall state the amount of the claim
16 after allowing all just credits, deductions, and set-offs as
17 shown by the licensee's books. These claims shall be deemed
18 proven unless some interested party files an objection within
19 the time fixed by the Director or court that has charge of
20 the liquidation.

21 (c) The General Assembly finds and declares that debt
22 management services provide important and vital services to
23 Illinois citizens. It is therefore declared to be the policy
24 of this State that customers who receive these services must
25 be protected from interruptions of services. To carry out
26 this policy and to insure that customers of a licensee are
27 protected if it is determined that a business in receivership
28 should be liquidated, the Director shall make a distribution
29 of moneys collected by the receiver in the following order of
30 priority:

31 (1) Allowed claims for the actual necessary
32 expenses of the receivership of the business being
33 liquidated, including:

34 (A) reasonable receiver's fees and receiver's

1 attorney's fees approved by the Director;
2 (B) all expenses of any preliminary or other
3 examinations into the condition of the receivership;
4 (C) all expenses incurred by the Director that
5 are incident to possession and control of any
6 property or records of the licensee's business; and
7 (D) reasonable expenses incurred by the
8 Director as the result of business agreements or
9 contractual arrangements necessary to insure that
10 the services of the licensee are delivered to the
11 community without interruption. These business
12 agreements or contractual arrangements may include,
13 but are not limited to, agreements made by the
14 Director, or by the receiver with the approval of
15 the Director, with banks, bonding companies, and
16 other types of financial institutions.
17 (2) Allowed unsecured claims for wages or salaries,
18 excluding vacation, severance, and sick leave pay earned
19 by employees within 90 days before the appointment of a
20 receiver.
21 (3) Allowed unsecured claims of any tax, and
22 interest and penalty on the tax.
23 (4) Allowed unsecured claims, other than a kind
24 specified in items (1), (2), and (3) of this subsection,
25 filed with the Director within the time the Director
26 fixes for filing claims.
27 (5) Allowed unsecured claims, other than a kind
28 specified in items (1), (2), and (3) of this subsection,
29 filed with the Director after the time fixed for filing
30 claims by the Director.
31 (6) Allowed creditor claims asserted by an owner,
32 member, or stockholder of the business in liquidation.
33 (7) After one year from the final dissolution of
34 the licensee's business, all assets not used to satisfy

1 allowed claims shall be distributed pro rata to the
2 owner, owners, members, or stockholders of the business.

3 The Director shall pay all claims of equal priority
4 according to the schedule established in this subsection and
5 shall not pay claims of lower priority until all higher
6 priority claims are satisfied. If insufficient assets are
7 available to meet all claims of equal priority, those assets
8 shall be distributed pro rata among those claims. All
9 unclaimed assets of a licensee and the licensee's business
10 shall be deposited with the Director to be paid out when
11 proper claims are presented to the Director.

12 (d) Upon the order of the circuit court of the county in
13 which the business being liquidated is located, the receiver
14 may sell or compound any bad or doubtful debt, and on like
15 order may sell the personal property of the business on such
16 terms as the court approves. The receiver shall succeed to
17 whatever rights or remedies the unsecured creditors of the
18 business may have against the owner or owners, operators,
19 stockholders, directors, members, managers, or officers,
20 arising out of their claims against the licensee's business,
21 but nothing contained in this Section shall prevent those
22 creditors from filing their claims in the liquidation
23 proceeding. The receiver may enforce those rights or remedies
24 in any court of competent jurisdiction.

25 (e) At the close of a receivership, the receiver shall
26 turn over to the Director all books of account and ledgers of
27 the business for preservation. The Director shall hold all
28 records of receiverships received at any time for a period of
29 2 years after the close of the receivership. The records may
30 be destroyed at the termination of the 2-year period. All
31 expenses of the receivership including, but not limited to,
32 reasonable receiver's and attorney's fees approved by the
33 Director, all expenses of any preliminary or other
34 examinations into the condition of the licensee's business or

1 the receivership, and all expenses incident to the possession
2 and control of any property or records of the business
3 incurred by the Director shall be paid out of the assets of
4 the licensee's business. These expenses shall be paid before
5 all other claims.

6 (f) Upon the filing of a complaint by the Attorney
7 General for the orderly liquidation and dissolution of a
8 licensee's business, as provided in this Act, all pending
9 suits and actions upon unsecured claims against the business
10 shall abate. Nothing contained in this Act, however, prevents
11 these claimants from filing their claims in the liquidation
12 proceeding. If a suit or an action is instituted or
13 maintained by the receiver on any bond or policy of insurance
14 issued pursuant to the requirements of this Act, the bonding
15 or insurance company sued shall not have the right to
16 interpose or maintain any counterclaim based upon
17 subrogation, upon any express or implied agreement of, or
18 right to, indemnity or exoneration, or upon any other express
19 or implied agreement with, or right against, the licensee's
20 business. Nothing contained in this Act prevents the bonding
21 or insurance company from filing this type of claim in the
22 liquidation proceeding.

23 (g) A licensee may not terminate its affairs and close
24 up its business unless it has first deposited with the
25 Director an amount of money equal to all of its debts,
26 liabilities, and lawful demands against it including the
27 costs and expenses of a proceeding under this Section,
28 surrendered to the Director its license, and filed with the
29 Director a statement of termination signed by the licensee
30 containing a pronouncement of intent to close up its business
31 and liquidate its liabilities and containing a sworn list
32 itemizing in full all of its debts, liabilities, and lawful
33 demands against it. Corporate licensees must attach to, and
34 make a part of the statement of termination, a copy of a

1 resolution providing for the termination and closing up of
2 the licensee's affairs, certified by the secretary of the
3 licensee and duly adopted at a shareholders' meeting by the
4 holders of at least two-thirds of the outstanding shares
5 entitled to vote at the meeting. Upon the filing with the
6 Director of a statement of termination, the Director shall
7 cause notice of that action to be published once each week
8 for 3 consecutive weeks in a public newspaper of general
9 circulation published in the city or village where the
10 business is located, and if no newspaper is published in that
11 place, then in a public newspaper of general circulation
12 nearest to that city or village. The publication shall give
13 notice that the debts, liabilities, and lawful demands
14 against the business will be redeemed by the Director upon
15 demand in writing made by the owner thereof, at any time
16 within 3 years after the date of first publication. After the
17 expiration of the 3-year period, the Director shall return to
18 the person or persons designated in the statement of
19 termination to receive repayment, and in the proportion
20 specified in that statement, any balance of money remaining
21 in his or her possession after first deducting all unpaid
22 costs and expenses incurred in connection with a proceeding
23 under this Section. The Director shall receive for his or her
24 services, exclusive of costs and expenses, 2% of any amount
25 up to \$5,000 and 1% of any amount in excess of \$5,000
26 deposited with him or her under this Section by any business.
27 Nothing contained in this Section shall affect or impair the
28 liability of any bonding or insurance company on any bond or
29 insurance policy issued under this Act relating to the
30 business.