

# **UNIFORM DEBT-MANAGEMENT SERVICES ACT \***

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NATIONAL CONFERENCE OF COMMISSIONERS  
ON UNIFORM STATE LAWS

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MEETING IN ITS ONE-HUNDRED-AND-FOURTEENTH YEAR  
PITTSBURGH, PENNSYLVANIA

JULY 22 - 29, 2005

## **UNIFORM DEBT-MANAGEMENT SERVICES ACT**

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## **DRAFTING COMMITTEE ON UNIFORM DEBT-MANAGEMENT SERVICES ACT**

The Committee appointed by and representing the National Conference of Commissioners on Uniform State Laws in preparing this Uniform Debt-Management Services Act consists of the following individuals:

WILLIAM C. HILLMAN, U.S. Bankruptcy Court, Room 1101, 10 Causeway St., Boston, MA 02222, *Chair*

BORIS AUERBACH, 332 Ardon Ln., Wyoming, OH 45215, *Enactment Plan Coordinator*

ROBERT G. BAILEY, University of Missouri-Columbia, 217 Hulston Hall, Columbia, MO 65211

MARION W. BENFIELD, JR., 10 Overlook Circle, New Braunfels, TX 78132

MICHAEL A. FERRY, 200 N. Broadway, Suite 950, St. Louis, MO 63102

BENNY L. KASS, 1050 17th St. NW, Suite 1100, Washington, DC 20036

MORRIS W. MACEY, 600 Marquis II, 285 Peachtree Center Ave. NE, Atlanta, GA 30303

MERRILL MOORES, 7932 Wickfield Ct., Indianapolis, IN 46256

NEAL OSSEN, 21 Oak St., Suite 201, Hartford, CT 06106

HIROSHI SAKAI, 3773 Diamond Head Circle, Honolulu, HI 96815

STEPHEN C. TAYLOR, D.C. Department of Insurance, Securities & Banking, 810 1st St. NE, Suite 701, Washington, DC 20002

MICHAEL M. GREENFIELD, Washington University School of Law, Campus Box 1120, One Brookings Dr., St. Louis, MO 63130, *Reporter*

### **EX OFFICIO**

FRED H. MILLER, University of Oklahoma, College of Law, 300 Timberdell Rd., Room 3056, Norman, OK 73019, *President*

JOANNE B. HUELSMAN, 235 W. Broadway, Suite 210, Waukesha, WI 53186, *Division Chair*

### **AMERICAN BAR ASSOCIATION ADVISOR**

CARLA WITZEL, 233 E. Redwood St., Baltimore, MD 21202, *American Bar Association Advisor*

### **EXECUTIVE DIRECTOR**

WILLIAM H. HENNING, University of Alabama School of Law, Box 870382, Tuscaloosa, AL 35487-0382, *Executive Director*

Copies of this Act may be obtained from:

NATIONAL CONFERENCE OF COMMISSIONERS ON UNIFORM STATE LAWS  
211 E. Ontario Street, Suite 1300  
Chicago, Illinois 60611  
312/915-0195  
[www.nccusl.org](http://www.nccusl.org)

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## UNIFORM DEBT-MANAGEMENT SERVICES ACT

**Legislative Note:** *As drafted, this Act is neutral with respect to the question whether for-profit entities may provide credit counseling services, debt-settlement services, or both. To implement its decision on this question, the state should follow the directions in the Legislative Notes to Sections 4, 5, and 9.*

**SECTION 1. SHORT TITLE.** This [act] may be cited as the Uniform Debt-Management Services Act.

**SECTION 2. DEFINITIONS.** In this [act]:

(1) “Administrator” means the [Insert the name of the agency or entity that will be charged with enforcement of this Act].

(2) “Affiliate”:

(A) with respect to an individual, means:

(i) the spouse of the individual;

(ii) a sibling of the individual or the spouse of a sibling;

(iii) an individual or the spouse of an individual who is a lineal ancestor or lineal descendant of the individual or the individual’s spouse;

(iv) an aunt, uncle, great-aunt, great-uncle, first cousin, niece, nephew, grand-niece, or grand-nephew, whether related by the whole or the half blood or adoption, or the spouse of any of them; or

(v) any other individual occupying the residence of the individual;

and

(B) with respect to an entity, means:

(i) a person that directly or indirectly controls, is controlled by, or is under common control with the entity;

(ii) an officer of, or an individual performing similar functions with respect to, the entity;

(iii) a director of, or an individual performing similar functions with respect to, the entity;

(iv) subject to Section 32(f), a person that receives or received more than \$25,000 from the entity in either the current year or the preceding year or a person that owns more than 10 percent of, or an individual who is employed by or is a director of, a person that receives or received more than \$25,000 from the entity in either the current year or the preceding year;

(v) an officer or director of, or an individual performing similar functions with respect to, a person described in subsubparagraph (i);

(vi) the spouse of, or an individual occupying the residence of, an individual described in subsubparagraph (i) through (v); or

(vii) an individual who has the relationship specified in subparagraph (A)(iv) to an individual or the spouse of an individual described in subsubparagraph (i) through (v).

(3) “Agreement” means an agreement between a provider and an individual for the performance of debt-management services.

(4) “Bank” means a financial institution, including a commercial bank, savings bank, savings and loan association, credit union, and trust company, engaged in the business of

banking, chartered under federal or state law, and regulated by a federal or state banking regulatory authority.

(5) “Business address” means the physical location of a business, including the name and number of a street.

(6) “Certified counselor” means an individual certified by:

(A) an independent, nationally recognized certifying organization, approved by the administrator, that authenticates the competence of individuals providing education and assistance to other individuals in connection with debt-management services; or

(B) a training program or certifying organization approved by the administrator.

(7) “Concessions” means assent to repayment of a debt on terms more favorable to an individual than the terms of the contract between the individual and a creditor.

(8) “Day” means calendar day.

(9) “Debt-management services” means services as an intermediary between an individual and one or more creditors of the individual for the purpose of obtaining concessions, but does not include:

(A) legal services provided in an attorney-client relationship by an attorney licensed or otherwise authorized to practice law in this State; or

(B) accounting services provided in an accountant-client relationship by an accountant licensed, or similarly regulated, to provide accounting services in this State.

(10) “Entity” means a person other than an individual.

(11) “Good faith” means honesty in fact and the observance of reasonable



standards of fair dealing.

(12) “Person” means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a public corporation, government, or governmental subdivision, agency, or instrumentality.

(13) “Plan” means a program or strategy in which a provider furnishes debt-management services to an individual and which includes a schedule of payments to be made by or on behalf of the individual and used to pay debts owed by the individual.

(14) “Principal amount of the debt” means the amount of a debt at the time of an agreement.

(15) “Provider” means a person that provides, offers to provide, or agrees to provide debt-management services directly or through others.

(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.

(17) “Settlement fee” means a charge imposed on or paid by an individual in connection with a creditor’s assent to accept in full satisfaction of a debt an amount less than the principal amount of the debt.

(18) “Sign” means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach to or logically associate with the record an electronic sound, symbol, or process.

(19) “State” means a state of the United States, the District of Columbia, Puerto

Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(20) “Trust account” means an account held by a provider or its designee that is:

(A) established in an insured bank;

(B) separate from other accounts of the provider or its designee;

(C) designated as a trust account or other account designated to indicate

that the money in the account is not the money of the provider or its designee; and

(D) used to hold money of one or more individuals for disbursement to

creditors of the individuals.

***Legislative Note:*** *In connection with paragraph (1), the state must decide whether to create a new administrative agency or charge an existing entity with enforcement of this Act. If the latter, the state must decide which existing entity to select. Logical choices include the attorney general or other entity charged with consumer protection generally (under a little-FTC act or similar statute) or the entity charged with regulation of consumer credit or financial institutions. It may be necessary or desirable to amend that entity’s organic statute to refer specifically to this Act.*

### **SECTION 3. EXEMPT AGREEMENTS AND PERSONS.**

(a) This [act] does not apply to an agreement with an individual who a provider

has no reason to know resides in this state at the time of the agreement.

(b) This [act] does not apply to a provider to the extent that the provider:

(1) provides or agrees to provide debt-management, educational, or

counseling services to an individual who the provider has no reason to know resides in this state

at the time the provider agrees to provide the services; or

(2) receives no compensation for debt-management services from

creditors of or from or on behalf of the individuals to whom it provides the services.

(c) This [act] does not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person's business or profession:

(1) a judicial officer, a person acting under a court order, or an assignee for the benefit of creditors;

(2) a bank;

(3) an affiliate, as defined in Section 2(2)(B)(i), of a bank if the affiliate is subject to regulation by a federal or state banking regulatory authority; or

(4) a title insurer, escrow company, or other person that provides bill-paying services if the provision of debt-management services is incidental to the bill-paying services.

#### **SECTION 4. REGISTRATION [AND NOT-FOR-PROFIT STATUS] REQUIRED.**

(a) Except as otherwise provided in subsection (b), a provider may not provide debt-management services to an individual who it reasonably should know resides in this state at the time it agrees to provide the services, unless the provider is registered under this [act].

(b) If a provider is registered under this [act], the registration requirement of subsection (a) does not apply to the employees or agents of the provider.

(c) The administrator shall maintain and publicize a list of the names of all registered providers.

[(d) A provider [whose plans contemplate that creditors will reduce finance charges or fees for late payment, default, or delinquency] [whose plans contemplate that creditors will settle debts for less than the full principal amount of debt owed] may be registered only if it is:

(1) organized and properly operating as a not-for-profit entity under the law of the State in which it was formed; and

(2) exempt from taxation under the Internal Revenue Code, 26 U.S.C.

Sec. 1 et seq. [as amended]].

**Legislative Note:** *If the state wishes to permit for-profit entities to provide all forms of debt-management services, delete the bracketed material in the section caption and omit subsection (d).*

*If the state wishes to permit for-profit debt-settlement entities but prohibit for-profit credit-counseling entities, use the language in the first set of brackets, so that subsection (d) states:*

*(d) A provider whose plans contemplate that creditors will reduce finance charges or fees for late payment, default, or delinquency may be registered only if it is:*

*If the state wishes to permit for-profit credit-counseling entities but prohibit for-profit debt-settlement entities, use the language in the second set of brackets, so that subsection (d) states:*

*(d) A provider whose plans contemplate that creditors will settle debts for less than the full principal amount of debt owed may be registered only if it is:*

## **SECTION 5. APPLICATION FOR REGISTRATION: FORM, FEE, AND ACCOMPANYING DOCUMENTS.**

(a) An application for registration as a provider must be in a form prescribed by the administrator.

(b) Subject to Section 32(f), an application for registration as a provider must be accompanied by:

(1) the fee established by the administrator;

(2) the bond required by Section 13;

(3) identification of all trust accounts required by Section 22 and an

irrevocable consent authorizing the administrator to review and examine the trust accounts;

(4) evidence of insurance in the amount of \$250,000 against the risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant, issued by an insurance company authorized to do business in this state and rated at least A by a nationally recognized rating organization, with no deductible, payable to the applicant, the individuals who have agreements with the applicant, and this state, as their interests may appear, and not subject to cancellation by the applicant without the approval of the administrator;

(5) proof of compliance with [Insert the citation to the statute specifying the prerequisites for an entity to do business in this state]; and

(6) [if the applicant is organized as a not-for-profit entity or is exempt from taxation,] evidence of not-for-profit status and evidence of tax-exempt status applicable to the applicant under the Internal Revenue Code, 26 U.S.C. Section 1 et seq.[, as amended], as applicable.

**Legislative Note:** In subsection (b)(5) if the state has no statute specifying the prerequisites for an entity to do business in this state, substitute the following for subsection (b)(5):

(5) a record consenting to the jurisdiction of this state containing:

(A) the name, business address, and other contact information of its registered agent in this state for purposes of service of process; or

(B) the appointment of the [administrator or other state official] as agent of the provider for purposes of service of process.

*In states in which the constitution does not permit the phrase, “as amended,” when federal statutes are incorporated into state law, the phrase should be deleted in subsection (b)(6).*

*If the state wishes to permit for-profit entities to provide all forms of debt-management services, the brackets at the beginning of paragraph (6), should be deleted, so that paragraphs (5)-(6) state:*

(5) *proof of compliance with [Insert the citation to the statute specifying the prerequisites for an entity to do business in this state]; and*

(6) *if the applicant is organized as a not-for-profit entity or is exempt from taxation, evidence of not-for-profit status and evidence of tax-exempt status applicable to the applicant under Internal Revenue Code, 26 U.S.C. Section 1 et seq. [, as amended], as applicable.*

*If the state wishes to prohibit all provision of debt-management services by for-profit entities, the first bracketed language in paragraph (6) should be deleted so that paragraphs (5)-(6) state:*

(5) *proof of compliance with [Insert the citation to the statute specifying the prerequisites for an entity to do business in this state]; and*

(6) *evidence of not-for-profit status and evidence of tax-exempt status applicable to the applicant under Internal Revenue Code, 26 U.S.C. Section 1 et seq. [, as amended].*

*If the state wishes to permit for-profit debt-settlement entities but not for-profit credit-counseling entities:*

(1) *paragraph (6) should state: “if the applicant’s plans contemplate that creditors will reduce finance charges or fees for late payment, default, or delinquency, evidence of not-for-profit status and evidence of tax-exempt status applicable to the applicant under Internal Revenue Code, 26 U.S.C. Section 1 et seq. [, as amended]; and*

(2) *add a new paragraph (7): if the applicant’s plans contemplate that creditors will settle debts for less than the full principal amount of debt owned and the applicant is organized as a not-for-profit entity or is exempt from taxation, evidence of not-for-profit status and evidence of tax-exempt status applicable to the applicant under Internal Revenue Code, 26 U.S.C. Section 1 et seq. [, as amended], as applicable.*

*If the state wishes to permit for-profit credit-counseling entities but not for-profit debt-settlement entities:*

(1) *paragraph (6) should state: “if the applicant’s plans contemplate that creditors will settle debts for less than the full principal amount of debt owed, evidence of not-for-profit status and evidence of tax-exempt status applicable to the applicant under Internal Revenue Code, 26 U.S.C. Section 1 et seq. [, as amended]”; and*

(2) *add a new paragraph: (7) if the applicant’s plans contemplate that creditors will reduce finance charges or fees for late payment, default, or delinquency and the applicant is organized as a not-for-profit entity or is exempt from taxation, evidence of not-for-profit status and evidence of tax-exempt status applicable to the applicant under Internal Revenue Code, 26 U.S.C. Section 1 et seq. [, as amended], as applicable.*

## **SECTION 6. APPLICATION FOR REGISTRATION: REQUIRED**

**INFORMATION.** An application for registration must be signed under oath and include:

- (1) the applicant's name, principal business address and telephone number, all other business addresses in this state, electronic mail addresses, and Internet website addresses;
- (2) all names under which the applicant conducts business;
- (3) the address of each location in this state at which the applicant will provide debt-management services or a statement that the applicant will have no such location;
- (4) the name and home address of each officer and director of the applicant and each person that owns more than 10 percent of the applicant;
- (5) identification of every jurisdiction in which, during the five years immediately preceding the application:
  - (A) the applicant or any of its officers or directors has been licensed or registered to provide debt-management services; or
  - (B) individuals have resided when they received debt-management services from the applicant;
- (6) a statement describing, to the extent it is known or should be known, any material civil or criminal judgment or litigation and any material administrative or enforcement action by a governmental agency in any jurisdiction against the applicant, any of its officers, directors, owners, or agents, or any person who is authorized to have access to the trust account required by Section 22;
- (7) the applicant's financial statements, audited by an accountant licensed to conduct audits, for each of the two years immediately preceding the application or, if it has not been in operation for the two years preceding the application, for the period of its existence;
- (8) evidence of accreditation by an independent accrediting organization

approved by the administrator;

(9) evidence that, within 12 months after initial employment, each of the applicant's counselors becomes certified as a certified counselor;

(10) a description of the three most commonly used educational programs that the applicant provides or intends to provide to individuals who reside in this state and a copy of any materials used or to be used in those programs;

(11) a description of the applicant's financial analysis and initial budget plan, including any form or electronic model, used to evaluate the financial condition of individuals;

(12) a copy of each current form of agreement that the applicant will use with individuals who reside in this state;

(13) the current schedule or schedules of fees and charges that the applicant will use with individuals who reside in this state;

(14) at the applicant's expense, the results of a criminal-records check, including fingerprints, conducted within the immediately preceding 12 months, covering every employee or agent of the applicant who is authorized to have access to the trust account required by Section 22 and every officer of the applicant;

(15) the names and addresses of employers of each director during the 10 years immediately preceding the application;

(16) a description of any ownership interest equal to or greater than 10 percent by a director, owner, or employee of the applicant in:

(A) any affiliate of the applicant; or

(B) any entity that provides products or services to the applicant or any



individual relating to the applicant's debt-management services;

(17) a statement of the compensation of the applicant's five most highly compensated employees for each of the three years immediately preceding the application; and

(18) the identity of each director who is an affiliate, as defined in Section 2(A) or (B)(i), (ii), (iv), (v), (vi), or (vii), of the applicant; and

(19) any other information that the administrator reasonably requires to perform the administrator's duties under Section 9.

**Legislative Note:** *In states in which the constitution does not permit the phrase, "as amended," when federal statutes are incorporated into state law, the phrase in paragraph 19 should be deleted.*

#### **SECTION 7. APPLICATION FOR REGISTRATION: OBLIGATION TO**

**UPDATE INFORMATION.** An applicant or registered provider shall notify the administrator within 10 days after a change in the information specified in Section 5(b)(4) or (6) or 6(1), (3), (6), (12), or (13).

**Legislative Note:** *If the state wishes to permit for-profit entities to provide debt-management services, see the Appendix for modifications to this section.*

#### **SECTION 8. APPLICATION FOR REGISTRATION: PUBLIC INFORMATION.**

Except for the information required by Sections 6 (7), (14), and (17) and the addresses required by Section 6(4), the administrator shall make the information in an application for registration as a provider available to the public.

#### **SECTION 9. CERTIFICATE OF REGISTRATION: ISSUANCE OR DENIAL.**

(a) Except as otherwise provided in subsections (b) and (c), the administrator

shall issue a certificate of registration as a provider to a person that complies with Sections 5 and 6.

(b) The administrator may deny registration if:

(1) the application contains information that is materially erroneous or incomplete;

(2) an officer, director, or owner of the applicant has ever been convicted of a crime, or suffered a civil judgment, involving dishonesty or the violation of state or federal securities laws;

(3) the applicant or any of its officers, directors, or owners has ever defaulted in the payment of money collected for others; or

(4) the administrator finds that the financial responsibility, experience, character, or general fitness of the applicant or its owners, directors, employees, or agents does not warrant the belief that the business will be operated in compliance with this [act].

(c) The administrator shall deny registration if:

(1) the application is not accompanied by the fee established by the administrator; or

(2) [with respect to an applicant that is organized as a not-for-profit entity or has obtained tax-exempt status under the Internal Revenue Code, 26 U.S.C. Section 1 et seq. [, as amended],] the applicant's board of directors is not independent of the applicant's employees and agents.

(d) Subject to Section 32(f), a board of directors is not independent for purposes of subsection (c) if more than one-fourth of its members:

- (1) are affiliates of the applicant, as defined in Section 2(2)(A) or (B)(i), (ii), (iv), (v), (vi), or (vii); or
- (2) after the date 10 years before first becoming a director of the applicant, were employed by or directors of a person that receives or received from the applicant more than \$25,000 in either the current year or the preceding year.

***Legislative Note:*** *If the state wishes to prohibit for-profit entities from providing all forms of debt-management services, in subsection (c)(2) all the bracketed language should be deleted. Otherwise, the first set of brackets should be deleted. If the state constitution does not permit the phrase, “as amended,” when federal statutes are incorporated into state law, the phrase should be deleted. If the constitution permits the phrase, the brackets surrounding the phrase should be deleted.*

#### **SECTION 10. CERTIFICATE OF REGISTRATION: TIMING.**

(a) The administrator shall approve or deny an initial registration as a provider within 120 days after an application is filed. In connection with a request pursuant to Section 6(19) for additional information, the administrator may extend the 120-day period for not more than 60 days. Within seven days after denying an application, the administrator, in a record, shall inform the applicant of the reasons for the denial.

(b) If the administrator denies an application for registration as a provider or does not act on an application within the time prescribed in subsection (a), the applicant may appeal and request a hearing pursuant to [Insert the citation to the appropriate section of the Administrative Procedure Act or other statute governing administrative procedure].

(c) Subject to Section 34, a registration as a provider is valid for one year.

#### **SECTION 11. RENEWAL OF REGISTRATION.**

(a) A provider shall renew its registration every year.

(b) An application for renewal of registration as a provider must be in a form prescribed by the administrator and:

(1) be filed no fewer than 30 and no more than 60 days before the registration expires;

(2) be accompanied by the fee established by the administrator and the bond required by Section 13;

(3) be signed under oath;

(4) contain the matter required for initial registration as a provider by Section 6(8) and (9) and a financial statement, audited by an accountant licensed to conduct audits, for the applicant's fiscal year immediately preceding the application;

(5) disclose any changes in the information contained in the applicant's application for registration or its immediately previous application for renewal, as applicable;

(6) supply evidence of insurance against risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant, in an amount equal to the larger of \$250,000 or the highest daily balance in the trust account required by Section 22 during the six-month period immediately preceding the application, issued by an insurance company rated at least A by a nationally recognized rating organization, with no deductible, payable to the applicant, the individuals who have agreements with the applicant, and this state, as their interests may appear, and not subject to cancellation by the applicant without the approval of the administrator;

(7) disclose the total amount of money received by it or its designees pursuant to plans during the preceding 12 months from or on behalf of individuals who reside in

this state and the total amount of money distributed to creditors of those individuals during that period;

(8) disclose, to the best of the applicant's knowledge, the total amount of money accumulated pursuant to plans during the preceding 12 months by or on behalf of individuals who reside in this state and with whom it has agreements; and

(9) provide any other information that the administrator reasonably requires to perform the administrator's duties under this section.

(c) Except for the information required by Section 6(7), (14), and (17) and the addresses required by Section 6(4), the administrator shall make the information in an application for renewal of registration as a provider available to the public.

(d) If a registered provider files a timely and complete application for renewal of registration, the registration remains effective until the administrator, in a record, notifies the applicant of a denial and states the reasons for the denial.

(e) If the administrator denies an application for renewal of registration as a provider, the applicant, within 30 days after receiving notice of the denial, may appeal and request a hearing pursuant to [Insert the citation to the appropriate section of the Administrative Procedure Act or other statute governing administrative procedure]. Subject to Section 34, while the appeal is pending the applicant shall continue to provide debt-management services to individuals with whom it has agreements. Thereafter, subject to the administrator's order and Section 34, the applicant shall continue to provide debt-management services to individuals with whom it has agreements until, with the approval of the administrator, it transfers them to another registered provider or returns their money that is under its control.

**SECTION 12. REGISTRATION IN ANOTHER STATE.** If a provider holds a license or certificate of registration in another state authorizing it to provide debt-management services, the provider may submit a copy of that license or certificate and the application for it in lieu of an application in the form prescribed by Sections 5(a), 6, or 11(b). The administrator shall accept the application and the license or certificate from the other state as an application for registration as a provider or for renewal of registration as a provider, as appropriate, in this state if:

(1) the application in the other state contains information substantially similar to or more comprehensive than that required in an application submitted in this state;

(2) provides the information required by Section 6(1), (3), (10), (12), and (13);  
and

(3) the applicant, under oath, certifies that the information contained in the application is current, or, to the extent it is not current, supplements the application to make the information current.

**SECTION 13. BOND REQUIRED.**

(a) Except as otherwise provided in Section 14, a provider that is required to be registered under this [act] shall file a surety bond with the administrator, which must:

(1) be in effect during the period of registration and for two years after a provider ceases providing debt-management services to individuals in this state; and

(2) run to this state for the benefit of this state and of individuals who reside in this state when they agree to receive debt-management services from the provider, as their interests may appear.

(b) Subject to Section 32(f), a surety bond filed pursuant to subsection (a) must:

(1) be in the amount of \$50,000 or other larger or smaller amount that the administrator determines is warranted by the financial condition and business experience of the provider, the history of the provider in performing debt-management services, the risk to individuals, and any other factor the administrator considers appropriate;

(2) be issued by a bonding, surety, or insurance company that is authorized to do business in this state and rated at least A by a nationally recognized rating organization; and

(3) have payment conditioned upon noncompliance of the provider or its agents with this [act].

(c) If the principal amount of a surety bond is reduced by payment of a claim or a judgment, the provider shall immediately notify the administrator and, within 30 days after notice by the administrator, file a new or additional surety bond in an amount set by the administrator. The amount of the new or additional bond must be at least the amount of the bond immediately before payment of the claim or judgment. If for any reason a surety terminates a bond, the provider shall immediately file a new surety bond in the amount of \$50,000 or other amount determined pursuant to subsection (b).

(d) The administrator or an individual may obtain satisfaction out of the surety bond procured pursuant to this section if:

(1) the administrator assesses expenses under Section 32(b)(1), issues a final order under Section 33(a)(2), or recovers a final judgment under Section 33(a)(4) or (5) or (d); or

(2) an individual recovers a final judgment pursuant to Section 35(a), (b), or (c)(1), (2), or (4).

(e) If claims against a surety bond exceed or are reasonably expected to exceed the amount of the bond, the administrator, on the initiative of the administrator or on petition of the surety, shall, unless the proceeds are adequate to pay all costs, judgments, and claims, distribute the proceeds in the following order:

(1) to satisfaction of an order or judgment under Sections 33(a)(2), (4), or (5) or (d);

(2) to final judgments recovered by individuals pursuant to Sections 35(a), (b), or (c) (1), (2) or (4), pro rata;

(3) to claims of individuals established to the satisfaction of the administrator, pro rata; and

(4) if a final order or judgment is issued under Section 33(a), to the costs recoverable under Section 32(b)(1).

#### **SECTION 14. BOND REQUIRED: SUBSTITUTE.**

(a) In lieu of the surety bond required by Section 13, a provider may deliver to the administrator any of the following, in the amount required by Section 13(b), and, except as otherwise provided in paragraph (2)(A), payable or available to this state and to individuals who reside in this state when they agree to receive debt-management services from the provider, as their interests may appear, if the provider or its agents does not comply with this [act]:

(1) a certificate of insurance issued by an insurance company that is authorized to do business in this state and rated at least A by a nationally recognized rating



organization, with no deductible; or

(2) with the approval of the administrator:

(A) an irrevocable letter of credit, issued or confirmed by a bank approved by the administrator, payable upon presentation of a certificate by the administrator stating that the provider or its agents has not complied with this [act]; or

(B) bonds or other obligations of the United States or guaranteed by the United States or bonds or other obligations of this state or a political subdivision of this state, to be deposited and maintained with a bank approved by the administrator for this purpose.

(b) If a provider furnishes a substitute pursuant to subsection (a), the provisions of Section 13(a), (c), (d), and (e) apply to the substitute.

**SECTION 15. REQUIREMENT OF GOOD FAITH.** A provider shall act in good faith in all matters under this [act].

**SECTION 16. CUSTOMER SERVICE.** A provider that is required to be registered under this [act] shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a certified counselor or customer service representative, as appropriate, during ordinary business hours.

**SECTION 17. PREREQUISITES FOR PROVIDING DEBT-MANAGEMENT SERVICES.**

(a) Before providing debt-management services to an individual, a provider shall give the individual an itemized list of goods and services and the charges for each. The list must be clear and conspicuous, in a record the individual may keep whether or not the individual assents to an agreement, and describe the goods and services the provider offers:

- (1) free of additional charge, if the individual enters into an agreement;
- (2) for a charge, if the individual does not enter into an agreement; and
- (3) for a charge, if the individual enters into an agreement, using the

following terminology, as applicable, and format:

Set-up fee                      [*dollar amount of fee*]

Monthly service fee        [*dollar amount of fee or method of determining amount*]

Settlement fee              [*dollar amount of fee or method of determining amount*]

Goods and services in addition to those provided in connection with a plan:

[*item*]                      [*dollar amount or method of determining amount*]

[*item*]                      [*dollar amount or method of determining amount*].

(b) A provider may not furnish debt-management services to an individual unless the provider, through the services of a certified counselor:

- (1) provides the individual with reasonable education about the management of personal finance;
- (2) has prepared a financial analysis; and
- (3) if the individual is to make regular, periodic payments:
  - (A) has prepared a plan for the individual;
  - (B) has made a determination, based on its analysis of the information provided by the individual and otherwise available to it, that the plan is suitable for the individual and the individual will be able to meet the payment obligations under the plan; and
  - (C) believes that each creditor of the individual listed as a participating creditor in the plan will accept payment of the individual's debts as provided in the

plan.

(c) Before an individual assents to an agreement to engage in a plan, a provider shall:

(1) provide the individual with a copy of the analysis and plan required by subsection (b) in a record that identifies the provider and that the individual may keep whether or not the individual assents to the agreement;

(2) inform the individual of the availability, at the individual's option, of assistance by toll-free telephone or in person to discuss the financial analysis and plan required by subsection (b); and

(3) with respect to all creditors identified by the individual or otherwise known by the provider to be creditors of the individual, provide the individual with:

(A) a list of creditors that the provider expects to participate in the plan and grant concessions;

(B) a list of creditors that the provider expects to participate in the plan but not grant concessions;

(C) a list of creditors that the provider expects not to participate in the plan; and

(D) all other creditors.

(d) Before an individual assents to an agreement to engage in a plan, the provider shall inform the individual, in a record that contains nothing else, that is given separately, and that the individual may keep whether or not the individual assents to the agreement:

(1) of the name and business address of the provider;

(2) that plans are not suitable for all individuals and the individual may ask the provider about other ways, including bankruptcy, to deal with indebtedness;

(3) that establishment of a plan may adversely affect the individual's credit rating or credit scores;

(4) that nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including litigation;

(5) that, unless it is not true, the provider may receive compensation from the creditors of the individual; and

(6) that, unless the individual is insolvent, if a creditor settles for less than the full amount of the debt, the plan may result in the creation of taxable income to the individual, even though the individual does not receive any money.

(e) If a plan contemplates that creditors will reduce finance charges or fees for late payment, default, or delinquency, a provider may comply with subsection (d) by providing the following disclosure:

**IMPORTANT INFORMATION FOR YOU TO CONSIDER**

(1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.

(2) Using a debt-management plan may hurt your credit rating or credit scores.

(3) [unless it is not true] We may receive compensation for our services from your creditors.

[name and business address of provider]

(f) If a plan contemplates that creditors will settle debts for less than the full principal amount of debt owed, a provider may comply with subsection (d) by providing the following disclosure:

**IMPORTANT INFORMATION FOR YOU TO CONSIDER**

(1) Our program is not right for all individuals, and you may ask us to provide information about bankruptcy and other ways to deal with your debts.

(2) Nonpayment of your debts under our program may

- hurt your credit rating or credit scores;
- lead your creditors to increase finance and other charges; and
- lead your creditors to undertake activity, including lawsuits, to collect the debts.

(3) Reduction of debt under our program may result in taxable income to you, even though you will not actually receive any money.

[name and business address of provider]

**SECTION 18. COMMUNICATION BY ELECTRONIC OR OTHER MEANS.**

(a) In this section:

(1) “Federal act” means the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended]; and

(2) “Consumer” means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.

(b) A provider may comply with Section 17, 19, or 27 by means of the Internet or other electronic means if the provider obtains the individual's consent in the manner provided by Section 101(c)(1) of the federal act.

(c) The disclosures and materials required by Sections 17, 19, and 27 shall be presented in a form that is capable of being accurately reproduced for later reference;

(d) With respect to disclosure by means of an Internet website, the disclosure of the information required by Section 17(d) shall appear on one or more screens that:

(1) contain no other information; and

(2) the individual must see before proceeding to assent to formation of a plan.

(e) A provider:

(1) at the time of providing the materials and agreement required by Sections 17(c) and (d), 19, and 27, shall inform the individual that upon electronic, telephonic, or written request, it will send the individual a written copy of the materials and shall comply with a request as provided in subsection (f).

(f) If a provider is requested, before the expiration of 90 days after a plan is completed or terminated, to send a written copy of the materials, the provider shall send them at no charge within three business days after the request, except that the provider need not comply with a request more than once per calendar month or if it reasonably believes the request is made for purposes of harassment. If the request is made after the expiration of 90 days after a plan is completed or terminated, the provider shall send within a reasonable time a written copy of the materials requested.

(g) A provider that maintains an Internet website shall disclose on the home page of its website or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals its contents:

- (1) its name and all names under which it does business;
- (2) its principal business address, telephone number, and electronic mail address, if any; and
- (3) the names of its principal officers.

(h) Subject to subsection (i), if a consumer who has consented in the manner provided by Section 101 of the federal act withdraws consent as provided in the federal act, a provider may terminate its agreement with the consumer.

(i) If a provider wishes to terminate an agreement with a consumer pursuant to subsection (h), it shall notify the consumer that it will terminate the agreement unless the consumer, within 30 days after receiving the notification, consents in the manner provided in Section 101(c) of the federal act. If the consumer consents, the provider may terminate the agreement only as permitted by Section 19(a)(6)(G).

***Legislative Note:*** *In states in which the constitution does not permit the phrase “as amended,” the phrase should be deleted in subsection (a).*

## **SECTION 19. FORM AND CONTENTS OF AGREEMENT.**

(a) An agreement must:

- (1) be in a record;
- (2) be dated and signed by the provider and the individual;

(3) include the name of the individual and the address where the individual resides;

(4) include the name, business address, and telephone number of the provider;

(5) be delivered to the individual immediately upon formation of the agreement; and

(6) disclose:

(A) the services to be provided;

(B) the amount or method of determining the amount of all fees, individually itemized, to be paid by the individual;

(C) the schedule of payments to be made by or on behalf of the individual, including the amount of each payment, the date on which each payment is due, and an estimate of the date of the final payment;

(D) if a plan provides for regular periodic payments to creditors:

(i) each creditor of the individual to which payment will be made, the amount owed to each creditor, and any concessions the provider reasonably believes each creditor will offer; and

(ii) the schedule of expected payments to each creditor, including the amount of each payment and the date on which it will be made;

(E) each creditor that the provider believes will not participate in the plan and to which the provider will not direct payment;



(F) how the provider will comply with its obligations under  
Section 27(a);

(G) that the provider may terminate the agreement for good cause,  
upon return of unexpended money of the individual;

(H) that the individual may cancel the agreement as provided in  
Section 20;

(I) that the individual may contact the administrator with any  
questions or complaints regarding the provider; and

(J) the address, telephone number, and Internet address or website  
of the administrator.

(b) For purposes of subsection (a)(5), delivery of an electronic record occurs  
when it is made available in a format in which the individual may retrieve, save, and print it and  
the individual is notified that it is available.

(c) If the administrator supplies the provider with any of the information required  
under subsection (a)(6)(J), the provider complies with that requirement only by disclosing the  
information supplied by the administrator.

(d) An agreement must provide that:

(1) the individual has a right to terminate the agreement at any time,  
without penalty or obligation, by giving the provider written or electronic notice, in which event:

(A) the provider will refund all unexpended money that the  
provider or its agents has received from or on behalf of the individual for the reduction or

satisfaction of the individual's debt;

(B) with respect to an agreement that contemplates that creditors will settle debts for less than the full principal amount of debt owed, the provider will refund 65 percent of any portion of the set-up fee that has not been credited against the settlement fee; and

(C) all powers of attorney granted by the individual to the provider are revoked and ineffective;

(2) the individual authorizes any bank in which the provider or its agent has established a trust account to disclose to the administrator any financial records relating to the trust account; and

(3) the provider will notify the individual within five days after learning of a creditor's decision to reject or withdraw from a plan and that this notice will include:

(A) the identity of the creditor; and

(B) the right of the individual to modify or terminate the agreement.

(e) An agreement may confer on a provider a power of attorney to settle an individual's debt for no more than 50 percent of the principal amount of the debt. An agreement may not confer a power of attorney to settle a debt for more than 50 percent of that amount, but may confer a power of attorney to negotiate with creditors of the individual on behalf of the individual. An agreement must provide that the provider will obtain the consent of the individual after a creditor has assented to a settlement for more than 50 percent of the amount of the debt.

(f) An agreement may not:

(1) provide for application of the law of any jurisdiction other than the United States and this state;

(2) except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. Section 2, [as amended,] [or [Insert citation to the Uniform Arbitration Act or other statute authorizing pre-dispute arbitration agreements]] contain a provision that modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are generally available to the individual under law other than this [act];

(3) contain a provision that restricts the individual's remedies under this [act] or law other than this [act]; or

(4) contain a provision that:

(A) limits or releases the liability of any person for not performing the agreement or for violating this [act]; or

(B) indemnifies any person for liability arising under the agreement or this [act].

***Legislative Note:*** In subsection (f)(2), if the constitution does not permit use of the phrase, "as amended," when federal statutes are incorporated into state law, the phrase should be deleted. If the state has no statute authorizing pre-dispute arbitration agreements, delete all the language in brackets.

## **SECTION 20. CANCELLATION OF AGREEMENT.**

(a) An individual may cancel an agreement before midnight of the third business day after the individual assents to it, unless the agreement does not comply with subsection (b) or Section 19 or 28, in which event the individual may cancel the agreement within 30 days after the

individual assents to it. To exercise the right to cancel, the individual must give notice in a record to the provider. Notice by mail is given when mailed.

(b) An agreement must be accompanied by a form that contains in bold-face type:

**Notice of Right to Cancel**

**You may cancel this agreement, without any penalty or obligation, at any time before midnight of the third business day that begins the day after you agree to it by electronic communication or by signing it.**

**To cancel this agreement during this period, send an e-mail to (e-mail address of the provider) or mail or deliver a signed, dated copy of this notice, or any other written notice to (name of provider) at (address) before midnight on (date). If you cancel this agreement within the 3-day period, we will refund all money you already have paid us.**

**You also may terminate this agreement at any later time, but we are not required to refund fees you have paid us.**

**I hereby cancel this agreement,**

**( signature )**

**( date )**

(c) In the event of a personal financial emergency that necessitates the disbursement of an individual's money to one or more of the individual's creditors before the expiration of three days after an agreement is signed, an individual may waive the right to cancel. To waive the right, the individual must send or deliver a signed, dated statement in his or her

own words describing the circumstances that necessitate a waiver. The waiver must explicitly waive the right to cancel. A waiver by means of a standard-form record is void.

**SECTION 21. REQUIRED LANGUAGE.** If a provider communicates with an individual primarily in a language other than English, the provider must furnish a translation into the other language of the disclosures and documents required by this [act].

**SECTION 22. TRUST ACCOUNT.**

(a) All money paid to a provider or its designee by or on behalf of an individual pursuant to a plan for distribution to creditors is held in trust. Within two business days after receipt, the provider or designee shall deposit the money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services.

(b) Money held in trust is not property of a provider or its designee and is not available to creditors of the provider or designee, except an individual from whom or on whose behalf the provider or designee received money, to the extent that the money has not been disbursed to creditors of the individual.

(c) A provider shall:

(1) maintain separate records of account for each individual to whom the provider is furnishing debt-management services;

(2) disburse money paid by or on behalf of the individual to creditors of the individual as disclosed in the agreement, except that:

(A) the provider may delay payment to the extent that a payment by the individual is not final; and

(B) if a plan provides for regular periodic payments to creditors, the disbursement must comply with the due dates established by each creditor; and

(3) promptly correct any payments that are not made or that are misdirected as a result of an error by the provider or other person in control of the trust account and reimburse the individual for any costs or fees imposed by a creditor as a result of the failure to pay or misdirection.

(d) A person may not commingle money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services with money of other persons.

(e) A trust account must at all times have a cash balance equal to the sum of the balances of each individual's account.

(f) If a provider or its designee has established a trust account pursuant to subsection (a), the provider shall reconcile the trust account at least once a month. The reconciliation must compare the cash balance in the account with the sum of the balances in each individual's account. If the provider or its designee has more than one trust account, each trust account must be individually reconciled.

(g) If a provider discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the provider immediately shall notify the administrator by a method approved by the administrator. Unless the administrator by rule provides otherwise, within five days thereafter, the provider shall give notice to the administrator describing the remedial action taken or to be taken.

(h) If an individual terminates an agreement or it becomes reasonably apparent to

a provider that a plan has failed, the provider shall promptly refund to the individual all money paid by or on behalf of the individual which has not been paid to creditors, less fees that are payable to the provider under Section 23.

(i) Before relocating a trust account from one bank to another, a provider shall inform the administrator of the name, business address, and telephone number of the new bank. As soon as practicable, the provider shall inform the administrator of the account number of the trust account at the new bank.

### **SECTION 23. FEES AND OTHER CHARGES.**

(a) A provider may not impose directly or indirectly a fee or other charge on an individual or receive money from or on behalf of an individual for debt-management services except as permitted by this section.

(b) A provider may not impose charges or receive payment for debt-management services until the provider and the individual have signed an agreement that complies with Sections 19 and 28.

(c) If an individual assents to an agreement, a provider may not impose a fee or other charge for educational or counseling services, or the like, except as otherwise provided in this subsection and Section 28(d). The administrator may authorize a provider to charge a fee based on the nature and extent of the educational or counseling services furnished by the provider.

(d) Subject to Section 32(f), the following rules apply:

(1) If an individual assents to a plan that contemplates that creditors will reduce finance charges or fees for late payment, default, or delinquency, the provider may charge:

(A) a fee not exceeding \$50 for consultation, obtaining a credit report, setting up an account, and the like; and

(B) a monthly service fee, not to exceed \$10 times the number of creditors remaining in a plan at the time the fee is assessed, except that the fee may not exceed \$50 in any month;

(2) If an individual assents to a plan that contemplates that creditors will settle debts for less than the full principal amount of debt owed, a provider may charge:

(A) subject to Section 19(d), a fee for consultation, obtaining a credit report, setting up an account, and the like, in an amount not exceeding the lesser of \$400 and four percent of the debt in the plan at the inception of the plan; and

(B) a monthly service fee, not to exceed \$10 times the number of creditors remaining in a plan at the time the fee is assessed, except that the fee may not exceed \$50 in any month;

(3) A provider may not impose or receive fees under both paragraphs (1) and (2);

(4) Except as otherwise provided in Section 28(d), if an individual does not assent to an agreement, a provider may receive for its educational and counseling services a fee not exceeding \$100 or, with the approval of the administrator, a larger fee. The administrator may approve a fee larger than \$100 if the nature and extent of the educational and counseling services warrant the larger fee.

(e) If, before the expiration of 90 days after the completion or termination of educational or counseling services, an individual assents to an agreement, the provider shall



refund to the individual any fee paid pursuant to subsection (d)(3).

(f) Except as otherwise provided in subsections (c) and (d), if a plan contemplates that creditors will settle an individual's debts for less than the full principal amount of the debt, compensation for services in connection with settling a debt may not exceed, with respect to each debt:

(1) 30 percent of the excess of the amount of the debt when the individual assents to the plan over the amount paid the creditor pursuant to the plan; less

(2) to the extent it has not been credited against an earlier settlement fee:

(A) the fee charged pursuant to subsection (d)(2)(A); and

(B) the aggregate of fees charged pursuant to subsection (d)(2)(B).

(g) Subject to Section 32(f), if a payment to a provider by an individual under this [act] is dishonored, a provider may impose a reasonable charge on the individual, not to exceed the lesser of \$25 and the amount permitted by law other than this [act].

**SECTION 24. VOLUNTARY CONTRIBUTIONS.** A provider may not solicit a voluntary contribution from an individual or an affiliate of the individual for any service provided to the individual. A provider may accept voluntary contributions from an individual but, until 30 days after completion or termination of a plan, the aggregate amount of money received from or on behalf of the individual may not exceed the total amount the provider may charge the individual under Section 23.

**SECTION 25. VOIDABLE AGREEMENTS.**

(a) If a provider imposes a fee or other charge or receives money or other

payments not authorized by Section 23 or 24, the individual may void the agreement and recover as provided in Section 35.

(b) If a provider is not registered as required by this [act] when an individual assents to an agreement, the agreement is voidable by the individual.

(c) If an individual voids an agreement under subsection (b), the provider does not have a claim against the individual for breach of contract or for restitution.

#### **SECTION 26. TERMINATION OF AGREEMENTS.**

(a) If an individual who has entered into an agreement fails for 60 days to make payments required by the agreement, a provider may terminate the agreement.

(b) If a provider or an individual terminates an agreement, the provider shall immediately return to the individual:

(1) any money of the individual held in trust for the benefit of the individual; and

(2) 65 percent of any portion of the set-up fee received pursuant to Section 23(d)(2) which has not been credited against settlement fees.

#### **SECTION 27. PERIODIC REPORTS AND RETENTION OF RECORDS.**

(a) A provider shall provide the accounting required by subsection (b):

(1) upon cancellation or termination of an agreement; and

(2) before cancellation or termination of any agreement:

(A) at least once each month; and

(B) within five business days after a request by an individual,

except that the provider need not comply with more than one request in any calendar month.

(b) A provider, in a record, shall provide each individual for whom it has established a plan an accounting of the following information:

(1) the amount of money received from the individual since the last report;

(2) the amounts and dates of disbursement made on the individual's behalf, or by the individual upon the direction of the provider, since the last report to each creditor listed in the plan;

(3) the amounts deducted from the amount received from the individual;

(4) the amount held in reserve; and

(5) if, since the last report, a creditor has agreed to accept as payment in full an amount less than the principal amount of the debt owed by the individual:

(A) the total amount and terms of the settlement;

(B) the amount of the debt when the individual assented to the plan;

(C) the amount of the debt when the creditor agreed to the settlement; and

(D) calculation of a settlement fee.

(c) A provider shall maintain records for each individual for whom it provides debt-management services for five years after the final payment made by the individual and produce a copy of them to the individual within a reasonable time after a request for them. The

provider may use electronic or other means of storage of the records.

## **SECTION 28. PROHIBITED ACTS AND PRACTICES.**

(a) A provider may not directly or indirectly:

(1) misappropriate or misapply money held in trust;

(2) settle a debt on behalf of an individual for more than 50 percent of the principal amount of the debt owed a creditor, unless the individual assents to the settlement after the creditor has assented;

(3) take a power of attorney that authorizes it to settle a debt, unless the power of attorney expressly limits the provider's authority to settling debts for not more than 50 percent of the principal amount of the debt owed a creditor;

(4) exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;

(5) initiate a transfer from an individual's account at a bank or with another person unless the transfer is:

(A) a return of money to the individual; or

(B) before termination of an agreement, properly authorized by the agreement and this [act], and for:

(i) payment to one or more creditors pursuant to a plan; or

(ii) payment of a fee;

(6) offer a gift, bonus, premium, reward, or other compensation to an individual for executing an agreement;

(7) offer, pay, or give a gift, bonus, premium, reward, or other compensation to a person for referring a prospective customer, if the person making the referral has a financial interest in the outcome of debt-management services provided to the customer, unless neither the provider nor the person making the referral communicates to the prospective customer the identity of the source of the referral;

(8) receive a bonus, commission, or other benefit for referring an individual to a person;

(9) structure a plan in a manner that would result in a negative amortization of any of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt;

(10) compensate its employees on the basis of a formula that incorporates the number of individuals the employee induces to enter into agreements;

(11) settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification by the creditor that the payment is in full settlement of the debt;

(12) make a representation that:

(A) the provider will furnish money to pay bills or prevent attachments;

(B) payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or

(C) participation in a plan will or may prevent litigation,

garnishment, attachment, repossession, foreclosure, eviction, or loss of employment;

(13) misrepresent that it is authorized or competent to furnish legal advice or perform legal services;

(14) represent that it is a not-for-profit or tax-exempt entity unless it has received certification of tax-exempt status from the Internal Revenue Service;

(15) take a confession of judgment or power of attorney to confess judgment against an individual; or

(16) employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information.

(b) If a provider furnishes debt-management services to an individual, the provider may not, directly or indirectly:

(1) purchase a debt or obligation of the individual;

(2) receive from or on behalf of the individual:

(A) a promissory note or other negotiable instrument other than a check or a demand draft; or

(B) a post-dated check or demand draft;

(3) lend money or provide credit to the individual, except as a deferral of a settlement fee at no additional expense to the individual;

(4) obtain a mortgage or other security interest from any person in connection with the services provided to the individual;

(5) except as permitted by federal law, disclose the identity or identifying

information of the individual or the identity of the individual's creditors, except to:

(A) the administrator, upon proper demand;

(B) a creditor of the individual, to the extent necessary to secure the cooperation of the creditor in a plan; or

(C) the extent necessary to administer the plan;

(6) except as otherwise provided in Section 23(f), provide the individual less than the full benefit of a compromise of a debt arranged by the provider;

(7) charge the individual for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt-management services or educational services concerning personal finance; or

(8) furnish legal advice or perform legal services, unless the person furnishing that advice to or performing those services for the individual is licensed to practice law.

(c) This [act] does not authorize any person to engage in the practice of law.

(d) A provider may not receive compensation, directly or indirectly, for advising, arranging, or assisting an individual in connection with obtaining an extension of credit or other service from a lender or service provider, except for educational or counseling services required in connection with a government-sponsored program.

(e) A provider may not purchase goods, services, or facilities from a person if an employee or a person that the provider should reasonably know to be an affiliate of the provider

owns more than 10 percent of the person, or an employee or a person that the provider should reasonably know to be an affiliate of the provider is an employee or affiliate of the person, unless the person supplies the goods, services, or facilities generally and supplies them to the provider at a cost no greater than the cost the person generally charges to others.

**SECTION 29. NOTICE OF LITIGATION.** No later than 30 days after a registered provider has been served with notice of a civil action for violation of this [act] by or on behalf of an individual who resides in this state at either the time of an agreement or the time the notice is served the provider shall notify the administrator in a record that it has been sued.

**SECTION 30. ADVERTISING.** If a provider advertises debt-management services, the provider must disclose in an easily comprehensible manner the information specified in Section 17(d)(3) and (4).

**SECTION 31. LIABILITY FOR THE CONDUCT OF OTHER PERSONS.** If a provider delegates any of its duties or obligations under an agreement or this [act] to another person, including an independent contractor, the provider is liable for conduct of the person which, if done by the provider, violates the agreement or this [act].

**SECTION 32. POWERS OF ADMINISTRATOR.**

(a) The administrator may act on its own initiative or in response to complaints and may receive complaints, take action to obtain voluntary compliance with this [act], [refer cases to the [attorney general]], and seek or provide remedies as provided in this [act].

(b) The administrator may investigate and examine, in this state or elsewhere, by subpoena or otherwise, the activities, books, accounts, and records of a person that provides or offers to provide debt-management services, or a person to whom a provider has delegated its



obligations under an agreement or this [act], to determine compliance with this [act]. Information that identifies individuals who have agreements with the provider shall not be disclosed to the public. In connection with the investigation, the administrator may:

(1) charge the person the reasonable expenses necessarily incurred to conduct the examination;

(2) require or permit a person to file a statement under oath as to all the facts and circumstances of a matter to be investigated; and

(3) seek from a court of competent jurisdiction an order authorizing seizure from a bank at which a trust account required by Section 22 is maintained, any or all money, books, records, accounts, and other property of the provider that is in the control of the bank and relates to individuals who reside in this state.

(c) The administrator may adopt rules to implement the provisions of this [act] in accordance with [Insert the appropriate section of the Administrative Procedure Act or other statute governing administrative procedure].

(d) The administrator may enter into cooperative arrangements with any other federal or state agency having authority over providers and may exchange with any of those agencies information about a provider, including information obtained during an examination of the provider.

(e) The administrator, by rule, shall establish reasonable fees to be paid by providers for the expense of administering this [act].

(f) The administrator, by rule, shall adopt dollar amounts in lieu of those specified in Sections 2, 5, 9, 13, 23, 33, and 35 to reflect inflation, as measured by the United

States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers, or, if that index is not available, other index adopted by rule by the administrator. The administrator shall adopt a base year and shall adjust the dollar amounts, effective on July 1 of each year, if the change in the index from the base year, as of December 31 of the preceding year, is at least 10 percent; but the dollar amount must be rounded to the nearest \$100, except that the amounts in Section 23 must be rounded to the nearest dollar.

(g) The administrator shall notify registered providers of a change in dollar amounts pursuant to subsection (f) and make that information available to the public.

***Legislative Note:*** Subsection (a): If the administrator is the attorney general, the language in brackets (“refer cases to the [attorney general]”) should be deleted. If not, those brackets and the brackets around “attorney general” should be deleted. If the state wishes the prosecution to be handled by some other official, the name of that official should be substituted for “attorney general.”

### **SECTION 33. ADMINISTRATIVE REMEDIES.**

(a) The administrator may enforce this [act] and rules adopted under this [act] by taking one or more of the following actions:

(1) ordering a provider or a director, employee, or other agent of a provider to cease and desist from the violation and any similar violations;

(2) ordering a provider or a person that has caused a violation to take affirmative action to correct the violation, including the restitution of money or property to a person aggrieved by a violation;

(3) subject to Section 32(f), imposing on a provider or a person that has caused a violation a civil penalty not exceeding \$10,000 for each violation;

(4) prosecuting a civil action to:

(A) enforce an order; or

(B) obtain restitution or an injunction or other equitable relief, or

both; and

(5) intervening in an action brought under Section 35.

(b) Subject to Section 32(f), if a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under subsection (a)(1) or (2), the administrator may impose a civil penalty not exceeding \$20,000 for each violation.

(c) The administrator may maintain an action to enforce this [act] in any [county].

(d) The administrator may recover the reasonable costs of enforcing the [act] under subsections (a) through (c), including attorney's fees based on the hours reasonably expended and the hourly rates for attorneys of comparable experience in the community.

(e) In determining the amount of a civil penalty to impose under subsection (a) or (b), the administrator shall consider the seriousness of the violation, the good faith of the violator, any previous violations by the violator, the deleterious effect of the violation on the public, the net worth of the violator, and any other factor the administrator considers relevant to the determination of the civil penalty.

#### **SECTION 34. SUSPENSION, REVOCATION, OR NONRENEWAL OF REGISTRATION.**

(a) In this section "insolvent" means:

(1) having generally ceased to pay debts in the ordinary course of business

other than as a result of good-faith dispute;

(2) being unable to pay debts as they become due; or

(3) being insolvent within the meaning of the federal bankruptcy law, 11

U.S.C. Section 101 et seq.[, as amended].

(b) The administrator may suspend, revoke, or deny renewal of a provider's registration if:

(1) a fact or condition exists that, if it had existed when the registrant applied for registration as a provider, would have been a reason for denying registration;

(2) the provider has violated a material provision of this [act] or a rule or order of the administrator under this [act];

(3) the provider is insolvent;

(4) the provider or an employee or affiliate of the provider has refused to permit the administrator to make an examination authorized by this [act], failed to comply with Section 32(b)(2) within 15 days after request, or made a material misrepresentation or omission in complying with Section 32(b)(2); or

(5) the provider has not responded within a reasonable time and in an appropriate manner to communications from the administrator.

(c) If a provider does not comply with Section 22(f) or if the administrator otherwise finds that the public health, safety, or welfare requires emergency action, the administrator may order a summary suspension of the provider's registration, effective on the date specified in the order.

(d) If the administrator suspends, revokes, or denies renewal of the registration of a provider, the administrator may seek from a court of competent jurisdiction an order authorizing seizure of any or all of the money in a trust account required by Section 22, books, records, accounts, and other property of the provider which are located in this state.

(e) If the administrator suspends or revokes a provider's registration, the provider may appeal and request a hearing pursuant to [Insert the citation to the appropriate section of the Administrative Procedure Act or other statute governing administrative procedure].

***Legislative Note:*** *In states in which the constitution does not permit the phrase, "as amended," when federal statutes are incorporated into state law, the phrase should be deleted in subsection (a)(3).*

## **SECTION 35. PRIVATE ENFORCEMENT.**

(a) If an individual voids an agreement pursuant to Section 25(b), the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement except for amounts paid to creditors, in addition to the recovery under subsection (c)(3) and (4).

(b) If an individual voids an agreement pursuant to Section 25(a), the individual may recover in a civil action three times the total amount of the fees, charges, money, and payments, in addition to the recovery under subsection (c)(4).

(c) Subject to subsection (d), an individual with respect to whom a provider violates this [act] may recover in a civil action from the provider and a person that caused the violation:

(1) compensatory damages for injury, including noneconomic injury,

caused by the violation;

(2) subject to Section 32(f), with respect to violation of Section 17, 19, 20, 21, 22, 23, 24, 27, or 28(a), (b), or (d), the greater of the amount recoverable under paragraph (1) or \$5,000;

(3) punitive damages; and

(4) reasonable attorney's fees and costs.

(d) In a class action, except for a violation of Section 28(a)(5), the minimum damages provided in subsection (c)(2) do not apply.

(e) In addition to the remedy available under subsection (c), if a provider does not give effect to an individual's rights under Section 20, the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except for amounts paid to creditors.

(f) A provider is not liable under this section for a violation of this [act] if the provider proves that the violation was not intentional and resulted from a good-faith error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. An error of legal judgment with respect to a provider's obligations under this [act] is not a good-faith error. If in connection with a violation, the provider has received more money than authorized by an agreement or this [act], the defense provided by this subsection is not available unless the provider refunds the excess within two business days of learning of the violation.

(g) The administrator shall assist an individual in enforcing a judgment against the surety bond or other security provided under Section 13 or 14.

## **SECTION 36. VIOLATION OF UNFAIR OR DECEPTIVE PRACTICES**

**STATUTE.** If an act or practice of a provider violates both this [act] and [Insert a reference to the statute(s) dealing with deceptive acts and practices in consumer transactions], an individual may not recover under both for the same act or practice.

### **SECTION 37. STATUTE OF LIMITATIONS.**

(a) An action or proceeding brought pursuant to Section 33(a), (b), or (c) must be commenced within four years after the conduct that is the basis of the administrator's complaint.

(b) An action brought pursuant to Section 35 must be commenced within two years after the latest of:

- (1) the individual's last transmission of money to a provider;
- (2) the individual's last transmission of money to a creditor at the direction of the provider;
- (3) the provider's last disbursement to a creditor of the individual;
- (4) the provider's last accounting to the individual pursuant to Section 27(a);
- (5) the date on which the individual discovered or reasonably should have discovered the facts giving rise to the individual's claim; or
- (6) termination of actions or proceedings by the administrator with respect to a violation of the [act].

(c) The period prescribed in subsection (b)(5) is tolled during any period during which the provider or, if different, the defendant has materially and willfully misrepresented information required by this [act] to be disclosed to the individual if the information so

misrepresented is material to the establishment of the liability of the defendant under this [act].

**SECTION 38. UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

**SECTION 39. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.** This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

**[SECTION 40. SEVERABILITY.** If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] that can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

**SECTION 41. TRANSITIONAL PROVISIONS; APPLICATION TO EXISTING TRANSACTIONS.** 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, or modified by this [act] as though the amendment, repeal, or modification had not occurred.

**SECTION 42. REPEAL.** The following laws are repealed:

***Legislative Note:*** Insert the citation to any existing legislation regulating consumer credit counseling, debt settlement, debt adjustment, debt prorating, or the like.



**SECTION 43. EFFECTIVE DATE.** This [act] takes effect 12 months after enactment.

***Legislative Note:** The effective date should be set in such a way that the administrator has an adequate opportunity to prepare to enforce the Act. It may be desirable to have the Act become effective in a staggered manner, delaying the effective date for registration. To implement this alternative, substitute the following language: “Sections 1 through 3 and 15 through 43 of this [act] take effect [six months after enactment]. Sections 4 through 14 of this [act] take effect on [insert date].”*