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HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR
HOUSE BILL 313

50TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2011

~~INTRODUCED BY~~

~~DISCUSSION DRAFT~~

AN ACT

RELATING TO CONSUMER CREDIT COUNSELING; ENACTING THE UNIFORM DEBT-MANAGEMENT SERVICES ACT; REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

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

SECTION 2. DEFINITIONS.--As used as in the Uniform Debt-Management Services Act:

A. "administrator" means the director of the financial institutions division of the regulation and licensing department or the director's designee;

B. "affiliate" means:

(1) with respect to an individual:

(a) the spouse of the individual;

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

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

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

(e) any other individual occupying the residence of the individual; and

(2) with respect to an entity:

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

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

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

(d) subject to adjustment of the dollar amount pursuant to Subsection E of Section 32 of the Uniform Debt-Management Services Act, a person that receives or has received more than twenty-five thousand dollars ($25,000) from the entity in either the current year or the preceding year or a person that owns more than ten percent of, or an individual who is employed by or is a director of, a person that receives or has received more than twenty-five thousand dollars ($25,000) from the entity in either the current year or the

preceding year;

(e) an officer or director of, or an individual performing similar functions with respect to, a person described in Subparagraph (a) of this paragraph;

(f) the spouse of, or an individual occupying the residence of, an individual described in Subparagraphs (a) through (e) of this paragraph; or

(g) an individual who has the relationship specified in Subparagraph (d) of Paragraph (1) of this subsection to an individual or the spouse of an individual described in Subparagraphs (a) through (e) of this paragraph;

C. "agreement" means an agreement between a provider and an individual for the performance of debt-management services;

D. "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 pursuant to federal or state law and regulated by a federal or state banking regulatory authority;

E. "business address" means the physical location of a business, including the name and number of a street;

F. "certified counselor" means an individual certified by a training program or 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 in which an agreement contemplates that creditors will reduce finance charges or fees for late payment, default or delinquency;

G. "certified debt specialist" means an individual certified by a training program or 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 in which an agreement contemplates that creditors will settle debts for less than the full principal amount of debt owed;

H. "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;

I. "day" means a calendar day;

J. "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:

(1) legal services provided in an attorney-client relationship by an attorney licensed or otherwise authorized to practice law in New Mexico~~;~~ who is:

(a) acting in the ordinary course of the attorney's business;

(b) providing bona fide legal services in representing the individual in the individual's relationship with creditors or debt collectors; and

(c) conforming to all applicable standards of professional responsibility, including those governing diligent representations of clients and fee sharing with non-lawyers; provided, however, that the exclusion set forth in this paragraph is not applicable merely because the individual speaks to or enters into a nominal agreement with an attorney, or receives forms prepared by an attorney, if the real intermediary between the individual and the creditors is an entity or person other than the attorney or the attorney's office;

(2) accounting services provided in an accountant-client relationship by a certified public accountant licensed to provide accounting services in New Mexico; or

(3) financial-planning services provided in a financial planner-client relationship by a member of a financial-planning profession whose members the administrator, by rule, determines after the delayed effective date are:

(a) licensed by New Mexico;

(b) subject to a disciplinary mechanism;

(c) subject to a code of professional responsibility; and

(d) subject to a continuing education

requirement;

K. "delayed effective date" means January 1, 2015;

~~K~~L. "entity" means a person other than an individual;

~~L~~M. "good faith" means honesty in fact and the observance of reasonable standards of fair dealing;

~~M~~N. "lead generator" means a person that supplies a provider with the names of potential customers, directs communications of an individual to a provider or otherwise channels customers to a provider;

~~N~~O. "person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or any other legal or commercial entity. "Person" does not include a public corporation, government or governmental subdivision, agency or instrumentality;

~~O~~P. "plan" means a program or strategy in which a provider furnishes debt-management services to an individual and that includes a schedule of payments to be made by or on behalf of the individual and used to pay debts owed by the individual. Every "plan" is a part of an "agreement", but not every "agreement" meets the additional requirements of a "plan" as defined in this subsection;

~~P~~Q. "principal amount of the debt" means the amount of a debt at the time of an agreement;

~~Q~~R. "provider" means a person, however denominated and wherever located, that provides, offers to provide or agrees to provide debt-management services directly or indirectly through one or more others;

~~R~~S. "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;

~~S~~T. "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;

~~T~~U. "sign" means, with present intent to authenticate or adopt a record:

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

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

~~U~~V. "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; and

~~V~~W. "trust account" means an account to be used for payment of a provider's fees or for payment to creditors pursuant to a plan, or both.

SECTION 3. EXEMPT AGREEMENTS AND PERSONS.--

A. The Uniform Debt-Management Services Act does

not apply to an agreement with an individual if a provider does not know and has no reason to know that the individual resides in New Mexico at the time of the agreement.

B. The Uniform Debt-Management Services 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 if the provider does not know and has no reason to know that the individual resides in New Mexico at the time the provider agrees to provide the services; or

(2) receives no compensation for debt-management services from or on behalf of the individuals to whom it provides the services or from their creditors.

C. The Uniform Debt-Management Services 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 pursuant to an order of a court or an administrative agency or an assignee for the benefit of creditors;

(2) a bank;

(3) an affiliate of a bank if the affiliate is regulated 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 REQUIRED.--

A. Except as otherwise provided in Subsection B of this section, after the delayed effective date, a provider shall not provide debt-management services to an individual whom it knows or reasonably should know resides in New Mexico at the time it agrees to provide the services, unless the provider is registered pursuant to the Uniform Debt-Management Services Act.

B. If a provider is registered pursuant to the Uniform Debt-Management Services Act, Subsection A of this section does not apply to an employee or agent of the provider.

C. The administrator shall maintain and publicize a list of the names of all registered providers.

SECTION 5. APPLICATION FOR REGISTRATION--FORM, FEE AND ACCOMPANYING DOCUMENTS.--

A. An application for registration as a provider shall be in a form prescribed by the administrator.

B. Subject to adjustment of dollar amounts pursuant to Subsection E of Section 32 of the Uniform Debt-Management Services Act, an application for registration as a provider shall be accompanied by:

(1) a five-hundred-dollar ($500) application

fee;

(2) the bond required by Section 13 of the Uniform Debt-Management Services Act;

(3) identification of all trust accounts and an irrevocable consent authorizing the administrator or the attorney general to review and examine the trust accounts;

(4) evidence of insurance in the amount of two hundred fifty thousand dollars ($250,000):

(a) 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;

(b) issued by an insurance company authorized to do business in New Mexico and rated at least A or equivalent by a nationally recognized rating organization approved by the administrator;

(c) with a deductible not exceeding five thousand dollars ($5,000);

(d) payable for the benefit of the applicant, New Mexico and the individuals who are residents of New Mexico, as their interests may appear; and

(e) not subject to cancellation by the applicant or the insurer until sixty days after written notice has been given to the administrator and the attorney general;

(5) proof of compliance with the applicable law ~~of New Mexico~~ governing ~~either~~ the formation ~~in New Mexico~~

of the applicant ~~or the~~in the jurisdiction in which it was formed and a current certificate of good standing pertaining to the applicant in that jurisdiction;

(6) if the applicant was formed in a jurisdiction other than New Mexico, proof of the applicant's qualification to do business in New Mexico ~~by the applicant, together with~~and a certificate of good standing pertaining to the applicant in New Mexico;

(7) the name and business address of the applicant's registered agent in New Mexico for the service of process and the address of the applicant's registered office in New Mexico; and

(~~6~~8) if the applicant is organized as a not-for-profit entity or is exempt from taxation pursuant to the Internal Revenue Code of 1986, 26 U.S.C. Section 501, as amended, evidence of not-for-profit status or tax-exempt status or both, if applicable.

SECTION 6. APPLICATION FOR REGISTRATION--REQUIRED INFORMATION.--An application for registration shall be signed, upon oath or affirmation, and include:

A. the applicant's name, principal business address and telephone number and all other business addresses in New Mexico, electronic-mail addresses and internet web site addresses;

B. all names under which the applicant conducts

business;

C. the address of each location in New Mexico at which the applicant will provide debt-management services or a statement that the applicant will have no such location;

D. the name and home address of each officer and director of the applicant and each person that owns at least ten percent of the applicant;

E. identification of every jurisdiction in which, during the five years immediately preceding the application:

(1) the applicant or any of its officers or directors has been licensed or registered to provide debt-management services; or

(2) individuals have resided when they received debt-management services from the applicant;

F. a statement describing, to the extent it is known or should be known by the applicant~~, any material civil or criminal judgment or litigation and any material administrative or enforcement action by a governmental agency in any jurisdiction against~~ after reasonable inquiry, whether the applicant, any of its ~~officers~~affiliates, ~~directors,~~other owners~~ or~~, agents or predecessors, or any person who is authorized to have access to a trust account:

(1) has been convicted of a crime, made a plea of nolo contendere or incurred a judgment, an administrative or enforcement action or license discipline in any jurisdiction

that involves dishonesty, fraud, financial misconduct, deceit or the violation or alleged violation of state or federal securities laws or consumer protection laws, including the Uniform Debt-Management Services Act; or

(2) incurred any other material civil or criminal judgment or litigation or any other material administrative or enforcement action in any jurisdiction;

G. 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;

H. evidence of accreditation by an independent accrediting organization approved by the administrator;

I. evidence that, within twelve months after initial employment, each of the applicant's counselors becomes certified as a certified counselor or certified debt specialist;

J. a description of the three most commonly used educational programs that the applicant provides or intends to provide to individuals who reside in New Mexico and a copy of any materials used or to be used in those programs;

K. 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;

L. a copy of each form of agreement that the applicant will use with individuals who reside in New Mexico;

M. the schedule of fees and charges that the applicant will use with individuals who reside in New Mexico;

N. at the applicant's expense, the results of a criminal records check, including fingerprints, conducted within the immediately preceding twelve months, covering every officer of the applicant and every employee or agent of the applicant who is authorized to have access to a trust account;

O. the names and addresses of all employers of each director during the ten years immediately preceding the application;

P. a description of any ownership interest of at least ten percent by a director, owner or employee of the applicant in:

(1) any affiliate of the applicant; or

(2) any entity that provides products or services to the applicant or any individual relating to the applicant's debt-management services;

Q. a statement of the amount of compensation of the applicant's five most highly compensated employees for each of the three years immediately preceding the application or, if it has not been in operation for the three years preceding the application, for the period of its existence;

R. the identity of each director who is an affiliate of the applicant;

S. a statement listing all names under which the applicant or any affiliate of the applicant provides or has provided debt-management services within the preceding five calendar years; and

~~S~~T. any other information that the administrator reasonably requires to perform the administrator's duties pursuant to Section 9 of the Uniform Debt-Management Services Act.

SECTION 7. APPLICATION FOR REGISTRATION--OBLIGATION TO UPDATE INFORMATION.--An applicant or registered provider shall notify the administrator within ten days after a change in the information specified in Paragraph (4), (5), (6), (7) or (~~6~~8) of Subsection B of Section 5 of the Uniform Debt-Management Services Act or Subsection A, C, F, L or M of Section 6 of that act.

SECTION 8. APPLICATION FOR REGISTRATION--PUBLIC INFORMATION.--Except for the information required by Subsections G, N and Q of Section 6 of the Uniform Debt-Management Services Act and the addresses required by Subsection D of that section, 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 C and D of this section, the administrator shall issue a certificate of registration as a provider to a person that complies with Sections 5 and 6 of the Uniform Debt-Management Services Act.

B. If an applicant has otherwise complied with Sections 5 and 6 of the Uniform Debt-Management Services Act, including a timely effort to obtain the information required by Subsection N of Section 6 of that act but the information has not been received, the administrator may issue a temporary certificate of registration. The temporary certificate shall expire no later than one hundred eighty days after issuance.

C. 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~~the applicant, any of its affiliates, other owners, predecessors or any person authorized to have access to a trust account, has been convicted of a crime~~ or suffered a civil judgment involving dishonesty or the~~, made a plea of nolo contendre or incurred a judgment, an administrative or enforcement action or license discipline in any jurisdiction that involved dishonesty, fraud, financial misconduct, deceit or the violation or alleged violation of state or federal

securities laws or consumer protection laws, including the Uniform Debt-Management Services Act;

(3) the applicant, an affiliate of the applicant or any ~~of its officers, directors or owners~~other owner of the applicant has defaulted in the payment of money collected for others;

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

(~~4~~5) 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 belief that the business will be operated in compliance with the Uniform Debt-Management Services Act.

D. The administrator shall deny registration if, with respect to an applicant that is organized as a not-for-profit entity or has obtained tax-exempt status pursuant to the Internal Revenue Code of 1986, 26 U.S.C. Section 501, as amended, the applicant's board of directors is not independent of the applicant's employees and agents.

E. Subject to adjustment of the dollar amount pursuant to Subsection E of Section 32 of the Uniform Debt-Management Services Act, a board of directors is not independent for purposes of Subsection D of this section if more than one-fourth of its members:

(1) are affiliates of the applicant; or

(2) after the date ten years before first becoming a director of the applicant, were employed by or were directors of a person that received from the applicant more than twenty-five thousand dollars ($25,000) in either the current year or the preceding year.

SECTION 10. CERTIFICATE OF REGISTRATION--TIMING.--

A. The administrator shall approve or deny an initial registration as a provider within one hundred twenty days after an application is filed. In connection with a request pursuant to Subsection S of Section 6 of the Uniform Debt-Management Services Act for additional information, the administrator may extend the one-hundred-twenty-day period for not more than sixty 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 of this section, the applicant may appeal and request a hearing.

C. Subject to the provisions of Subsection D of Section 11 and Section 34 of the Uniform Debt-Management Services Act, a registration as a provider is valid for one year.

SECTION 11. RENEWAL OF REGISTRATION.--

A. A provider shall obtain a renewal of its registration annually.

B. An application for renewal of registration as a provider shall be in a form prescribed by the administrator, signed upon oath or affirmation, and shall:

(1) be filed no fewer than ~~thirty~~sixty and no more than ~~sixty~~ninety days before the registration expires;

(2) be accompanied by a ~~one-hundred-dollar~~two-hundred-dollar ($~~1~~200) renewal fee and the bond required by Section 13 of the Uniform Debt-Management Services Act;

(3) contain the matter required for initial registration as a provider by Subsections H and I of Section 6 of the Uniform Debt-Management Services Act and a financial statement, audited by an accountant licensed to conduct audits, for the applicant's fiscal year immediately preceding the application;

(4) disclose any changes in the information contained in the applicant's application for registration or its immediately previous application for renewal, as applicable. If an application is otherwise complete and the applicant has made a timely effort to obtain the information required by Subsection N of Section 6 of the Uniform Debt-Management Services Act but the information has not been received, the administrator may issue a temporary renewal of registration. The temporary renewal shall expire no later than

~~one hundred eighty~~ninety days after issuance;

(5) supply evidence of insurance in an amount equal to the greater of two hundred fifty thousand dollars ($250,000) or the highest daily balance in each trust account during the six-month period immediately preceding the application:

(a) against risks of dishonesty, fraud, theft and other misconduct on the part of the applicant or a director, employee or agent of the applicant;

(b) issued by an insurance company authorized to do business in New Mexico and rated at least A or equivalent by a nationally recognized rating organization approved by the administrator;

(c) with a deductible not exceeding five thousand dollars ($5,000);

(d) payable for the benefit of the applicant, New Mexico and individuals who are residents of New Mexico, as their interests may appear; and

(e) not subject to cancellation by the applicant or the insurer until sixty days after written notice has been given to the administrator;

(6) disclose the total amount of money deposited in trust accounts or received by the applicant pursuant to plans during the preceding twelve months from or on behalf of individuals who reside in New Mexico and the total

amount of money distributed to creditors of those individuals during that period;

(7) disclose, to the best of the applicant's knowledge, the gross amount of money accumulated during the preceding twelve months pursuant to plans by or on behalf of individuals who reside in New Mexico and with whom the applicant has agreements;

(8) be accompanied by a current certificate of good standing pertaining to the applicant from each jurisdiction specified in Paragraphs (5) and (6) of Subsection B of Section 5 of the Uniform Debt-Management Services Act; and

(~~8~~9) provide any other information that the administrator reasonably requires to perform the administrator's duties pursuant to this section.

C. Except for the information required by Subsections G, N and Q of Section 6 of the Uniform Debt-Management Services Act and the addresses required by Subsection D of that section, 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 thirty days after receiving notice of the denial may appeal and request a hearing. Subject to Section 34 of the Uniform Debt-Management Services Act, while the appeal is pending, the applicant shall continue to provide debt-management services to individuals with whom it has agreements, but to no others whom it knows or has reason to know are residents of New Mexico. If the denial is affirmed, subject to the administrator's order and Section 34 of the Uniform Debt-Management Services Act, 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 the agreements to another registered provider or returns to the individuals all unexpended money that is under the applicant's control.

SECTION 12. REGISTRATION IN ANOTHER STATE.--If a provider or an affiliate of a provider holds a license or certificate of registration in another state authorizing it to provide debt-management services, the provider ~~may~~shall submit a copy of that license or certificate ~~and~~to the ~~application for it instead of an~~administrator together with the application in the form prescribed by Subsection A of Section 5, Section 6 or Subsection B of Section 11 of the Uniform Debt-Management Services Act. ~~The administrator shall accept the application and the~~A provider providing debt-management services to

residents of New Mexico shall be registered to do so pursuant to the Uniform Debt-Management Services Act even if it holds a license or certificate ~~from the other state as an application for registration as a provider or for renewal~~of registration authorizing it to provide debt-management services in another state. The provider shall notify the administrator within ten days of the commencement and outcome of any proceedings in another state to revoke, suspend or deny the renewal of a license or a certificate of registration ~~as a provider, as appropriate, in New Mexico if:~~

~~A. the application in the other state contains information substantially similar to or more comprehensive than that required in an application submitted in New Mexico;~~

~~B. the applicant provides the information required by Subsections A, C, J, L and M of Section 6 of the Uniform Debt-Management Services Act; and~~

~~C. the applicant, upon oath or affirmation, 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~~of the provider or an affiliate of the provider in that state.

SECTION 13. BOND REQUIRED.--

A. Except as otherwise provided in Section 14 of the Uniform Debt-Management Services Act, a provider that ~~is required to be registered pursuant to the provisions of that~~

~~act~~provides debt-management services to an individual whom it knows or reasonably should have known resides in New Mexico at the time of the agreement to provide such services shall file a surety bond with the attorney general until the delayed effective date, and with the administrator after the delayed effective date, which bond shall:

(1) be in effect during the period ~~of registration~~it provides debt-management services to such individuals and for two years after the provider ceases providing debt-management services to individuals in New Mexico; and

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

B. Subject to adjustment of the dollar amount pursuant to Subsection E of Section 32 of the Uniform Debt-Management Services Act, a surety bond filed pursuant to Subsection A of this section shall:

(1) be in the amount of two hundred fifty thousand dollars ($250,000) or other larger or smaller amount that the administrator determines after the delayed effective date 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 authorized to do business in New Mexico and rated at least A by a nationally recognized rating organization; and

(3) have payment conditioned upon noncompliance of the provider or its agent with the Uniform Debt-Management Services 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 attorney general until the delayed effective date, and the administrator after the delayed effective date, and within thirty days after the notice ~~by the administrator~~shall file a new or additional surety bond ~~in an amount set by the administrator~~. The amount of the new or additional bond shall 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 two hundred fifty thousand dollars ($250,000) or other amount determined pursuant to Subsection B of this section.

D. ~~T~~Subject to the provisions or Section 26 of the Uniform Debt-Management Services Act, the administrator, the attorney general or an individual may obtain satisfaction out of the surety bond procured pursuant to this section if:

(1) the administrator or the attorney general assesses expenses pursuant to Paragraph (1) of Subsection B of Section 32 of the Uniform Debt-Management Services Act, issues a final order pursuant to Paragraph (2) of Subsection A of Section 33 of that act or recovers a final judgment pursuant to Paragraph (4) or (5) of Subsection A or Subsection D of Section 33 of that act; or

(2) an individual recovers a final judgment pursuant to Subsection A or B of Section 35 of the Uniform Debt-Management Services Act or Paragraph (1), (2) or (4) of Subsection C of that section.

E. ~~I~~Subject to the provisions of Section 26 of the Uniform Debt-Management Services Act, if claims against a surety bond exceed or are reasonably expected to exceed the amount of the bond, the administrator or the attorney general, on ~~the~~that official's own initiative ~~of the administrator~~ or on petition of the surety or another interested person, shall, unless the proceeds are adequate to pay all costs, judgments and claims, distribute the proceeds in the following order:

(1) to satisfaction of a final order or judgment pursuant to Paragraph (2), (4) or (5) of Subsection A of Section 33 of the Uniform Debt-Management Services Act or Subsection D of that section;

(2) to final judgments recovered by individuals pursuant to Subsection A or B of Section 35 of the

Uniform Debt-Management Services Act or Paragraph (1), (2) or (4) of Subsection C of that section, pro rata;

(3) to claims of individuals established to the satisfaction of the ~~administrator~~official administering claims against the bond, pro rata; and

(4) if a final order or judgment is issued pursuant to Subsection A of Section 33 of the Uniform Debt-Management Services Act, to the expenses charged pursuant to Paragraph (1) of Subsection B of Section 32 of that act.

SECTION 14. BOND REQUIRED--SUBSTITUTE.--

A. Instead of the surety bond required by Section 13 of the Uniform Debt-Management Services Act, a provider may deliver to the administrator after the delayed effective date, in the amount required by Subsection B of that section, and, except as otherwise provided in Subparagraph (a) of Paragraph (2) of this subsection, payable or available to New Mexico and to individuals who reside in New Mexico when they agree to receive debt-management services from the provider, as their interests may appear, if the provider or its agent does not comply with the Uniform Debt-Management Services Act:

(1) a certificate of insurance:

(a) issued by an insurance company authorized to do business in New Mexico and rated at least A or equivalent by a nationally recognized rating organization approved by the administrator; and

(b) with no deductible, or if the provider supplies a bond in the amount of five thousand dollars ($5,000), a deductible not exceeding five thousand dollars ($5,000); 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 agent has not complied with the Uniform Debt-Management Services Act, and otherwise satisfactory in form and substance to the administrator; or

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

B. If a provider furnishes a substitute pursuant to Subsection A of this section, the provisions of Subsections A, C, D and E of Section 13 of the Uniform Debt-Management Services Act apply to the substitute.

SECTION 15. REQUIREMENT OF GOOD FAITH.--A provider, a lead generator and each person to whom a provider delegates any of its duties pursuant to the Uniform Debt-Management Services Act shall act in good faith in all matters pursuant to ~~the~~

~~Uniform Debt-Management Services A~~that act.

SECTION 16. CUSTOMER SERVICE.--A provider that ~~is required to be registered pursuant to the Uniform Debt-Management Services Act~~provides debt-management services to an individual whom it knows or reasonably should know resides in New Mexico at the time it agrees to provide such services shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a certified counselor, certified debt specialist or customer service representative, as appropriate, during ordinary business hours.

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

A. Before providing debt-management services, a ~~registered provider~~provider that provides debt-management services to an individual whom it knows or reasonably should know resides in New Mexico at the time it agrees to provide such services shall give the individual an itemized list of goods and services and the charges for each. The list shall be clear and conspicuous, be in a record that 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 shall not furnish debt-management services unless the provider, through the services of a certified counselor or certified debt specialist:

(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 to a creditor or provider:

(a) has prepared a plan for the individual;

(b) has made a determination, based on the provider's 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 pursuant to 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 of this section 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 a toll-free communication system or in person to discuss the financial analysis and plan required by Subsection B of this section; 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 list

of:

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

(b) creditors that the provider expects to participate in the plan but not grant concessions;

(c) creditors that the provider expects not to participate in the plan; and

(d) all other creditors.

D. Before an individual assents to an agreement, 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) unless it is not true, that 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~~.~~;

(7) that the provider, who is not otherwise authorized or officially licensed, does not provide accounting or legal advice to individuals;

(8) that the use of debt-management services may not stop a creditor from filing or pursuing a lawsuit against an individual;

(9) that the use of debt-management services will not stop debt collection activity or wage garnishment; and

(10) that some creditors refuse to negotiate with debt-management providers.

E. If a provider may receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default or delinquency, the provider may comply with Subsection D of this section by providing the following disclosure, surrounded by black lines:

"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 make it harder for you to obtain credit.

(3) We may receive compensation for our services from your creditors.

_____

Name and business address of provider".

F. If a provider will not receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default or delinquency, a provider may comply with Subsection D of this section by providing the following disclosure, surrounded by black lines:

"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 make it harder for you to obtain credit.

_____

Name and business address of provider".

G. If an agreement contemplates that creditors will settle debts for less than the full principal amount of debt owed, a provider may comply with Subsection D of this section by providing the following disclosure, surrounded by black lines:

"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. As used in this section:

(1) "consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family or household purposes; and

(2) "federal act" means the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001, et seq., as amended.

B. A provider may satisfy the requirements of Section 17, 19 or 27 of the Uniform Debt-Management Services Act by means of the internet or other electronic means if the provider obtains a consumer'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 of the Uniform Debt-Management Services Act 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 web site, the disclosure of the information required by Subsection D of Section 17 of the Uniform Debt-Management Services Act 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 an agreement.

E. At the time of providing the materials and

agreement required by Subsections C and D of Section 17 and Sections 19 and 27 of the Uniform Debt-Management Services Act, a provider 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 of this section.

F. If a provider is requested, before the expiration of ninety days after an agreement is completed or terminated, to send a written copy of the materials required by Subsections C and D of Section 17 and Sections 19 and 27 of the Uniform Debt-Management Services Act, the provider shall send the materials at no charge within three business days after the request is received, but 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 a request is made more than ninety days after an agreement 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 web site shall disclose on the home page of its web site 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 of this section, if a consumer who has consented to electronic communication 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 of this section, it shall notify the consumer that it will terminate the agreement unless the consumer, within thirty days after receiving the notification, consents to electronic communication 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 Subparagraph (g) of Paragraph (6) of Subsection A of Section 19 of the Uniform Debt-Management Services Act.

SECTION 19. FORM AND CONTENTS OF AGREEMENT.--

A. An agreement shall:

(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: 1) 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 2) 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 pursuant to Subsection A of Section 27 of the Uniform Debt-Management Services Act;

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

(h) that the individual may terminate the agreement at any time, by giving written or electronic notice, in which event the individual will receive all unexpended money in the trust account;

(i) that the individual may contact the attorney general before the delayed effective date, or the administrator after the delayed effective date, with any questions or complaints regarding the provider; and

(j) the address, telephone number and internet address or web site of the attorney general before the delayed effective date and the administrator after the delayed effective date.

B. For purposes of Paragraph (5) of Subsection A of this section, 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 attorney general, before the delayed effective date, or the administrator, after the delayed effective date, supplies the provider with any information ~~required~~ pursuant to Subparagraph (j) of Paragraph (6) of Subsection A of this section, the provider may comply with that

requirement only by disclosing the information supplied by the attorney general or the administrator.

D. An agreement shall provide that:

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

(2) the provider will notify the individual within five days after learning of a creditor's final 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 shall not confer a power of attorney to settle a debt, but may confer a power of attorney to negotiate with creditors of the individual on behalf of the individual. An agreement shall provide that the provider will obtain the assent of the individual after a creditor has assented to a settlement.

F. An agreement shall not:

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

(2) except as permitted by Section 2 of the Federal Arbitration Act or the Uniform Arbitration Act, contain

a provision that modifies or limits otherwise available local forums or procedural rights, including the right to trial by jury or the right to proceed by class action where appropriate, that are generally available to the individual pursuant to law other than the Uniform ~~Debt-Management~~Debt-Management Services Act;

(3) contain a provision that restricts the individual's rights or remedies or the provider's obligations pursuant to the Uniform Debt-Management Services Act or law other than the Uniform Debt-Management Services Act; ~~or~~

(4) contain a provision that:

(a) limits or releases the liability of any person for not performing the agreement or for violating the Uniform Debt-Management Services Act; or

(b) indemnifies any person for liability arising pursuant to the agreement or the Uniform ~~Debt-Management~~Debt-Management Services Act; or

(5) contain a post-agreement waiver, modification or agreement prohibited from inclusion in the agreement.

G. All rights and obligations specified in Subsection D of this section and Section 20 of the Uniform Debt-Management Services Act~~.~~

~~G~~ exist even if not provided in the agreement. A provision in an agreement that violates Subsection D, E or F of

this section is void.

SECTION 20. TERMINATION OF AGREEMENT~~ BY INDIVIDUAL~~.~~--An~~

A. An individual may terminate an agreement at any time, without penalty or obligation, by giving the provider written or electronic notice~~, in which event:~~

~~A.~~.

B. A provider may terminate an agreement if an individual fails for sixty days to make payments required by the agreement or for other good cause.

C. If an agreement is terminated by either party:

(1) the provider shall~~ refund~~, within seven business days of termination, pay to the individual all ~~unexpended~~ money that the provider~~ or~~, its agent or ~~other~~a person administering a trust account has received from or on behalf of the individual~~ for the reduction or satisfaction of the individual's debt; and~~

~~B.~~, other than amounts previously disbursed to creditors or received pursuant to Section 23 of the Uniform Debt-Management Services Act; and

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

SECTION 21. REQUIRED LANGUAGE.--Unless the administrator, by rule, provides otherwise after the delayed effective date, the disclosures and documents required by the

Uniform Debt-Management Services Act shall be in English. If a provider communicates with an individual primarily in a language other than English, the provider shall furnish a translation into the other language of the disclosures and documents required by the Uniform Debt- Management Services Act.

SECTION 22. TRUST ACCOUNT.--

A. All money paid to a provider by or on behalf of an individual for distribution to creditors pursuant to a plan is held in trust. Within two business days after receipt, the provider shall deposit the money in a trust account.

B. A provider may request or require an individual to place money in a trust account instead of paying money to the provider.

C. The trust account shall be ~~at an insured bank~~in a bank account that is fully insured by the federal deposit insurance corporation and, unless the individual owns the account, shall:

(1) be 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;

(2) be administered by an entity that is not:

(a) the provider; or

(b) an affiliate of the provider; and

(3) provide that any interest accruing on the

individual's funds in the account is credited to the individual.

D. ~~The~~A person administering ~~the~~a trust account shall not give or accept any compensation from the provider in exchange for referrals of business involving debt-management services.

E. Upon termination of ~~the agreement as provided in Section 20 of the Uniform Debt-Management Services Act or otherwise, the~~an agreement, a person administering ~~the~~a trust account shall~~ pay all money in the account, other than amounts the provider may receive as provided in Section 23 of that act, to the individual~~, within seven business days of ~~the individual's request~~termination, pay to the individual all money received from or on behalf of the individual, other than amounts properly disbursed to creditors or the provider.

F. Money in a trust account is not property of the provider or the person administering the account. The money belongs to ~~the~~each individual from whom or on whose behalf it was deposited and is not available to creditors of the person administering the account or creditors of the provider.

G. A person administering a trust account 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~~person administering the account 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 shall 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.

H. A provider or person administering a trust account shall not include in the trust account money of ~~individuals~~persons other than ~~those~~individuals to whom the provider is furnishing debt-management services.

I. A trust account shall at all times have a cash balance equal to the sum of the balances of each individual's account.

J. A person administering a trust account shall reconcile the trust account at least once a month. The reconciliation shall compare the cash balance in the trust 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 shall be individually reconciled.

K. If a provider or person administering a trust account discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the provider or person administering the account, respectively, immediately shall notify the ~~administrator by a method~~attorney general before the delayed effective date, or the administrator after the delayed effective date, by a method or methods approved by the ~~administrator~~attorney general or, after the delayed effective date, the administrator. If either the administrator or the attorney general has not approved a method, then the notice shall be provided in a record sent by first class mail, and the record shall refer to this section of the Uniform Debt-Management Services Act. Unless the administrator by rule provides otherwise after the delayed effective date, within five days thereafter, the provider shall give notice to the attorney general, or to the administrator after the delayed effective date, describing the remedial action taken or to be taken.

L. Before relocating a trust account from one bank to another after the delayed effective date, a person administering the account shall inform the administrator of the name, business address and telephone number of the new bank. ~~As soon as practicable~~Within seven business days after a

transfer after the delayed effective date, the person administering the account 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 shall 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 shall 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 of the Uniform Debt-Management Services Act.

C. If an individual assents to an agreement, a provider shall not impose a fee or other charge for educational or counseling services, or the like, except as otherwise provided in this subsection and Subsection D of Section 28 of the Uniform Debt-Management Services Act. ~~T~~After the delayed effective date, 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 adjustment of dollar amounts pursuant to Subsection E of Section 32 of the Uniform Debt-Management Services Act, the following rules apply:

(1) subject to the provisions of Paragraph (2) of this subsection, 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 fee not exceeding fifty dollars ($50.00) for consultation, obtaining a credit report, setting up an account and the like;

(2) a provider shall not request or receive any compensation from or on behalf of an individual unless:

(a) the provider has secured the assent of the individual and at least one creditor of the individual to a change in the terms of a debt; and

(b) the individual has made a payment toward satisfying the modified terms of the debt;

(3) subject to the provisions of Paragraph (1) of this subsection, 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 receive compensation in the form of a monthly service fee, not to exceed ten dollars ($10.00) multiplied by the number of creditors remaining in a plan at the time the fee is assessed, but not more than fifty dollars ($50.00) in any month;

(4) except as otherwise provided in Subsection C of this section, if an agreement contemplates that creditors will settle an individual's debts, including any interest accrued to the date of settlement for less than the principal amount of the debt:

(a) compensation for services in connection with settling a debt shall not exceed, with respect to each debt, thirty percent of the excess of the principal amount of the debt over the amount paid the creditor pursuant to the agreement; and

(b) if the debt is to be settled by installment payments: 1) the provider may receive this compensation in installments, made simultaneously with the individual's installment payments to the creditor; but 2) ~~*[Alternative (a): any such installment of the compensation shall not be a greater percentage of the provider's total compensation for settlement of that debt than the simultaneous payment to the creditor is of the entire settlement amount for that debt] or [Alternative (b):*~~ any such installment of the compensation shall not be a greater percentage of the provider's total compensation for settlement of that debt than the ratio of the settlement payment to the total settlement amount for that debt~~]~~;

(5) a provider that receives fees pursuant to Paragraph (4) of this subsection shall not also impose or receive fees pursuant to Paragraph (1) or (3) of this subsection; and

(6) except as otherwise provided in Subsection D of Section 28 of the Uniform Debt-Management Services Act, if an individual does not assent to an agreement, a provider may

receive for educational and counseling services it provides to the individual a fee not exceeding one hundred dollars ($100) or, with the approval of the administrator after the delayed effective date, a larger fee. ~~T~~After the delayed effective date, the administrator may approve a fee larger than one hundred dollars ($100) if the nature and extent of the educational and counseling services warrant the larger fee.

E. If, before the expiration of ninety 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 Paragraph (6) of Subsection D of this section.

F. Subject to adjustment of the dollar amount pursuant to Subsection E of Section 32 of the Uniform Debt-Management Services Act, if a payment to a provider by an individual pursuant to the Uniform Debt-Management Services Act is dishonored, a provider may impose a reasonable charge on the individual, not to exceed the lesser of twenty-five dollars ($25.00) and the amount permitted by law other than that act.

SECTION 24. VOLUNTARY CONTRIBUTIONS.--A provider shall 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 thirty days after completion or termination of a plan, the aggregate amount of money received

from or on behalf of the individual shall not exceed the total amount the provider may charge the individual pursuant to Section 23 of the Uniform Debt-Management Services Act.

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 of the Uniform Debt-Management Services Act, the individual may void the agreement and recover as provided in Section 35 of that act.

B. If a provider is not registered as required by the Uniform Debt-Management Services Act when an individual assents to an agreement, the agreement is voidable by the individual.

C. If an individual voids an agreement pursuant to Subsection B of this section, the provider does not have a claim against the individual for breach of contract ~~or~~, for restitution or for any cause or action.

SECTION 26. ~~TERMINATION OF AGREEMENTS BY PROVIDER.--~~

~~A. If an individual who has entered into an agreement fails for sixty days to make payments required by the agreement, a provider may terminate the agreement.~~

~~B. If a provider terminates an agreement, the provider shall immediately return any money of the individual held in trust for the benefit or the individual~~ NO DUTIES OF ADMINISTRATOR UNTIL DELAYED EFFECTIVE DATE--DUTIES OF

ADMINISTRATOR ON AND AFTER DELAYED EFFECTIVE DATE.--

A. Notwithstanding any other provision of the Uniform Debt-Management Services Act to the contrary, the administrator has no duties or responsibilities pursuant to that act until the delayed effective date.

B. Except as provided in Subsection D of this section, after the delayed effective date upon request of the administrator, the attorney general shall deliver to the administrator:

(1) the original bonds held by the attorney general pursuant to Section 13 of the Uniform Debt-Management Services Act and a copy of each record pertaining to those bonds;

(2) a copy of each complaint to the attorney general made by an individual against a provider, lead generator or other person pursuant to the Uniform Debt-Management Services Act and any document reflecting the disposition or outcome, if any, of that complaint;

(3) a copy of any report to the attorney general by any provider, lead generator or other person pursuant to any provision of the Uniform Debt-Management Services Act and any document reflecting the disposition or outcome, if any, of that report;

(4) a copy of any record obtained by the attorney general pursuant to Section 32 of the Uniform Debt-

Management Services Act; and

(5) a copy of any record reflecting the outcome or disposition of each of the attorney general's enforcement, administrative and other actions pursuant to Section 32 or 33 of the Uniform Debt-Management Services Act.

C. Except as provided in Subsection D of this section, after the delayed effective date, the administrator shall have administrative and enforcement authority pursuant to the Uniform Debt-Management Services Act. After the delayed effective date, the attorney general shall continue to have investigative powers pursuant to Section 32 of that act in order to seek evidence to enforce laws other than the Uniform Debt-Management Services Act.

D. On the delayed effective date, if the attorney general is actively engaged in any investigative, enforcement, restitution or other proceedings or duties pursuant to Section 32, 33 or other section of the Uniform Debt-Management Services Act, the attorney general may continue pursuing those proceedings and duties for as long after the delayed effective date as the attorney general determines to be in the public interest, and to that end may retain any original bonds and any other records for as long as the attorney general determines is necessary or desirable in connection with those proceedings and duties.

SECTION 27. PERIODIC REPORTS AND RETENTION OF RECORDS.--

A. A provider shall provide the accounting required by Subsection B of this section:

(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, but 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, which amount shall be held in a trust account pursuant to Section 22 of the Uniform Debt-Management Services Act; 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) the 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 shall 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 shall not, directly or indirectly:

(1) misappropriate or misapply money held in trust or received from or on behalf of an individual;

(2) settle a debt on behalf of an individual 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;

(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 the Uniform Debt-Management Services Act, and in compliance with any other law governing the payment, including the law governing electronic fund transfers, and for: 1) payment to one or more creditors pursuant to an agreement; or 2) payment of a fee;

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

(7) offer, pay or give a gift or bonus, premium, reward or other compensation to a lead generator or other person for referring a prospective customer, if the person making the referral:

(a) 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; or

(b) compensates its employees on the basis of a formula that incorporates the number of individuals

the employee refers to the provider;

(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 written certification by the creditor that the payment is in full settlement of the debt or is part of a payment plan, the terms of which are included in the certification, which upon completion will result 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 in its agreements, disclosures required by the Uniform Debt-Management Services Act, advertisements or internet web site that it is:

(a) a not-for-profit entity, unless it is organized and properly operating as a not-for-profit entity pursuant to the law of the state in which it was formed; or

(b) a tax-exempt entity unless it has received certification of tax-exempt status from the internal revenue service and is properly operating as a not-for-profit entity pursuant to the law of the state in which it was formed;

(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~~.~~;

(17) require an individual participating in a debt-management program to utilize additional ancillary goods or services;

(18) at any time, encourage any individual to stop or refrain from payment of any debt;

(19) fail to provide promised services to any individual;

(20) enter into a contract with an individual if the contract signed by the individual contained any blank spaces to be filled in later;

(21) include in any debt-management services agreement any debt secured by a motor vehicle or real property; or

(22) advise an individual not to communicate with the individual's creditors, or to change the address on bills of creditors so that the individual no longer receives information about the individual's debts directly from the creditor.

B. If a provider furnishes debt-management services to an individual, the provider shall 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 Paragraph (4) of Subsection ~~F~~D of Section 23 of the Uniform Debt-Management Services Act, 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,

except to the extent such services are expressly authorized by the administrator; 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. The Uniform Debt-Management Services Act does not authorize any person to engage in the practice of law.

D. A provider shall not receive a gift or bonus, premium, reward or other 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. Unless a person supplies 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, a provider shall not purchase goods, services or facilities from the person if an employee of the provider or a person that the provider should reasonably know is an affiliate of the provider:

(1) owns more than ten percent of the person; or

(2) is an employee or affiliate of the person.

SECTION 29. NOTICE OF LITIGATION.--No later than thirty days after a provider or an affiliate of the provider has been served with notice of a civil action for violation of the Uniform Debt-Management Services Act or the Unfair Practices Act, or of fraud or misrepresentation by or on behalf of an individual who resides in New Mexico~~-~~ 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~~attorney general before the delayed effective date, or the administrator after the delayed effective date, in a record of the lawsuit.

SECTION 30. ADVERTISING.--

A. If the agreements of a provider contemplate that creditors will reduce finance charges or fees for late payment, default or delinquency and the provider advertises debt-management services, it shall disclose, in an easily comprehensible manner, that using a debt-management plan may make it harder for the individual to obtain credit.

B. If the agreements of a provider whose agreements contemplate that creditors will settle for less than the full principal amount of debt and the provider advertises debt-management services, it shall disclose, in an easily comprehensible manner, the information specified in Paragraphs (3) and (4) of Subsection D of Section 17 of the Uniform Debt-Management Services Act.

C. Advertising concerning debt-management services shall not contain a false, misleading or deceptive statement or omit any fact necessary to make the statements made, in light of circumstances under which they are made, not false, misleading or deceptive.

SECTION 31. LIABILITY OF PROVIDER FOR THE CONDUCT OF OTHER PERSONS--UNLAWFUL CONDUCT BY OTHER PERSONS.--

A. If a provider delegates any of its duties or obligations pursuant to an agreement or the Uniform Debt-Management Services Act to ~~another~~a lead generator or other person, including an independent contractor, the provider is liable for conduct of the lead generator or other person that, if done by the provider, would violate the agreement or the Uniform Debt-Management Services Act.

B. A lead generator or other person that provides services to or for a provider shall not engage in an unfair, unconscionable or deceptive act or practice, including the knowing omission of any material information, in its interactions with an individual whom it has reason to believe is or may become a customer of the provider.

SECTION 32. POWERS OF ADMINISTRATOR AND ATTORNEY GENERAL.--

A. ~~T~~After the delayed effective date, the administrator may act on the administrator's own initiative or in response to complaints and may receive complaints, take

action to obtain voluntary compliance with the Uniform Debt-Management Services Act, refer cases to the office of the attorney general and seek or provide remedies as provided in the Uniform Debt-Management Services Act.

B. The attorney general and, after the delayed effective date, the administrator, acting separately or together, may investigate and examine, in New Mexico 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 which a provider has delegated its obligations pursuant to an agreement or the Uniform Debt-Management Services Act, a lead generator or a person that administers a trust account for a provider, to determine compliance with the~~e~~at 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 or the attorney general 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 a court order authorizing seizure, from a bank at which the person maintains a trust account, any or all money in the trust account, and the books, records,

accounts and other property of the provider that is in the control of the bank~~ and relates to individuals who reside in New Mexico~~.

C. ~~T~~After the delayed effective date, the administrator may adopt rules to implement the provisions of the Uniform Debt-Management Services Act.

D. The attorney general and, after the delayed effective date, 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. ~~T~~After the delayed effective date, the administrator, by rule, shall adopt dollar amounts instead of those specified in Sections 2, 5, 9, 13, 23, 33 and 35 of the Uniform Debt-Management Services Act 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, another index adopted by rule by the administrator. ~~T~~When adopting the rule, the administrator shall adopt a base year and adjust the dollar amounts, effective on ~~July~~January 1 of each year beginning in 2016, if the change in the index from the base year, as of December 31 of the preceding year, is at least ten percent. The dollar amount shall be rounded to the nearest one hundred dollars

($100), except that the amounts in Section 23 of the Uniform Debt-Management Services Act shall be rounded to the nearest dollar.

F. ~~T~~After the delayed effective date, the administrator shall notify registered providers of any change in dollar amounts made pursuant to Subsection E of this section and make that information available to the public.

SECTION 33. ADMINISTRATIVE REMEDIES.--

A. ~~T~~Until the delayed effective date, the ~~administrator~~attorney general may enforce the Uniform Debt-Management Services Act~~ and rules adopted pursuant to~~, or after that date, the administrator may enforce that act, by taking one or more of the following actions:

(1) ordering a provider, a lead generator, a person administering a trust account or a director, employee or other agent of a provider to cease and desist from any violation~~s~~;

(2) ordering a provider, a lead generator, a person administering a trust account or a person that has caused a violation to correct the violation, including making restitution of money or property to a person aggrieved by a violation;

(3) subject to adjustment of the dollar amount pursuant to Subsection E of Section 32 of the Uniform Debt-Management Services Act, imposing on a provider, lead generator

or other person that has violated or caused a violation a civil penalty not exceeding ten thousand dollars ($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; or

(5) intervening in an action brought pursuant to Section 35 of the Uniform Debt-Management Services Act.

B. Subject to adjustment of the dollar amount pursuant to Subsection E of Section 32 of the Uniform Debt-Management Services Act, if a person violates or knowingly authorizes, directs or aids in the violation of a final order issued pursuant to Paragraph (1) or (2) of Subsection A of this section, the attorney general until the delayed effective date, or the administrator after that date, may impose a civil penalty not exceeding twenty thousand dollars ($20,000) for each violation.

C. The attorney general until the delayed effective date, or the administrator after that date, may maintain an action to enforce the Uniform Debt-Management Services Act in any county, state or country.

D. The attorney general until the delayed effective date, or the administrator after that date, may recover the reasonable expenses of enforcing the Uniform Debt-Management

Services Act pursuant to Subsections A through C of this section, including attorney and expert witness fees based on the hours reasonably expended and the hourly rates for attorneys and expert witnesses of comparable experience in the community.

E. In determining the amount of a civil penalty to impose pursuant to Subsection A or B of this section, the attorney general until the delayed effective date, or the administrator after that date, 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 or the attorney general considers relevant to the determination of the civil penalty.

F. The attorney general until the delayed effective date, or the administrator after the delayed effective date, shall provide by rule necessary or desirable procedures to implement the provisions of the Uniform Debt-Management Services Act.

SECTION 34. SUSPENSION, REVOCATION OR NONRENEWAL OF REGISTRATION.--

A. As used in this section, "insolvent" means:

(1) having generally ceased to pay debts in the ordinary course of business other than as a result of a 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 committed a material violation of the Uniform Debt-Management Services Act or a rule or order of the administrator pursuant to that act;

(3) the provider is insolvent;

(4) the provider, an employee or affiliate of the provider, a lead generator, a person administering a trust account or a person to which the provider has delegated its obligations pursuant to an agreement or pursuant to the Uniform Debt-Management Services Act has refused to permit the administrator or the attorney general to make an examination authorized by that act, failed to comply with Paragraph (2) of Subsection B of Section 32 of that act within fifteen days after request or made a material misrepresentation or omission in complying with that paragraph; ~~or~~

(5) the provider has not responded within a

reasonable time and in an appropriate manner to communications from the administrator.

; or

(6) the provider or any of its affiliates, owners, predecessor organizations or any person authorized to have access to a trust account has been convicted of a crime, made a plea of nolo contendere or incurred a judgment, administrative or enforcement action or license discipline in any jurisdiction that involves dishonesty, fraud, financial misconduct, deceit or the violation or alleged violation of state or federal securities laws or state or federal consumer protection laws, including the Uniform Debt-Management Services Act, or that is substantially related to the qualifications, functions or duties of the licensed activity.

C. If a provider or the person administering a trust account for the provider does not comply with Subsection A, G, H, I, J or K of Section 22 of the Uniform Debt-Management Services Act or if the administrator otherwise finds that the public health or safety or general 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 a court order authorizing seizure of any or all of the

money in a trust account~~,~~ and the books, records, accounts and other property of the provider that are located in New Mexico or elsewhere.

E. If the administrator suspends or revokes a provider's registration, the provider may appeal and request a hearing.

SECTION 35. PRIVATE ENFORCEMENT.--

A. If an individual voids an agreement pursuant to Subsection B of Section 25 of the Uniform Debt-Management Services Act, 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 amounts paid to creditors, in addition to the recovery pursuant to Paragraphs (3) and (4) of Subsection C of this section.

B. If an individual voids an agreement pursuant to Subsection A of Section 25 of the Uniform Debt-Management Services Act, the individual may recover in a civil action three times the total amount of the fees, charges, money and payments made by the individual to the provider, in addition to the recovery pursuant to Paragraph (4) of Subsection C of this section.

C. Subject to Subsection D of this section, an individual with respect to whom a provider, lead generator or other person violates the Uniform Debt-Management Services Act may recover in a civil action from the provider, the lead

generator, that person and any other person that caused the violation:

(1) compensatory damages for injury, including noneconomic injury, caused by the violation;

(2) except as otherwise provided in Subsection D of this section and subject to adjustment of the dollar amount pursuant to Subsection E of Section 32 of the Uniform Debt-Management Services Act, with respect to a violation of Section 17, 19, 20, 21, 22, 23, 24, 27 or Subsection A, B or D of Section 28 of that act, the greater of the amount recoverable pursuant to Paragraph (1) of this subsection or five thousand dollars ($5,000);

(3) punitive damages; and

(4) reasonable attorney and expert witness fees and other litigation expenses.

D. In a class action, except for a violation of Paragraph (5) of Subsection A of Section 28 of the Uniform Debt-Management Services Act, the minimum damages provided in Paragraph (2) of Subsection C of this section do not apply.

E. A provider is not liable pursuant to this section for a violation of the Uniform Debt-Management Services Act if the provider proves that the violation was not intentional and resulted from a good-faith error notwithstanding the maintenance of procedures reasonably ad~~a~~opted to avoid the error. An error of legal judgment with

respect to a provider's obligations pursuant to the Uniform Debt-Management Services 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 the Uniform Debt-Management Services 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.

F. The ~~administrator shall~~attorney general before the delayed effective date and the administrator after that date may assist an individual in enforcing a judgment against the surety bond or other security provided pursuant to Section 13 or 14 of the Uniform ~~Debt-Management~~Debt-Management Services Act.

SECTION 36. VIOLATION OF UNFAIR PRACTICES ACT.--If an act or practice of a provider or other person violates both the Uniform ~~Debt- Management~~Debt-Management Services Act and the Unfair Practices Act, an individual shall not recover under both for the same act or practice. This section shall not prevent the administrator or the attorney general from seeking injunctive relief pursuant to the Uniform Debt-Management Services Act or the Unfair Practices Act for the same act or practice, but neither shall recover damages, restitution or civil penalties pursuant to both acts for the same act or practice.

SECTION 37. STATUTE OF LIMITATIONS.--

A. An action or proceeding brought pursuant to Subsection A, B or C of Section 33 of the Uniform Debt-Management Services Act shall be commenced within four years after the conduct that is the basis of the complaint of the administrator~~'s complaint~~ or the attorney general.

B. An action brought pursuant to Section 35 of the Uniform Debt-Management Services Act shall be commenced within ~~two~~four 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 Subsection A of Section 27 of the Uniform Debt-Management Services Act;

(5) the date on which the individual discovered or reasonably should have discovered the facts giving rise to the individual's claim; or

(6) the termination of the latest actions or proceedings by the administrator or the attorney general with respect to a violation of the Uniform Debt-Management Services Act.

C. The period prescribed in Paragraph (5) of

Subsection B of this section is tolled during any period during which the provider or, if different, the defendant has materially and willfully misrepresented information required by the Uniform Debt-Management Services Act to be disclosed to the individual, if the information so misrepresented is material to the establishment of the liability of the defendant pursuant to that act.

SECTION 38. UNIFORMITY OF APPLICATION AND CONSTRUCTION.--In applying and construing the Uniform Debt-Management Services Act, consideration shall 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.--The Uniform Debt-Management Services 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. TRANSITIONAL PROVISION~~S~~--APPLICATION TO EXISTING TRANSACTIONS.--Transactions entered into before the Uniform Debt-Management Services 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 the Uniform Debt-Management Services Act as though the amendment, repeal or modification had not occurred.

SECTION 41. REPEAL.--Sections 56-2-1 through 56-2-4 NMSA 1978 (being Laws 1965, Chapter 80, Sections 1 through 4) are repealed.

SECTION 42. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

SECTION 43. EFFECTIVE DATE--DELAYED EFFECTIVE DATE.--

A. The effective date of the provisions of Sections 1 through 3, 13, 15 through 33 and ~~15~~35 through 42 of this act is ~~July~~January 1, 201~~1~~2.

B. The delayed effective date of the provisions of Sections 4 through ~~14~~12, 14 and 34 of this act is January 1, 201~~2~~5.