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HOUSE BILL 851

49TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2009

INTRODUCED BY

Joseph Cervantes

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

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;

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

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

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

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

12 (2) with respect to an entity:

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

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

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

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

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1 who is employed by or is a director of, a person that receives
2 or has received more than twenty-five thousand dollars
3 (\$25,000) from the entity in either the current year or the
4 preceding year;

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

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

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

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

18 D. "bank" means a financial institution, including
19 a commercial bank, savings bank, savings and loan association,
20 credit union and trust company, engaged in the business of
21 banking, chartered pursuant to federal or state law and
22 regulated by a federal or state banking regulatory authority;

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

25 F. "certified counselor" means an individual

1 certified by a training program or certifying organization,
2 approved by the administrator, that authenticates the
3 competence of individuals providing education and assistance to
4 other individuals in connection with debt-management services
5 in which an agreement contemplates that creditors will reduce
6 finance charges or fees for late payment, default or
7 delinquency;

8 G. "certified debt specialist" means an individual
9 certified by a training program or certifying organization,
10 approved by the administrator, that authenticates the
11 competence of individuals providing education and assistance to
12 other individuals in connection with debt-management services
13 in which an agreement contemplates that creditors will settle
14 debts for less than the full principal amount of debt owed;

15 H. "concessions" means assent to repayment of a
16 debt on terms more favorable to an individual than the terms of
17 the contract between the individual and a creditor;

18 I. "day" means a calendar day;

19 J. "debt-management services" means services as an
20 intermediary between an individual and one or more creditors of
21 the individual for the purpose of obtaining concessions, but
22 does not include:

23 (1) legal services provided in an
24 attorney-client relationship by an attorney licensed or
25 otherwise authorized to practice law in New Mexico;

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

4 (3) financial-planning services provided in a
5 financial planner-client relationship by a member of a
6 financial-planning profession whose members the administrator,
7 by rule, determines are:

- 8 (a) licensed by New Mexico;
- 9 (b) subject to a disciplinary mechanism;
- 10 (c) subject to a code of professional
11 responsibility; and
- 12 (d) subject to a continuing education
13 requirement;

14 K. "entity" means a person other than an
15 individual;

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

18 M. "person" means an individual, corporation,
19 business trust, estate, trust, partnership, limited liability
20 company, association, joint venture or any other legal or
21 commercial entity. "Person" does not include a public
22 corporation, government or governmental subdivision, agency or
23 instrumentality;

24 N. "plan" means a program or strategy in which a
25 provider furnishes debt-management services to an individual

1 and that includes a schedule of payments to be made by or on
2 behalf of the individual and used to pay debts owed by the
3 individual. Every "plan" is a part of an "agreement", but not
4 every "agreement" meets the additional requirements of a "plan"
5 as defined in this subsection;

6 O. "principal amount of the debt" means the amount
7 of a debt at the time of an agreement;

8 P. "provider" means a person that provides, offers
9 to provide or agrees to provide debt-management services
10 directly or through others;

11 Q. "record" means information that is inscribed on
12 a tangible medium or that is stored in an electronic or other
13 medium and is retrievable in perceivable form;

14 R. "settlement fee" means a charge imposed on or
15 paid by an individual in connection with a creditor's assent to
16 accept in full satisfaction of a debt an amount less than the
17 principal amount of the debt;

18 S. "sign" means, with present intent to
19 authenticate or adopt a record:

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

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

23 T. "state" means a state of the United States, the
24 District of Columbia, Puerto Rico, the United States Virgin
25 Islands or any territory or insular possession subject to the

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1 jurisdiction of the United States; and

2 U. "trust account" means an account held by a
3 provider that is:

- 4 (1) established in an insured bank;
5 (2) separate from other accounts of the
6 provider or its designee;
7 (3) designated as a trust account or other
8 account designated to indicate that the money in the account is
9 not the money of the provider or its designee; and
10 (4) used to hold money of one or more
11 individuals for disbursement to creditors of the individuals.

12 Section 3. EXEMPT AGREEMENTS AND PERSONS.--

13 A. The Uniform Debt-Management Services Act does
14 not apply to an agreement with an individual if a provider has
15 no reason to know that the individual resides in New Mexico at
16 the time of the agreement.

17 B. The Uniform Debt-Management Services Act does
18 not apply to a provider to the extent that the provider:

19 (1) provides or agrees to provide
20 debt-management, educational or counseling services to an
21 individual if the provider has no reason to know that the
22 individual resides in New Mexico at the time the provider
23 agrees to provide the services; or

24 (2) receives no compensation for debt-
25 management services from or on behalf of the individuals to

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1 whom it provides the services or from their creditors.

2 C. The Uniform Debt-Management Services Act does
3 not apply to the following persons or their employees when the
4 person or the employee is engaged in the regular course of the
5 person's business or profession:

6 (1) a judicial officer, a person acting
7 pursuant to an order of a court or an administrative agency or
8 an assignee for the benefit of creditors;

9 (2) a bank;

10 (3) an affiliate of a bank if the affiliate is
11 regulated by a federal or state banking regulatory authority;
12 or

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

17 Section 4. REGISTRATION REQUIRED.--

18 A. Except as otherwise provided in Subsection B of
19 this section, a provider shall not provide debt-management
20 services to an individual whom it reasonably should know
21 resides in New Mexico at the time it agrees to provide the
22 services, unless the provider is registered pursuant to the
23 Uniform Debt-Management Services Act.

24 B. If a provider is registered pursuant to the
25 Uniform Debt-Management Services Act, Subsection A of this

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1 section does not apply to an employee or agent of the provider.

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

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

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

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

12 (1) the five-hundred-dollar (\$500) application
13 fee;

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

16 (3) identification of all trust accounts
17 required by Section 22 of the Uniform Debt-Management Services
18 Act and an irrevocable consent authorizing the administrator to
19 review and examine the trust accounts;

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

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

25 (b) issued by an insurance company

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1 authorized to do business in New Mexico and rated at least A or
2 equivalent by a nationally recognized rating organization
3 approved by the administrator;

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

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

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

12 (5) proof of compliance with the applicable
13 law of New Mexico governing either the formation in New Mexico
14 of the applicant or the qualification to do business in New
15 Mexico by the applicant, together with the name and business
16 address of the applicant's registered agent in New Mexico for
17 the service of process; and

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

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

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

5 B. all names under which the applicant conducts
6 business;

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

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

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

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

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

20 F. a statement describing, to the extent it is
21 known or should be known by the applicant, any material civil
22 or criminal judgment or litigation and any material
23 administrative or enforcement action by a governmental agency
24 in any jurisdiction against the applicant, any of its officers,
25 directors, owners or agents, or any person who is authorized to

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1 have access to the trust account required by Section 22 of the
2 Uniform Debt-Management Services Act;

3 G. the applicant's financial statements, audited by
4 an accountant licensed to conduct audits, for each of the two
5 years immediately preceding the application or, if it has not
6 been in operation for the two years preceding the application,
7 for the period of its existence;

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

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

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

18 K. a description of the applicant's financial
19 analysis and initial budget plan, including any form or
20 electronic model, used to evaluate the financial condition of
21 individuals;

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

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

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1 N. at the applicant's expense, the results of a
2 criminal records check, including fingerprints, conducted
3 within the immediately preceding twelve months, covering every
4 officer of the applicant and every employee or agent of the
5 applicant who is authorized to have access to the trust account
6 required by Section 22 of the Uniform Debt-Management Services
7 Act;

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

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

14 (1) any affiliate of the applicant; or

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

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

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

25 S. any other information that the administrator

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1 reasonably requires to perform the administrator's duties
2 pursuant to Section 9 of the Uniform Debt-Management Services
3 Act.

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

10 Section 8. APPLICATION FOR REGISTRATION--PUBLIC
11 INFORMATION.--Except for the information required by
12 Subsections G, N and Q of Section 6 of the Uniform Debt-
13 Management Services Act and the addresses required by
14 Subsection D of Section 6 of that act, the administrator shall
15 make the information in an application for registration as a
16 provider available to the public.

17 Section 9. CERTIFICATE OF REGISTRATION--ISSUANCE OR
18 DENIAL.--

19 A. Except as otherwise provided in Subsections C
20 and D of this section, the administrator shall issue a
21 certificate of registration as a provider to a person that
22 complies with Sections 5 and 6 of the Uniform Debt-Management
23 Services Act.

24 B. If an applicant has otherwise complied with
25 Sections 5 and 6 of the Uniform Debt-Management Services Act,

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1 including a timely effort to obtain the information required by
2 Subsection N of Section 6 of that act but the information has
3 not been received, the administrator may issue a temporary
4 certificate of registration. The temporary certificate shall
5 expire no later than one hundred eighty days after issuance.

6 C. The administrator may deny registration if:

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

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

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

16 (4) the administrator finds that the financial
17 responsibility, experience, character or general fitness of the
18 applicant or its owners, directors, employees or agents does
19 not warrant belief that the business will be operated in
20 compliance with the Uniform Debt-Management Services Act.

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

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1 not independent of the applicant's employees and agents.

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

7 (1) are affiliates of the applicant; or

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

13 Section 10. CERTIFICATE OF REGISTRATION--TIMING.--

14 A. The administrator shall approve or deny an
15 initial registration as a provider within one hundred twenty
16 days after an application is filed. In connection with a
17 request pursuant to Subsection S of Section 6 of the Uniform
18 Debt-Management Services Act for additional information, the
19 administrator may extend the one-hundred-twenty-day period for
20 not more than sixty days. Within seven days after denying an
21 application, the administrator, in a record, shall inform the
22 applicant of the reasons for the denial.

23 B. If the administrator denies an application for
24 registration as a provider or does not act on an application
25 within the time prescribed in Subsection A of this section, the

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1 applicant may appeal and request a hearing.

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

6 Section 11. RENEWAL OF REGISTRATION.--

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

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

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

14 (2) be accompanied by a one-hundred-dollar
15 (\$100) renewal fee and the bond required by Section 13 of the
16 Uniform Debt-Management Services Act;

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

23 (4) disclose any changes in the information
24 contained in the applicant's application for registration or
25 its immediately previous application for renewal, as

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1 applicable. If an application is otherwise complete and the
2 applicant has made a timely effort to obtain the information
3 required by Subsection N of Section 6 of the Uniform Debt-
4 Management Services Act but the information has not been
5 received, the administrator may issue a temporary renewal of
6 registration. The temporary renewal shall expire no later than
7 one hundred eighty days after issuance;

8 (5) supply evidence of insurance in an amount
9 equal to the greater of two hundred fifty thousand dollars
10 (\$250,000) or the highest daily balance in the trust account
11 required by Section 22 of the Uniform Debt-Management Services
12 Act during the six-month period immediately preceding the
13 application:

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

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

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

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

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

4 (6) disclose the total amount of money
5 received by the applicant pursuant to plans during the
6 preceding twelve months from or on behalf of individuals who
7 reside in New Mexico and the total amount of money distributed
8 to creditors of those individuals during that period;

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

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

17 C. Except for the information required by
18 Subsections G, N and Q of Section 6 of the Uniform Debt-
19 Management Services Act and the addresses required by
20 Subsection D of Section 6 of that act, the administrator shall
21 make the information in an application for renewal of
22 registration as a provider available to the public.

23 D. If a registered provider files a timely and
24 complete application for renewal of registration, the
25 registration remains effective until the administrator, in a

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1 record, notifies the applicant of a denial and states the
2 reasons for the denial.

3 E. If the administrator denies an application for
4 renewal of registration as a provider, the applicant within
5 thirty days after receiving notice of the denial may appeal and
6 request a hearing. Subject to Section 34 of the Uniform
7 Debt-Management Services Act, while the appeal is pending, the
8 applicant shall continue to provide debt-management services to
9 individuals with whom it has agreements. If the denial is
10 affirmed, subject to the administrator's order and Section 34
11 of the Uniform Debt-Management Services Act, the applicant
12 shall continue to provide debt-management services to
13 individuals with whom it has agreements until, with the
14 approval of the administrator, it transfers the agreements to
15 another registered provider or returns to the individuals all
16 unexpended money that is under the applicant's control.

17 Section 12. REGISTRATION IN ANOTHER STATE.--If a
18 provider holds a license or certificate of registration in
19 another state authorizing it to provide debt-management
20 services, the provider may submit a copy of that license or
21 certificate and the application for it instead of an
22 application in the form prescribed by Subsection A of Section
23 5, Section 6 or Subsection B of Section 11 of the Uniform
24 Debt-Management Services Act. The administrator shall accept
25 the application and the license or certificate from the other

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1 state as an application for registration as a provider or for
2 renewal of registration as a provider, as appropriate, in New
3 Mexico if:

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

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

10 C. the applicant, upon oath or affirmation,
11 certifies that the information contained in the application is
12 current or, to the extent it is not current, supplements the
13 application to make the information current.

14 Section 13. BOND REQUIRED.--

15 A. Except as otherwise provided in Section 14 of
16 the Uniform Debt-Management Services Act, a provider that is
17 required to be registered pursuant to the provisions of that
18 act shall file a surety bond with the administrator, which
19 shall:

20 (1) be in effect during the period of
21 registration and for two years after the provider ceases
22 providing debt-management services to individuals in New
23 Mexico; and

24 (2) run to New Mexico for the benefit of New
25 Mexico and of individuals who reside in New Mexico when they

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1 agree to receive debt-management services from the provider, as
2 their interests may appear.

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

7 (1) be in the amount of fifty thousand dollars
8 (\$50,000) or other larger or smaller amount that the
9 administrator determines is warranted by the financial
10 condition and business experience of the provider, the history
11 of the provider in performing debt-management services, the
12 risk to individuals and any other factor the administrator
13 considers appropriate;

14 (2) be issued by a bonding, surety or
15 insurance company authorized to do business in New Mexico and
16 rated at least A by a nationally recognized rating
17 organization; and

18 (3) have payment conditioned upon
19 noncompliance of the provider or its agent with the Uniform
20 Debt-Management Services Act.

21 C. If the principal amount of a surety bond is
22 reduced by payment of a claim or a judgment, the provider shall
23 immediately notify the administrator and within thirty days
24 after notice by the administrator file a new or additional
25 surety bond in an amount set by the administrator. The amount

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1 of the new or additional bond shall be at least the amount of
2 the bond immediately before payment of the claim or judgment.
3 If for any reason a surety terminates a bond, the provider
4 shall immediately file a new surety bond in the amount of fifty
5 thousand dollars (\$50,000) or other amount determined pursuant
6 to Subsection B of this section.

7 D. The administrator or an individual may obtain
8 satisfaction out of the surety bond procured pursuant to this
9 section if:

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

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

21 E. If claims against a surety bond exceed or are
22 reasonably expected to exceed the amount of the bond, the
23 administrator, on the initiative of the administrator or on
24 petition of the surety, shall, unless the proceeds are adequate
25 to pay all costs, judgments and claims, distribute the proceeds

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1 in the following order:

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

6 (2) to final judgments recovered by
7 individuals pursuant to Subsection A or B of Section 35 of the
8 Uniform Debt-Management Services Act or Paragraph (1), (2) or
9 (4) of Subsection C of Section 35 of that act, pro rata;

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

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

16 Section 14. BOND REQUIRED--SUBSTITUTE.--

17 A. Instead of the surety bond required by Section
18 13 of the Uniform Debt-Management Services Act, a provider may
19 deliver to the administrator, in the amount required by
20 Subsection B of Section 13 of that act, and, except as
21 otherwise provided in Subparagraph (a) of Paragraph (2) of this
22 subsection, payable or available to New Mexico and to
23 individuals who reside in New Mexico when they agree to receive
24 debt-management services from the provider, as their interests
25 may appear, if the provider or its agent does not comply with

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1 the Uniform Debt-Management Services Act:

2 (1) a certificate of insurance:

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

7 (b) with no deductible, or if the
8 provider supplies a bond in the amount of five thousand dollars
9 (\$5,000), a deductible not exceeding five thousand dollars
10 (\$5,000); or

11 (2) with the approval of the administrator:

12 (a) an irrevocable letter of credit,
13 issued or confirmed by a bank approved by the administrator,
14 payable upon presentation of a certificate by the administrator
15 stating that the provider or its agent has not complied with
16 the Uniform Debt-Management Services Act; or

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

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

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1 Section 15. REQUIREMENT OF GOOD FAITH.--A provider shall
2 act in good faith in all matters pursuant to the Uniform
3 Debt-Management Services Act.

4 Section 16. CUSTOMER SERVICE.--A provider that is
5 required to be registered pursuant to the Uniform Debt-
6 Management Services Act shall maintain a toll-free
7 communication system, staffed at a level that reasonably
8 permits an individual to speak to a certified counselor,
9 certified debt specialist or customer-service representative,
10 as appropriate, during ordinary business hours.

11 Section 17. PREREQUISITES FOR PROVIDING DEBT-MANAGEMENT
12 SERVICES.--

13 A. Before providing debt-management services, a
14 registered provider shall give the individual an itemized list
15 of goods and services and the charges for each. The list shall
16 be clear and conspicuous, be in a record that the individual
17 may keep, whether or not the individual assents to an
18 agreement, and describe the goods and services the provider
19 offers:

20 (1) free of additional charge if the
21 individual enters into an agreement;

22 (2) for a charge if the individual does not
23 enter into an agreement; and

24 (3) for a charge if the individual enters into
25 an agreement, using the following terminology, as applicable,

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1 and format:

2 "Set-up fee:

3

4 (dollar amount of fee)

5 Monthly service fee:

6

7 (dollar amount of fee or method of determining amount)

8 Settlement fee:

9

10 (dollar amount of fee or method of determining amount)

11 Goods and services in addition to those provided in connection

12 with a plan:

13

14 (item) (dollar amount or method of determining amount)

15

16 (item) (dollar amount or method of determining amount)".

17

18

19

20

21

22

23

24

25

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:

(a) has prepared a plan for the

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1 individual;

2 (b) has made a determination, based on
3 the provider's analysis of the information provided by the
4 individual and otherwise available to it, that the plan is
5 suitable for the individual and the individual will be able to
6 meet the payment obligations pursuant to the plan; and

7 (c) believes that each creditor of the
8 individual listed as a participating creditor in the plan will
9 accept payment of the individual's debts as provided in the
10 plan.

11 C. Before an individual assents to an agreement to
12 engage in a plan, a provider shall:

13 (1) provide the individual with a copy of the
14 analysis and plan required by Subsection B of this section in a
15 record that identifies the provider and that the individual may
16 keep whether or not the individual assents to the agreement;

17 (2) inform the individual of the availability,
18 at the individual's option, of assistance by a toll-free
19 communication system or in person to discuss the financial
20 analysis and plan required by Subsection B of this section; and

21 (3) with respect to all creditors identified
22 by the individual or otherwise known by the provider to be
23 creditors of the individual, provide the individual with a list
24 of:

25 (a) creditors that the provider expects

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1 to participate in the plan and grant concessions;

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

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

6 (d) all other creditors.

7 D. Before an individual assents to an agreement,
8 the provider shall inform the individual, in a record that
9 contains nothing else, that is given separately and that the
10 individual may keep whether or not the individual assents to
11 the agreement:

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

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

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

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

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

25 (6) that, unless the individual is insolvent,

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1 if a creditor settles for less than the full amount of the
2 debt, the plan may result in the creation of taxable income to
3 the individual, even though the individual does not receive any
4 money.

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

11 **"IMPORTANT INFORMATION FOR YOU TO CONSIDER**

- 12 (1) Debt-management plans are not right for
13 all individuals, and you may ask us to
14 provide information about other ways,
15 including bankruptcy, to deal with your
16 debts.
- 17 (2) Using a debt-management plan may make it
18 harder for you to obtain credit.
- 19 (3) We may receive compensation for our
20 services from your creditors.

21 _____
22 *Name and business address of provider".*

23 F. If a provider will not receive payments from an
24 individual's creditors and the plan contemplates that the
25 individual's creditors will reduce finance charges or fees for

1 late payment, default or delinquency, a provider may comply
2 with Subsection D of this section by providing the following
3 disclosure, surrounded by black lines:

4 **"IMPORTANT INFORMATION FOR YOU TO CONSIDER**

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

10 (2) Using a debt-management plan may make it
11 harder for you to obtain credit.

12 _____
13 *Name and business address of provider".*

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

19 **"IMPORTANT INFORMATION FOR YOU TO CONSIDER**

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

24 (2) Nonpayment of your debts under our
25 program may:

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- 1 · hurt your credit rating or credit scores;
- 2 · lead your creditors to increase finance and
- 3 other charges; and
- 4 · lead your creditors to undertake
- 5 activity, including lawsuits, to collect
- 6 the debts.

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

11

12 *Name and business address of provider".*

13 Section 18. COMMUNICATION BY ELECTRONIC OR OTHER
 14 MEANS.--

15 A. As used in this section:

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

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

22 B. A provider may satisfy the requirements of
 23 Section 17, 19 or 27 of the Uniform Debt-Management Services
 24 Act by means of the internet or other electronic means if the
 25 provider obtains a consumer's consent in the manner provided by

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1 Section 101(c)(1) of the federal act.

2 C. The disclosures and materials required by
3 Sections 17, 19 and 27 of the Uniform Debt-Management Services
4 Act shall be presented in a form that is capable of being
5 accurately reproduced for later reference.

6 D. With respect to disclosure by means of an
7 internet web site, the disclosure of the information required
8 by Subsection D of Section 17 of the Uniform Debt-Management
9 Services Act shall appear on one or more screens that:

10 (1) contain no other information; and

11 (2) the individual must see before proceeding
12 to assent to formation of an agreement.

13 E. At the time of providing the materials and
14 agreement required by Subsections C and D of Section 17 and
15 Sections 19 and 27 of the Uniform Debt-Management Services Act,
16 a provider shall inform the individual that upon electronic,
17 telephonic or written request, it will send the individual a
18 written copy of the materials and shall comply with a request
19 as provided in Subsection F of this section.

20 F. If a provider is requested, before the
21 expiration of ninety days after an agreement is completed or
22 terminated, to send a written copy of the materials required by
23 Subsections C and D of Section 17 and Sections 19 and 27 of the
24 Uniform Debt-Management Services Act, the provider shall send
25 the materials at no charge within three business days after the

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1 request is received, but the provider need not comply with a
2 request more than once per calendar month or if it reasonably
3 believes the request is made for purposes of harassment. If a
4 request is made more than ninety days after an agreement is
5 completed or terminated, the provider shall send within a
6 reasonable time a written copy of the materials requested.

7 G. A provider that maintains an internet web site
8 shall disclose on the home page of its web site or on a page
9 that is clearly and conspicuously connected to the home page by
10 a link that clearly reveals its contents:

11 (1) its name and all names under which it does
12 business;

13 (2) its principal business address, telephone
14 number and electronic-mail address, if any; and

15 (3) the names of its principal officers.

16 H. Subject to Subsection I of this section, if a
17 consumer who has consented to electronic communication in the
18 manner provided by Section 101 of the federal act withdraws
19 consent as provided in the federal act, a provider may
20 terminate its agreement with the consumer.

21 I. If a provider wishes to terminate an agreement
22 with a consumer pursuant to Subsection H of this section, it
23 shall notify the consumer that it will terminate the agreement
24 unless the consumer, within thirty days after receiving the
25 notification, consents to electronic communication in the

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1 manner provided in Section 101(c) of the federal act. If the
2 consumer consents, the provider may terminate the agreement
3 only as permitted by Subparagraph (g) of Paragraph (6) of
4 Subsection A of Section 19 of the Uniform Debt-Management
5 Services Act.

6 Section 19. FORM AND CONTENTS OF AGREEMENT.--

7 A. An agreement shall:

- 8 (1) be in a record;
- 9 (2) be dated and signed by the provider and
10 the individual;
- 11 (3) include the name of the individual and the
12 address where the individual resides;
- 13 (4) include the name, business address and
14 telephone number of the provider;
- 15 (5) be delivered to the individual immediately
16 upon formation of the agreement; and
- 17 (6) disclose:
- 18 (a) the services to be provided;
- 19 (b) the amount, or method of determining
20 the amount, of all fees, individually itemized, to be paid by
21 the individual;
- 22 (c) the schedule of payments to be made
23 by or on behalf of the individual, including the amount of each
24 payment, the date on which each payment is due and an estimate
25 of the date of the final payment;

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1 (d) if a plan provides for regular
2 periodic payments to creditors: 1) each creditor of the
3 individual to which payment will be made, the amount owed to
4 each creditor and any concessions the provider reasonably
5 believes each creditor will offer; and 2) the schedule of
6 expected payments to each creditor, including the amount of
7 each payment and the date on which it will be made;

8 (e) each creditor that the provider
9 believes will not participate in the plan and to which the
10 provider will not direct payment;

11 (f) how the provider will comply with
12 its obligations pursuant to Subsection A of Section 27 of the
13 Uniform Debt-Management Services Act;

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

17 (h) that the individual may cancel the
18 agreement as provided in Section 20 of the Uniform Debt-
19 Management Services Act;

20 (i) that the individual may contact the
21 administrator with any questions or complaints regarding the
22 provider; and

23 (j) the address, telephone number and
24 internet address or web site of the administrator.

25 B. For purposes of Paragraph (5) of Subsection A of

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1 this section, delivery of an electronic record occurs when it
2 is made available in a format in which the individual may
3 retrieve, save and print it and the individual is notified that
4 it is available.

5 C. If the administrator supplies the provider with
6 any information required pursuant to Subparagraph (j) of
7 Paragraph (6) of Subsection A of this section, the provider may
8 comply with that requirement only by disclosing the information
9 supplied by the administrator.

10 D. An agreement shall provide that:

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

15 (a) the provider will refund all
16 unexpended money that the provider or its agent has received
17 from or on behalf of the individual for the reduction or
18 satisfaction of the individual's debt;

19 (b) with respect to an agreement that
20 contemplates that creditors will settle debts for less than the
21 principal amount of debt, the provider will refund sixty-five
22 percent of any portion of the set-up fee that has not been
23 credited against the settlement fee; and

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

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

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

- 9 (a) the identity of the creditor; and
10 (b) the right of the individual to
11 modify or terminate the agreement.

12 E. An agreement may confer on a provider a power of
13 attorney to settle the individual's debt for no more than fifty
14 percent of the principal amount of the debt. An agreement
15 shall not confer a power of attorney to settle a debt for more
16 than fifty percent of that amount, but may confer a power of
17 attorney to negotiate with creditors of the individual on
18 behalf of the individual. An agreement shall provide that the
19 provider will obtain the assent of the individual after a
20 creditor has assented to a settlement for more than fifty
21 percent of the principal amount of the debt.

22 F. An agreement shall not:

- 23 (1) provide for application of the law of any
24 jurisdiction other than the United States and New Mexico;
25 (2) except as permitted by the Uniform

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1 Arbitration Act, contain a provision that modifies or limits
2 otherwise available forums or procedural rights, including the
3 right to trial by jury, that are generally available to the
4 individual pursuant to law other than the Uniform Debt-
5 Management Services Act;

6 (3) contain a provision that restricts the
7 individual's remedies pursuant to the Uniform Debt-Management
8 Services Act or law other than the Uniform Debt-Management
9 Services Act; or

10 (4) contain a provision that:

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

14 (b) indemnifies any person for liability
15 arising pursuant to the agreement or the Uniform Debt-
16 Management Services Act.

17 G. All rights and obligations specified in
18 Subsection D of this section and Section 20 of the Uniform
19 Debt-Management Services Act exist even if not provided in the
20 agreement. A provision in an agreement that violates
21 Subsection D, E or F of this section is void.

22 Section 20. CANCELLATION OF AGREEMENT--WAIVER.--

23 A. An individual may cancel an agreement before
24 midnight of the third business day after the individual assents
25 to it, unless the agreement does not comply with Subsection B

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1 of this section or Section 19 or 28 of the Uniform Debt-
2 Management Services Act, in which event the individual may
3 cancel the agreement within thirty days after the individual
4 assents to it. To exercise the right to cancel, the individual
5 shall give notice in a record to the provider. Notice by mail
6 is given when mailed.

7 B. An agreement shall be accompanied by a form that
8 contains in bold-face type, surrounded by bold black lines:

9 **"Notice of Right to Cancel**

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

15 To cancel this agreement during this period, send an
16 email to _____ (*email address*
17 *of provider*) or mail or deliver a signed, dated copy
18 of this notice, or any other written notice to
19 _____ (*name of provider*)
20 at _____ (*address of*
21 *provider*) before midnight on _____
22 (*date*).

23 If you cancel this agreement within the three-day
24 period, we will refund all money you already have
25 paid us.

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1 You also may terminate this agreement at any later
2 time, but we may not be required to refund fees you
3 have paid us.

4 I cancel this agreement,

5 _____
6 Print your name

7 _____
8 Signature

9 _____
10 Date".

11 C. If a personal financial emergency necessitates
12 the disbursement of an individual's money to one or more of the
13 individual's creditors before the expiration of three days
14 after an agreement is signed, an individual may waive the right
15 to cancel. To waive the right, the individual shall send or
16 deliver a signed, dated statement in the individual's own words
17 describing the circumstances that necessitate a waiver. The
18 waiver shall explicitly waive the right to cancel. A waiver by
19 means of a standard-form record is void.

20 Section 21. REQUIRED LANGUAGE.--Unless the
21 administrator, by rule, provides otherwise, the disclosures and
22 documents required by the Uniform Debt-Management Services Act
23 shall be in English. If a provider communicates with an
24 individual primarily in a language other than English, the
25 provider shall furnish a translation into the other language of

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1 the disclosures and documents required by the Uniform Debt-
2 Management Services Act.

3 Section 22. TRUST ACCOUNT.--

4 A. All money paid to a provider by or on behalf of
5 an individual for distribution to creditors pursuant to a plan
6 is held in trust. Within two business days after receipt, the
7 provider shall deposit the money in a trust account established
8 for the benefit of individuals to whom the provider is
9 furnishing debt-management services.

10 B. Money held in trust by a provider is not
11 property of the provider or its designee. The money is not
12 available to creditors of the provider or designee, except an
13 individual from whom or on whose behalf the provider received
14 money, to the extent that the money has not been disbursed to
15 creditors of the individual.

16 C. A provider shall:

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

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

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

25 (b) if a plan provides for regular

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1 periodic payments to creditors, the disbursement shall comply
2 with the due dates established by each creditor; and

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

8 D. A provider shall not commingle money in a trust
9 account established for the benefit of individuals to whom the
10 provider is furnishing debt-management services with money of
11 other persons.

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

15 F. If a provider has established a trust account
16 pursuant to Subsection A of this section, the provider shall
17 reconcile the trust account at least once a month. The
18 reconciliation shall compare the cash balance in the trust
19 account with the sum of the balances in each individual's
20 account. If the provider or its designee has more than one
21 trust account, each trust account shall be individually
22 reconciled.

23 G. If a provider discovers, or has a reasonable
24 suspicion of, embezzlement or other unlawful appropriation of
25 money held in trust, the provider immediately shall notify the

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1 administrator by a method approved by the administrator.
2 Unless the administrator by rule provides otherwise, within
3 five days thereafter, the provider shall give notice to the
4 administrator describing the remedial action taken or to be
5 taken.

6 H. If an individual terminates an agreement or it
7 becomes reasonably apparent to a provider that a plan has
8 failed, the provider shall promptly refund to the individual
9 all money paid by or on behalf of the individual that has not
10 been paid to creditors, less fees that are payable to the
11 provider pursuant to Section 23 of the Uniform Debt-Management
12 Services Act.

13 I. Before relocating a trust account from one bank
14 to another, a provider shall inform the administrator of the
15 name, business address and telephone number of the new bank.
16 As soon as practicable, the provider shall inform the
17 administrator of the account number of the trust account at the
18 new bank.

19 Section 23. FEES AND OTHER CHARGES.--

20 A. A provider shall not impose directly or
21 indirectly a fee or other charge on an individual or receive
22 money from or on behalf of an individual for debt-management
23 services except as permitted by this section.

24 B. A provider shall not impose charges or receive
25 payment for debt-management services until the provider and the

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1 individual have signed an agreement that complies with Sections
2 19 and 28 of the Uniform Debt-Management Services Act.

3 C. If an individual assents to an agreement, a
4 provider shall not impose a fee or other charge for educational
5 or counseling services, or the like, except as otherwise
6 provided in this subsection and Subsection D of Section 28 of
7 the Uniform Debt-Management Services Act. The administrator
8 may authorize a provider to charge a fee based on the nature
9 and extent of the educational or counseling services furnished
10 by the provider.

11 D. Subject to adjustment of dollar amounts pursuant
12 to Subsection E of Section 32 of the Uniform Debt-Management
13 Services Act, the following rules apply:

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

18 (a) a fee not exceeding fifty dollars
19 (\$50.00) for consultation, obtaining a credit report, setting
20 up an account and the like; and

21 (b) a monthly service fee, not to exceed
22 ten dollars (\$10.00) multiplied by the number of creditors
23 remaining in a plan at the time the fee is assessed, but not
24 more than fifty dollars (\$50.00) in any month;

25 (2) if an individual assents to an agreement

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1 that contemplates that creditors will settle debts for less
2 than the principal amount of the debt, a provider may charge:

3 (a) subject to Subsection D of Section
4 19 of the Uniform Debt-Management Services Act, a fee for
5 consultation, obtaining a credit report, setting up an account
6 and the like in an amount not exceeding the lesser of four
7 hundred dollars (\$400) and four percent of the debt in the plan
8 at the inception of the plan; and

9 (b) a monthly service fee, not to exceed
10 ten dollars (\$10.00) multiplied by the number of creditors
11 remaining in a plan at the time the fee is assessed, but not
12 more than fifty dollars (\$50.00) in any month;

13 (3) a provider shall not impose or receive
14 fees pursuant to both Paragraphs (1) and (2) of this section;
15 and

16 (4) except as otherwise provided in Subsection
17 D of Section 28 of the Uniform Debt-Management Services Act, if
18 an individual does not assent to an agreement, a provider may
19 receive for educational and counseling services it provides to
20 the individual a fee not exceeding one hundred dollars (\$100)
21 or, with the approval of the administrator, a larger fee. The
22 administrator may approve a fee larger than one hundred dollars
23 (\$100) if the nature and extent of the educational and
24 counseling services warrant the larger fee.

25 E. If, before the expiration of ninety days after

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1 the completion or termination of educational or counseling
2 services, an individual assents to an agreement, the provider
3 shall refund to the individual any fee paid pursuant to
4 Paragraph (4) of Subsection D of this section.

5 F. Except as otherwise provided in Subsections C
6 and D of this section, if an agreement contemplates that
7 creditors will settle an individual's debts for less than the
8 principal amount of the debt, compensation for services in
9 connection with settling a debt may not exceed, with respect to
10 each debt, thirty percent of the excess of the principal amount
11 of the debt over the amount paid the creditor pursuant to the
12 agreement, less, to the extent that it has not been credited
13 against an earlier settlement fee, the fee charged pursuant to
14 Subparagraph (a) of Paragraph (2) of Subsection D of this
15 section and the aggregate of fees charged pursuant to
16 Subparagraph (b) of Paragraph (2) of Subsection D of this
17 section.

18 G. Subject to adjustment of the dollar amount
19 pursuant to Subsection E of Section 32 of the Uniform Debt-
20 Management Services Act, if a payment to a provider by an
21 individual pursuant to the Uniform Debt-Management Services Act
22 is dishonored, a provider may impose a reasonable charge on the
23 individual, not to exceed the lesser of twenty-five dollars
24 (\$25.00) and the amount permitted by law other than that act.

25 Section 24. VOLUNTARY CONTRIBUTIONS.--A provider shall

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1 not solicit a voluntary contribution from an individual or an
2 affiliate of the individual for any service provided to the
3 individual. A provider may accept voluntary contributions from
4 an individual but, until thirty days after completion or
5 termination of a plan, the aggregate amount of money received
6 from or on behalf of the individual shall not exceed the total
7 amount the provider may charge the individual pursuant to
8 Section 23 of the Uniform Debt-Management Services Act.

9 Section 25. VOIDABLE AGREEMENTS.--

10 A. If a provider imposes a fee or other charge or
11 receives money or other payments not authorized by Section 23
12 or 24 of the Uniform Debt-Management Services Act, the
13 individual may void the agreement and recover as provided in
14 Section 35 of that act.

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

19 C. If an individual voids an agreement pursuant to
20 Subsection B of this section, the provider does not have a
21 claim against the individual for breach of contract or for
22 restitution.

23 Section 26. TERMINATION OF AGREEMENTS.--

24 A. If an individual who has entered into an
25 agreement fails for sixty days to make payments required by the

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1 agreement, a provider may terminate the agreement.

2 B. If a provider or an individual terminates an
3 agreement, the provider shall immediately return to the
4 individual:

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

7 (2) sixty-five percent of any portion of the
8 set-up fee received pursuant to Paragraph (2) of Subsection D
9 of Section 23 of the Uniform Debt-Management Services Act that
10 has not been credited against settlement fees.

11 Section 27. PERIODIC REPORTS AND RETENTION OF RECORDS.--

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

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

16 (2) before cancellation or termination of any
17 agreement:

18 (a) at least once each month; and

19 (b) within five business days after a
20 request by an individual, but the provider need not comply with
21 more than one request in any calendar month.

22 B. A provider, in a record, shall provide each
23 individual for whom it has established a plan an accounting of
24 the following information:

25 (1) the amount of money received from the

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1 individual since the last report;

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

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

8 (4) the amount held in reserve; and

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

12 (a) the total amount and terms of the
13 settlement;

14 (b) the amount of the debt when the
15 individual assented to the plan;

16 (c) the amount of the debt when the
17 creditor agreed to the settlement; and

18 (d) the calculation of a settlement fee.

19 C. A provider shall maintain records for each
20 individual for whom it provides debt-management services for
21 five years after the final payment made by the individual and
22 shall produce a copy of them to the individual within a
23 reasonable time after a request for them. The provider may use
24 electronic or other means of storage of the records.

25 Section 28. PROHIBITED ACTS AND PRACTICES.--

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- 1 A. A provider shall not, directly or indirectly:
2 (1) misappropriate or misapply money held in
3 trust;
4 (2) settle a debt on behalf of an individual
5 for more than fifty percent of the principal amount of the debt
6 owed a creditor, unless the individual assents to the
7 settlement after the creditor has assented;
8 (3) take a power of attorney that authorizes
9 it to settle a debt, unless the power of attorney expressly
10 limits the provider's authority to settle debts for not more
11 than fifty percent of the principal amount of the debt owed a
12 creditor;
13 (4) exercise or attempt to exercise a power of
14 attorney after an individual has terminated an agreement;
15 (5) initiate a transfer from an individual's
16 account at a bank or with another person unless the transfer
17 is:
18 (a) a return of money to the individual;
19 or
20 (b) before termination of an agreement,
21 properly authorized by the agreement and the Uniform Debt-
22 Management Services Act, and for: 1) payment to one or more
23 creditors pursuant to an agreement; or 2) payment of a fee;
24 (6) offer a gift or bonus, premium, reward or
25 other compensation to an individual for executing an agreement;

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

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

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

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

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

23 (12) make a representation that:

24 (a) the provider will furnish money to
25 pay bills or prevent attachments;

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1 (b) payment of a certain amount will
2 permit satisfaction of a certain amount or range of
3 indebtedness; or

4 (c) participation in a plan will or may
5 prevent litigation, garnishment, attachment, repossession,
6 foreclosure, eviction or loss of employment;

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

9 (14) represent in its agreements, disclosures
10 required by the Uniform Debt-Management Services Act,
11 advertisements or internet web site that it is:

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

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

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

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

24 B. If a provider furnishes debt-management services
25 to an individual, the provider shall not, directly or

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1 indirectly:

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

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

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

8 (b) a post-dated check or demand draft;

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

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

15 (5) except as permitted by federal law,
16 disclose the identity or identifying information of the
17 individual or the identity of the individual's creditors,
18 except to:

19 (a) the administrator, upon proper
20 demand;

21 (b) a creditor of the individual, to the
22 extent necessary to secure the cooperation of the creditor in a
23 plan; or

24 (c) the extent necessary to administer
25 the plan;

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1 (6) except as otherwise provided in Subsection
2 F of Section 23 of the Uniform Debt-Management Services Act,
3 provide the individual less than the full benefit of a
4 compromise of a debt arranged by the provider;

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

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

15 C. The Uniform Debt-Management Services Act does
16 not authorize any person to engage in the practice of law.

17 D. A provider shall not receive a gift or bonus,
18 premium, reward or other compensation, directly or indirectly,
19 for advising, arranging or assisting an individual in
20 connection with obtaining an extension of credit or other
21 service from a lender or service provider, except for
22 educational or counseling services required in connection with
23 a government-sponsored program.

24 E. Unless a person supplies goods, services or
25 facilities generally and supplies them to the provider at a

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1 cost no greater than the cost the person generally charges to
2 others, a provider shall not purchase goods, services or
3 facilities from the person if an employee of the provider or a
4 person that the provider should reasonably know is an affiliate
5 of the provider:

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

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

9 Section 29. NOTICE OF LITIGATION.--No later than thirty
10 days after a provider has been served with notice of a civil
11 action for violation of the Uniform Debt-Management Services
12 Act by or on behalf of an individual who resides in New Mexico
13 at either the time of an agreement or the time the notice is
14 served, the provider shall notify the administrator in a record
15 that it has been sued.

16 Section 30. ADVERTISING.--

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

23 B. If the agreements of a provider whose agreements
24 contemplate that creditors will settle for less than the full
25 principal amount of debt and the provider advertises

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1 debt-management services, it shall disclose, in an easily
2 comprehensible manner, the information specified in Paragraphs
3 (3) and (4) of Subsection D of Section 17 of the Uniform
4 Debt-Management Services Act.

5 Section 31. LIABILITY FOR THE CONDUCT OF OTHER
6 PERSONS.--If a provider delegates any of its duties or
7 obligations pursuant to an agreement or the Uniform
8 Debt-Management Services Act to another person, including an
9 independent contractor, the provider is liable for conduct of
10 the person that, if done by the provider, would violate the
11 agreement or the Uniform Debt-Management Services Act.

12 Section 32. POWERS OF ADMINISTRATOR.--

13 A. The administrator may act on the administrator's
14 own initiative or in response to complaints and may receive
15 complaints, take action to obtain voluntary compliance with the
16 Uniform Debt-Management Services Act, refer cases to the office
17 of the attorney general and seek or provide remedies as
18 provided in the Uniform Debt-Management Services Act.

19 B. The administrator may investigate and examine,
20 in New Mexico or elsewhere, by subpoena or otherwise, the
21 activities, books, accounts and records of a person that
22 provides or offers to provide debt-management services, or a
23 person to which a provider has delegated its obligations
24 pursuant to an agreement or the Uniform Debt-Management
25 Services Act, to determine compliance with the Uniform

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1 Debt-Management Services Act. Information that identifies
2 individuals who have agreements with the provider shall not be
3 disclosed to the public. In connection with the investigation,
4 the administrator may:

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

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

10 (3) seek a court order authorizing seizure
11 from a bank at which the person maintains a trust account
12 required by Section 22 of the Uniform Debt-Management Services
13 Act any or all money, books, records, accounts and other
14 property of the provider that is in the control of the bank and
15 relates to individuals who reside in New Mexico.

16 C. The administrator may adopt rules to implement
17 the provisions of the Uniform Debt-Management Services Act.

18 D. The administrator may enter into cooperative
19 arrangements with any other federal or state agency having
20 authority over providers and may exchange with any of those
21 agencies information about a provider, including information
22 obtained during an examination of the provider.

23 E. The administrator, by rule, shall adopt dollar
24 amounts instead of those specified in Sections 2, 5, 9, 13, 23,
25 33 and 35 of the Uniform Debt-Management Services Act to

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1 reflect inflation, as measured by the United States bureau of
2 labor statistics consumer price index for all urban consumers
3 or, if that index is not available, another index adopted by
4 rule by the administrator. The administrator shall adopt a
5 base year and adjust the dollar amounts, effective on July 1 of
6 each year, if the change in the index from the base year, as of
7 December 31 of the preceding year, is at least ten percent.
8 The dollar amount shall be rounded to the nearest one hundred
9 dollars (\$100), except that the amounts in Section 23 of the
10 Uniform Debt-Management Services Act shall be rounded to the
11 nearest dollar.

12 F. The administrator shall notify registered
13 providers of any change in dollar amounts made pursuant to
14 Subsection E of this section and make that information
15 available to the public.

16 Section 33. ADMINISTRATIVE REMEDIES.--

17 A. The administrator may enforce the Uniform
18 Debt-Management Services Act and rules adopted pursuant to that
19 act by taking one or more of the following actions:

20 (1) ordering a provider or a director,
21 employee or other agent of a provider to cease and desist from
22 any violations;

23 (2) ordering a provider or a person that has
24 caused a violation to correct the violation, including making
25 restitution of money or property to a person aggrieved by a

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1 violation;

2 (3) subject to adjustment of the dollar amount
3 pursuant to Subsection E of Section 32 of the Uniform Debt-
4 Management Services Act, imposing on a provider or a person
5 that has caused a violation a civil penalty not exceeding ten
6 thousand dollars (\$10,000) for each violation;

7 (4) prosecuting a civil action to:

8 (a) enforce an order; or

9 (b) obtain restitution or an injunction
10 or other equitable relief, or both; or

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

13 B. Subject to adjustment of the dollar amount
14 pursuant to Subsection E of Section 32 of the Uniform Debt-
15 Management Services Act, if a person violates or knowingly
16 authorizes, directs or aids in the violation of a final order
17 issued pursuant to Paragraph (1) or (2) of Subsection A of this
18 section, the administrator may impose a civil penalty not
19 exceeding twenty thousand dollars (\$20,000) for each violation.

20 C. The administrator may maintain an action to
21 enforce the Uniform Debt-Management Services Act in any county.

22 D. The administrator may recover the reasonable
23 expenses of enforcing the Uniform Debt-Management Services Act
24 pursuant to Subsections A through C of this section, including
25 attorney and expert witness fees based on the hours reasonably

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1 expended and the hourly rates for attorneys and expert
2 witnesses of comparable experience in the community.

3 E. In determining the amount of a civil penalty to
4 impose pursuant to Subsection A or B of this section, the
5 administrator shall consider the seriousness of the violation,
6 the good faith of the violator, any previous violations by the
7 violator, the deleterious effect of the violation on the
8 public, the net worth of the violator and any other factor the
9 administrator considers relevant to the determination of the
10 civil penalty.

11 Section 34. SUSPENSION, REVOCATION OR NONRENEWAL OF
12 REGISTRATION.--

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

14 (1) having generally ceased to pay debts in
15 the ordinary course of business other than as a result of
16 good-faith dispute;

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

19 (3) being insolvent within the meaning of the
20 federal bankruptcy law, 11 U.S.C. Section 101 et seq., as
21 amended.

22 B. The administrator may suspend, revoke or deny
23 renewal of a provider's registration if:

24 (1) a fact or condition exists that, if it had
25 existed when the registrant applied for registration as a

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1 provider, would have been a reason for denying registration;

2 (2) the provider has committed a material
3 violation of the Uniform Debt-Management Services Act or a rule
4 or order of the administrator pursuant to that act;

5 (3) the provider is insolvent;

6 (4) the provider or an employee or affiliate
7 of the provider has refused to permit the administrator to make
8 an examination authorized by the Uniform Debt-Management
9 Services Act, failed to comply with Paragraph (2) of Subsection
10 B of Section 32 of the Uniform Debt-Management Services Act
11 within fifteen days after request or made a material
12 misrepresentation or omission in complying with Paragraph (2)
13 of Subsection B of Section 32 of that act; or

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

17 C. If a provider does not comply with Subsection F
18 of Section 22 of the Uniform Debt-Management Services Act or if
19 the administrator otherwise finds that the public health or
20 safety or general welfare requires emergency action, the
21 administrator may order a summary suspension of the provider's
22 registration, effective on the date specified in the order.

23 D. If the administrator suspends, revokes or denies
24 renewal of the registration of a provider, the administrator
25 may seek a court order authorizing seizure of any or all of the

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1 money in a trust account required by Section 22 of the Uniform
2 Debt-Management Services Act, books, records, accounts and
3 other property of the provider that are located in New Mexico.

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

7 Section 35. PRIVATE ENFORCEMENT.--

8 A. If an individual voids an agreement pursuant to
9 Subsection B of Section 25 of the Uniform Debt-Management
10 Services Act, the individual may recover in a civil action all
11 money paid or deposited by or on behalf of the individual
12 pursuant to the agreement, except amounts paid to creditors, in
13 addition to the recovery pursuant to Paragraphs (3) and (4) of
14 Subsection C of this section.

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

22 C. Subject to Subsection D of this section, an
23 individual with respect to whom a provider violates the Uniform
24 Debt-Management Services Act may recover in a civil action from
25 the provider and any person that caused the violation:

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

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

11 (3) punitive damages; and

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

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

18 E. In addition to the remedy available pursuant to
19 Subsection C of this section, if a provider violates an
20 individual's rights pursuant to Section 20 of the Uniform
21 Debt-Management Services Act, the individual may recover in a
22 civil action all money paid or deposited by or on behalf of the
23 individual pursuant to the agreement, except for amounts paid
24 to creditors.

25 F. A provider is not liable pursuant to this

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1 section for a violation of the Uniform Debt-Management Services
2 Act if the provider proves that the violation was not
3 intentional and resulted from a good-faith error
4 notwithstanding the maintenance of procedures reasonably
5 adapted to avoid the error. An error of legal judgment with
6 respect to a provider's obligations pursuant to the Uniform
7 Debt-Management Services Act is not a good-faith error. If, in
8 connection with a violation, the provider has received more
9 money than authorized by an agreement or the Uniform Debt-
10 Management Services Act, the defense provided by this
11 subsection is not available unless the provider refunds the
12 excess within two business days of learning of the violation.

13 G. The administrator shall assist an individual in
14 enforcing a judgment against the surety bond or other security
15 provided pursuant to Section 13 or 14 of the Uniform Debt-
16 Management Services Act.

17 Section 36. VIOLATION OF UNFAIR PRACTICES ACT.--If an
18 act or practice of a provider violates both the Uniform Debt-
19 Management Services Act and the Unfair Practices Act, an
20 individual shall not recover under both for the same act or
21 practice.

22 Section 37. STATUTE OF LIMITATIONS.--

23 A. An action or proceeding brought pursuant to
24 Subsection A, B or C of Section 33 of the Uniform Debt-
25 Management Services Act shall be commenced within four years

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1 after the conduct that is the basis of the administrator's
2 complaint.

3 B. An action brought pursuant to Section 35 of the
4 Uniform Debt-Management Services Act shall be commenced within
5 two years after the latest of:

6 (1) the individual's last transmission of
7 money to a provider;

8 (2) the individual's last transmission of
9 money to a creditor at the direction of the provider;

10 (3) the provider's last disbursement to a
11 creditor of the individual;

12 (4) the provider's last accounting to the
13 individual pursuant to Subsection A of Section 27 of the
14 Uniform Debt-Management Services Act;

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

18 (6) termination of actions or proceedings by
19 the administrator with respect to a violation of the Uniform
20 Debt-Management Services Act.

21 C. The period prescribed in Paragraph (5) of
22 Subsection B of this section is tolled during any period during
23 which the provider or, if different, the defendant has
24 materially and willfully misrepresented information required by
25 the Uniform Debt-Management Services Act to be disclosed to the

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1 individual, if the information so misrepresented is material to
2 the establishment of the liability of the defendant pursuant to
3 that act.

4 Section 38. UNIFORMITY OF APPLICATION AND
5 CONSTRUCTION.--In applying and construing the Uniform Debt-
6 Management Services Act, consideration shall be given to the
7 need to promote uniformity of the law with respect to its
8 subject matter among states that enact it.

9 Section 39. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
10 AND NATIONAL COMMERCE ACT.--The Uniform Debt-Management
11 Services Act modifies, limits and supersedes the federal
12 Electronic Signatures in Global and National Commerce Act (15
13 U.S.C. Section 7001 et seq.) but does not modify, limit or
14 supersede Section 101(c) of that act (15 U.S.C. Section
15 7001(c)) or authorize electronic delivery of any of the notices
16 described in Section 103(b) of that act (15 U.S.C. Section
17 7003(b)).

18 Section 40. TRANSITIONAL PROVISIONS--APPLICATION TO
19 EXISTING TRANSACTIONS.--Transactions entered into before the
20 Uniform Debt-Management Services Act takes effect and the
21 rights, duties and interests resulting from them may be
22 completed, terminated or enforced as required or permitted by a
23 law amended, repealed or modified by the Uniform Debt-
24 Management Services Act as though the amendment, repeal or
25 modification had not occurred.

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

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

7 Section 43. EFFECTIVE DATE.--

8 A. The effective date of the provisions of Sections
9 1 through 3 and Sections 15 through 42 of this act is July 1,
10 2009.

11 B. The effective date of the provisions of Sections
12 4 through 14 of this act is January 1, 2010.