

HOUSE CONSUMER AND PUBLIC AFFAIRS COMMITTEE SUBSTITUTE FOR
HOUSE BILL 851

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

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;

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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

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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

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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

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;

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

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

23 D. The administrator shall deny registration if,
24 with respect to an applicant that is organized as a
25 not-for-profit entity or has obtained tax-exempt status

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1 pursuant to the Internal Revenue Code of 1986, 26 U.S.C.
2 Section 501, as amended, the applicant's board of directors is
3 not independent of the applicant's employees and agents.

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

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

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

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

25 B. If the administrator denies an application for

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1 registration as a provider or does not act on an application
2 within the time prescribed in Subsection A of this section, the
3 applicant may appeal and request a hearing.

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

8 Section 11. RENEWAL OF REGISTRATION.--

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

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

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

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

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

25 (4) disclose any changes in the information

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

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

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

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

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

25 (d) payable for the benefit of the

1 applicant, New Mexico and individuals who are residents of New
2 Mexico, as their interests may appear; and

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

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

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

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

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

25 D. If a registered provider files a timely and

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1 complete application for renewal of registration, the
2 registration remains effective until the administrator, in a
3 record, notifies the applicant of a denial and states the
4 reasons for the denial.

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

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

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1 Debt-Management Services Act. The administrator shall accept
2 the application and the license or certificate from the other
3 state as an application for registration as a provider or for
4 renewal of registration as a provider, as appropriate, in New
5 Mexico if:

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

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

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

16 Section 13. BOND REQUIRED.--

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

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

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

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

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

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

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

23 C. If the principal amount of a surety bond is
24 reduced by payment of a claim or a judgment, the provider shall
25 immediately notify the administrator and within thirty days

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

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

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

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

23 E. If claims against a surety bond exceed or are
24 reasonably expected to exceed the amount of the bond, the
25 administrator, on the initiative of the administrator or on

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1 petition of the surety, shall, unless the proceeds are adequate
2 to pay all costs, judgments and claims, distribute the proceeds
3 in the following order:

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

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

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

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

18 Section 14. BOND REQUIRED--SUBSTITUTE.--

19 A. Instead of the surety bond required by Section
20 13 of the Uniform Debt-Management Services Act, a provider may
21 deliver to the administrator, in the amount required by
22 Subsection B of Section 13 of that act, and, except as
23 otherwise provided in Subparagraph (a) of Paragraph (2) of this
24 subsection, payable or available to New Mexico and to
25 individuals who reside in New Mexico when they agree to receive

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1 debt-management services from the provider, as their interests
2 may appear, if the provider or its agent does not comply with
3 the Uniform Debt-Management Services Act:

4 (1) a certificate of insurance:

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

9 (b) with no deductible, or if the
10 provider supplies a bond in the amount of five thousand dollars
11 (\$5,000), a deductible not exceeding five thousand dollars
12 (\$5,000); or

13 (2) with the approval of the administrator:

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

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

24 B. If a provider furnishes a substitute pursuant to
25 Subsection A of this section, the provisions of Subsections A,

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1 C, D and E of Section 13 of the Uniform Debt-Management
2 Services Act apply to the substitute.

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

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

13 Section 17. PREREQUISITES FOR PROVIDING DEBT-MANAGEMENT
14 SERVICES.--

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

22 (1) free of additional charge if the
23 individual enters into an agreement;

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

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1 (3) for a charge if the individual enters into
2 an agreement, using the following terminology, as applicable,
3 and format:

4 "Set-up fee:

5 _____

6 (dollar amount of fee)

7 Monthly service fee:

8 _____

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

10 Settlement fee:

11 _____

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

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

15 _____

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

17 _____

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

19 B. A provider shall not furnish debt-management
20 services unless the provider, through the services of a
21 certified counselor or certified debt specialist:

22 (1) provides the individual with reasonable
23 education about the management of personal finance;

24 (2) has prepared a financial analysis; and

25 (3) if the individual is to make regular,

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underscored material = new
[bracketed material] = delete

1 periodic payments to a creditor or provider:

2 (a) has prepared a plan for the
3 individual;

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

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

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

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

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

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

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1 of:

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

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

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

8 (d) all other creditors.

9 D. Before an individual assents to an agreement,
10 the provider shall inform the individual in a separate record
11 that the individual may keep whether or not the individual
12 assents to the agreement:

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

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

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

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

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

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

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

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

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

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

24 F. If a provider will not receive payments from an
25 individual's creditors and the plan contemplates that the

1 individual's creditors will reduce finance charges or fees for
 2 late payment, default or delinquency, a provider may comply
 3 with Subsection D of this section by providing the following
 4 disclosure, surrounded by black lines:

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

- 6 (1) Debt-management plans are not right for
 7 all individuals, and you may ask us to
 8 provide information about other ways,
 9 including bankruptcy, to deal with your
 10 debts.
- 11 (2) Using a debt-management plan may make it
 12 harder for you to obtain credit.

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

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

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

- 21 (1) Our program is not right for all
 22 individuals, and you may ask us to
 23 provide information about bankruptcy and
 24 other ways to deal with your debts.
- 25 (2) Nonpayment of your debts under our

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1 program may:

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

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

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

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

16 A. As used in this section:

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

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

23 B. A provider may satisfy the requirements of
24 Section 17, 19 or 27 of the Uniform Debt-Management Services
25 Act by means of the internet or other electronic means if the

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1 provider obtains a consumer's consent in the manner provided by
2 Section 101(c)(1) of the federal act.

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

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

11 (1) contain no other information; and

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

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

21 F. If a provider is requested, before the
22 expiration of ninety days after an agreement is completed or
23 terminated, to send a written copy of the materials required by
24 Subsections C and D of Section 17 and Sections 19 and 27 of the
25 Uniform Debt-Management Services Act, the provider shall send

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1 the materials at no charge within three business days after the
2 request is received, but the provider need not comply with a
3 request more than once per calendar month or if it reasonably
4 believes the request is made for purposes of harassment. If a
5 request is made more than ninety days after an agreement is
6 completed or terminated, the provider shall send within a
7 reasonable time a written copy of the materials requested.

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

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

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

16 (3) the names of its principal officers.

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

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

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

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

8 A. An agreement shall:

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

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1 of the date of the final payment;

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

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

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

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

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

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

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

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1 B. For purposes of Paragraph (5) of Subsection A of
2 this section, delivery of an electronic record occurs when it
3 is made available in a format in which the individual may
4 retrieve, save and print it and the individual is notified that
5 it is available.

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

11 D. An agreement shall provide that:

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

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

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

25 (c) all powers of attorney granted by

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1 the individual to the provider are revoked and ineffective;

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

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

10 (a) the identity of the creditor; and

11 (b) the right of the individual to
12 modify or terminate the agreement.

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

23 F. An agreement shall not:

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

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

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

11 (4) contain a provision that:

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

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

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

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

24 A. An individual may cancel an agreement before
25 midnight of the third business day after the individual assents

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1 to it, unless the agreement does not comply with Subsection B
2 of this section or Section 19 or 28 of the Uniform Debt-
3 Management Services Act, in which event the individual may
4 cancel the agreement within thirty days after the individual
5 assents to it. To exercise the right to cancel, the individual
6 shall give notice in a record to the provider. Notice by mail
7 is given when mailed.

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

10 **"Notice of Right to Cancel**

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

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

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

1 paid us.

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

5 I cancel this agreement,

6 _____

7 Print your name

8 _____

9 Signature

10 _____

11 Date".

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

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

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underscoring material = new
[bracketed material] = delete

1 provider shall furnish a translation into the other language of
2 the disclosures and documents required by the Uniform Debt-
3 Management Services Act.

4 Section 22. TRUST ACCOUNT.--

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

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

17 C. A provider shall:

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

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

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

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1 (b) if a plan provides for regular
2 periodic payments to creditors, the disbursement shall comply
3 with the due dates established by each creditor; and

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

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

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

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

24 G. If a provider discovers, or has a reasonable
25 suspicion of, embezzlement or other unlawful appropriation of

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1 money held in trust, the provider immediately shall notify the
2 administrator by a method approved by the administrator.

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

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

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

20 Section 23. FEES AND OTHER CHARGES.--

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

25 B. A provider shall not impose charges or receive

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1 payment for debt-management services until the provider and the
2 individual have signed an agreement that complies with Sections
3 19 and 28 of the Uniform Debt-Management Services Act.

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

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

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

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

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

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1 (2) if an individual assents to an agreement
2 that contemplates that creditors will settle debts for less
3 than the principal amount of the debt, a provider may charge:

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

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

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

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

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

6 F. Except as otherwise provided in Subsections C
7 and D of this section, if an agreement contemplates that
8 creditors will settle an individual's debts for less than the
9 principal amount of the debt, compensation for services in
10 connection with settling a debt may not exceed the following
11 settlement fee limits, the terms of which shall be clearly
12 disclosed in the agreement:

13 (1) with respect to an agreement that provides
14 for a flat settlement fee based on the overall amount of
15 included debt, the total aggregate amount of fees charged to
16 any individual pursuant to the Uniform Debt-Management Services
17 Act, including fees charged pursuant to Subparagraphs (a) and
18 (b) of Paragraph (2) of Subsection D of this section, shall not
19 exceed seventeen percent of the principal amount of debt
20 included in the agreement at the inception of the agreement.
21 The flat settlement fee authorized pursuant to this paragraph
22 shall be assessed in equal monthly payments over at least half
23 the length of the plan, as estimated at the plan's inception,
24 unless the payment of fees is voluntarily accelerated by the
25 individual in a separate record or at least half of the overall

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1 amount of outstanding debt covered by the agreement has been
2 settled; or

3 (2) with respect to agreements where fees are
4 calculated as a percentage of the amount saved by an
5 individual, a settlement fee may not exceed thirty percent of
6 the excess of the outstanding amount of each debt over the
7 amount actually paid to the creditor, as calculated at the time
8 of settlement. Settlement fees authorized pursuant to this
9 paragraph may be collected only as debts are settled, and the
10 total aggregate amount of fees charged to any individual
11 pursuant to the Uniform Debt-Management Services Act, including
12 fees charged pursuant to Subparagraphs (a) and (b) of Paragraph
13 (2) of Subsection D of this section, may not exceed twenty
14 percent of the principal amount of debt included in the
15 agreement at the inception of the agreement; and

16 (3) a provider shall not impose or receive
17 fees under both Paragraphs (1) and (2) of this subsection.

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

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 outstanding amount of the
6 debt 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 outstanding 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 or is part of a
23 payment plan, the terms of which are included in the
24 certification, which upon completion will result in full
25 settlement of the debt;

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1 (12) make a representation that:

2 (a) the provider will furnish money to
3 pay bills or prevent attachments;

4 (b) payment of a certain amount will
5 permit satisfaction of a certain amount or range of
6 indebtedness; or

7 (c) participation in a plan will or may
8 prevent litigation, garnishment, attachment, repossession,
9 foreclosure, eviction or loss of employment;

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

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

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

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

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

24 (16) employ an unfair, unconscionable or
25 deceptive act or practice, including the knowing omission of

1 any material information.

2 B. If a provider furnishes debt-management services
3 to an individual, the provider shall not, directly or
4 indirectly:

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

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

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

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

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

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

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

22 (a) the administrator, upon proper
23 demand;

24 (b) a creditor of the individual, to the
25 extent necessary to secure the cooperation of the creditor in a

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1 plan; or

2 (c) the extent necessary to administer
3 the plan;

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

8 (7) charge the individual for or provide
9 credit or other insurance, coupons for goods or services,
10 membership in a club, access to computers or the internet or
11 any other matter not directly related to debt-management
12 services or educational services concerning personal finance,
13 except to the extent such services are expressly authorized by
14 the administrator; or

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

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

21 D. A provider shall not receive a gift or bonus,
22 premium, reward or other compensation, directly or indirectly,
23 for advising, arranging or assisting an individual in
24 connection with obtaining an extension of credit or other
25 service from a lender or service provider, except for

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1 educational or counseling services required in connection with
2 a government-sponsored program.

3 E. Unless a person supplies goods, services or
4 facilities generally and supplies them to the provider at a
5 cost no greater than the cost the person generally charges to
6 others, a provider shall not purchase goods, services or
7 facilities from the person if an employee of the provider or a
8 person that the provider should reasonably know is an affiliate
9 of the provider:

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

11 or

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

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

20 Section 30. ADVERTISING.--

21 A. If the agreements of a provider contemplate that
22 creditors will reduce finance charges or fees for late payment,
23 default or delinquency and the provider advertises
24 debt-management services, it shall disclose, in an easily
25 comprehensible manner, that using a debt-management plan may

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1 make it harder for the individual to obtain credit.

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

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

16 Section 32. POWERS OF ADMINISTRATOR.--

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

23 B. The administrator may investigate and examine,
24 in New Mexico or elsewhere, by subpoena or otherwise, the
25 activities, books, accounts and records of a person that

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1 provides or offers to provide debt-management services, or a
2 person to which a provider has delegated its obligations
3 pursuant to an agreement or the Uniform Debt-Management
4 Services Act, to determine compliance with the Uniform
5 Debt-Management Services Act. Information that identifies
6 individuals who have agreements with the provider shall not be
7 disclosed to the public. In connection with the investigation,
8 the administrator may:

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

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

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

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

22 D. The administrator may enter into cooperative
23 arrangements with any other federal or state agency having
24 authority over providers and may exchange with any of those
25 agencies information about a provider, including information

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1 obtained during an examination of the provider.

2 E. The administrator, by rule, shall adopt dollar
3 amounts instead of those specified in Sections 2, 5, 9, 13, 23,
4 33 and 35 of the Uniform Debt-Management Services Act to
5 reflect inflation, as measured by the United States bureau of
6 labor statistics consumer price index for all urban consumers
7 or, if that index is not available, another index adopted by
8 rule by the administrator. The administrator shall adopt a
9 base year and adjust the dollar amounts, effective on July 1 of
10 each year, if the change in the index from the base year, as of
11 December 31 of the preceding year, is at least ten percent.
12 The dollar amount shall be rounded to the nearest one hundred
13 dollars (\$100), except that the amounts in Section 23 of the
14 Uniform Debt-Management Services Act shall be rounded to the
15 nearest dollar.

16 F. The administrator shall notify registered
17 providers of any change in dollar amounts made pursuant to
18 Subsection E of this section and make that information
19 available to the public.

20 Section 33. ADMINISTRATIVE REMEDIES.--

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

24 (1) ordering a provider or a director,
25 employee or other agent of a provider to cease and desist from

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underscoring material = new
[bracketed material] = delete

1 any violations;

2 (2) ordering a provider or a person that has
3 caused a violation to correct the violation, including making
4 restitution of money or property to a person aggrieved by a
5 violation;

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

11 (4) prosecuting a civil action to:

12 (a) enforce an order; or

13 (b) obtain restitution or an injunction
14 or other equitable relief, or both; or

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

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

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

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1 D. The administrator may recover the reasonable
2 expenses of enforcing the Uniform Debt-Management Services Act
3 pursuant to Subsections A through C of this section, including
4 attorney and expert witness fees based on the hours reasonably
5 expended and the hourly rates for attorneys and expert
6 witnesses of comparable experience in the community.

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

15 Section 34. SUSPENSION, REVOCATION OR NONRENEWAL OF
16 REGISTRATION.--

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

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

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

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

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

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

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

9 (3) the provider is insolvent;

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

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

21 C. If a provider does not comply with Subsection F
22 of Section 22 of the Uniform Debt-Management Services Act or if
23 the administrator otherwise finds that the public health or
24 safety or general welfare requires emergency action, the
25 administrator may order a summary suspension of the provider's

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underscored material = new
[bracketed material] = delete

1 registration, effective on the date specified in the order.

2 D. If the administrator suspends, revokes or denies
3 renewal of the registration of a provider, the administrator
4 may seek a court order authorizing seizure of any or all of the
5 money in a trust account required by Section 22 of the Uniform
6 Debt-Management Services Act, books, records, accounts and
7 other property of the provider that are located in New Mexico.

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

11 Section 35. PRIVATE ENFORCEMENT.--

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

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

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

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

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

15 (3) punitive damages; and

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

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

22 E. In addition to the remedy available pursuant to
23 Subsection C of this section, if a provider violates an
24 individual's rights pursuant to Section 20 of the Uniform
25 Debt-Management Services Act, the individual may recover in a

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1 civil action all money paid or deposited by or on behalf of the
2 individual pursuant to the agreement, except for amounts paid
3 to creditors.

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

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

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

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1 Section 37. STATUTE OF LIMITATIONS.--

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

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

10 (1) the individual's last transmission of
11 money to a provider;

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

14 (3) the provider's last disbursement to a
15 creditor of the individual;

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

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

22 (6) termination of actions or proceedings by
23 the administrator with respect to a violation of the Uniform
24 Debt-Management Services Act.

25 C. The period prescribed in Paragraph (5) of

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

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

13 Section 39. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
14 AND NATIONAL COMMERCE ACT.--The Uniform Debt-Management
15 Services Act modifies, limits and supersedes the federal
16 Electronic Signatures in Global and National Commerce Act (15
17 U.S.C. Section 7001 et seq.) but does not modify, limit or
18 supersede Section 101(c) of that act (15 U.S.C. Section
19 7001(c)) or authorize electronic delivery of any of the notices
20 described in Section 103(b) of that act (15 U.S.C. Section
21 7003(b)).

22 Section 40. TRANSITIONAL PROVISIONS--APPLICATION TO
23 EXISTING TRANSACTIONS.--Transactions entered into before the
24 Uniform Debt-Management Services Act takes effect and the
25 rights, duties and interests resulting from them may be

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1 completed, terminated or enforced as required or permitted by a
2 law amended, repealed or modified by the Uniform Debt-
3 Management Services Act as though the amendment, repeal or
4 modification had not occurred.

5 Section 41. REPEAL.--Sections 56-2-1 through 56-2-4 NMSA
6 1978 (being Laws 1965, Chapter 80, Sections 1 through 4) are
7 repealed.

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

11 Section 43. EFFECTIVE DATE.--

12 A. The effective date of the provisions of Sections
13 1 through 3 and Sections 15 through 42 of this act is July 1,
14 2009.

15 B. The effective date of the provisions of Sections
16 4 through 14 of this act is January 1, 2010.