

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

SENATE BILL 152

48TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2008

INTRODUCED BY

Carroll H. Leavell

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

RELATING TO CONSUMER CREDIT COUNSELING; ENACTING THE UNIFORM
DEBT-MANAGEMENT SERVICES ACT.

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

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

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

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

B. "affiliate" means:

(1) with respect to an individual:

(a) the spouse of the individual;

(b) a sibling of the individual or the

underscoring material = new
[bracketed material] = delete

1 spouse of a sibling;

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

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

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

11 (2) with respect to an entity:

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

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

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

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

.169959.3

1 or received more than twenty-five thousand dollars (\$25,000)
2 from the entity in either the current year or the preceding
3 year;

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

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

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

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

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

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

24 F. "certified counselor" means an individual
25 certified by a training program or certifying organization,

.169959.3

1 approved by the administrator, that authenticates the
2 competence of individuals providing education and assistance to
3 other individuals in connection with debt-management services;

4 G. "concessions" means assent to repayment of a
5 debt on terms more favorable to an individual than the terms of
6 the contract between the individual and a creditor;

7 H. "day" means a calendar day;

8 I. "debt-management services" means services as an
9 intermediary between an individual and one or more creditors of
10 the individual for the purpose of obtaining concessions, but
11 does not include:

12 (1) legal services provided in an
13 attorney-client relationship by an attorney licensed or
14 otherwise authorized to practice law in this state;

15 (2) accounting services provided in an
16 accountant-client relationship by a certified public accountant
17 licensed to provide accounting services in this state; or

18 (3) financial-planning services provided in a
19 financial planner-client relationship by a member of a
20 financial-planning profession whose members the administrator,
21 by rule, determines are:

22 (a) licensed by this state;
23 (b) subject to a disciplinary mechanism;
24 (c) subject to a code of professional
25 responsibility; and

.169959.3

underscored material = new
[bracketed material] = delete

1 (d) subject to a continuing education
2 requirement;

3 J. "entity" means a person other than an
4 individual;

5 K. "good faith" means honesty in fact and the
6 observance of reasonable standards of fair dealing;

7 L. "person" means an individual, corporation,
8 business trust, estate, trust, partnership, limited liability
9 company, association, joint venture or any other legal or
10 commercial entity. "Person" does not include a public
11 corporation, government or governmental subdivision, agency or
12 instrumentality;

13 M. "plan" means a program or strategy in which a
14 provider furnishes debt-management services to an individual
15 and that includes a schedule of payments to be made by or on
16 behalf of the individual and used to pay debts owed by the
17 individual;

18 N. "principal amount of the debt" means the amount
19 of a debt at the time of an agreement;

20 O. "provider" means a person that provides, offers
21 to provide or agrees to provide debt-management services
22 directly or through others;

23 P. "record" means information that is inscribed on
24 a tangible medium or that is stored in an electronic or other
25 medium and is retrievable in perceivable form;

.169959.3

underscoring material = new
[bracketed material] = delete

1 Q. "settlement fee" means a charge imposed on or
2 paid by an individual in connection with a creditor's assent to
3 accept in full satisfaction of a debt an amount less than the
4 principal amount of the debt;

5 R. "sign" means, with present intent to
6 authenticate or adopt a record:

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

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

10 S. "state" means a state of the United States, the
11 District of Columbia, Puerto Rico, the United States Virgin
12 Islands or any territory or insular possession subject to the
13 jurisdiction of the United States; and

14 T. "trust account" means an account held by a
15 provider that is:

16 (1) established in an insured bank;

17 (2) separate from other accounts of the
18 provider or its designee;

19 (3) designated as a trust account or other
20 account designated to indicate that the money in the account is
21 not the money of the provider or its designee; and

22 (4) used to hold money of one or more
23 individuals for disbursement to creditors of the individuals.

24 Section 3. EXEMPT AGREEMENTS AND PERSONS.--

25 A. The Uniform Debt-Management Services Act does

.169959.3

underscoring material = new
[bracketed material] = delete

1 not apply to an agreement with an individual whom the provider
2 has no reason to know resides in this state at the time of the
3 agreement.

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

6 (1) provides or agrees to provide
7 debt-management, educational or counseling services to an
8 individual whom the provider has no reason to know resides in
9 this state at the time the provider agrees to provide the
10 services; or

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

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

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

21 (2) a bank;

22 (3) an affiliate of a bank if the affiliate is
23 regulated by a federal or state banking regulatory authority;
24 or

25 (4) a title insurer, escrow company or other

.169959.3

underscored material = new
[bracketed material] = delete

1 person that provides bill-paying services if the provision of
2 debt-management services is incidental to the bill-paying
3 services.

4 Section 4. REGISTRATION REQUIRED.--

5 A. Except as otherwise provided in Subsection B of
6 this section, a provider shall not provide debt-management
7 services to an individual whom it reasonably should know
8 resides in this state at the time it agrees to provide the
9 services, unless the provider is registered pursuant to the
10 Uniform Debt-Management Services Act.

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

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

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

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

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

24 (1) the five-hundred-dollar (\$500) application
25 fee;

.169959.3

underscored material = new
[bracketed material] = delete

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

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

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

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

12 (b) issued by an insurance company
13 authorized to do business in this state and rated at least A by
14 a nationally recognized rating organization;

15 (c) with no deductible;

16 (d) payable to the applicant, the
17 individuals who have agreements with the applicant and this
18 state as their interests may appear; and

19 (e) not subject to cancellation by the
20 applicant without the approval of the administrator;

21 (5) proof of compliance with the applicable
22 law of this state governing either the formation in this state
23 of the applicant or the qualification to do business in this
24 state by the applicant, together with the name and business
25 address of the applicant's registered agent in this state for

.169959.3

underscoring material = new
[bracketed material] = delete

1 the service of process; and

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

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

10 A. the applicant's name, principal business address
11 and telephone number and all other business addresses in this
12 state, electronic-mail addresses and internet web site
13 addresses;

14 B. all names under which the applicant conducts
15 business;

16 C. the address of each location in this state at
17 which the applicant will provide debt-management services or a
18 statement that the applicant will have no such location;

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

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

24 (1) the applicant or any of its officers or
25 directors has been licensed or registered to provide debt-

.169959.3

underscored material = new
[bracketed material] = delete

1 management services; or

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

4 F. a statement describing, to the extent it is
5 known or should be known by the applicant, any material civil
6 or criminal judgment or litigation and any material
7 administrative or enforcement action by a governmental agency
8 in any jurisdiction against the applicant, any of its officers,
9 directors, owners or agents, or any person who is authorized to
10 have access to the trust account required by Section 22 of the
11 Uniform Debt-Management Services Act;

12 G. the applicant's financial statements, audited by
13 an accountant licensed to conduct audits, for each of the two
14 years immediately preceding the application or, if it has not
15 been in operation for the two years preceding the application,
16 for the period of its existence;

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

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

22 J. a description of the three most commonly used
23 educational programs that the applicant provides or intends to
24 provide to individuals who reside in this state and a copy of
25 any materials used or to be used in those programs;

.169959.3

underscored material = new
[bracketed material] = delete

1 K. a description of the applicant's financial
2 analysis and initial budget plan, including any form or
3 electronic model, used to evaluate the financial condition of
4 individuals;

5 L. a copy of each form of agreement that the
6 applicant will use with individuals who reside in this state;

7 M. the schedule of fees and charges that the
8 applicant will use with individuals who reside in this state;

9 N. at the applicant's expense, the results of a
10 criminal records check, including fingerprints, conducted
11 within the immediately preceding twelve months, covering every
12 officer of the applicant and every employee or agent of the
13 applicant who is authorized to have access to the trust account
14 required by Section 22 of the Uniform Debt-Management Services
15 Act;

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

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

22 (1) any affiliate of the applicant; or

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

.169959.3

underscored material = new
[bracketed material] = delete

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

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

8 S. any other information that the administrator
9 reasonably requires to perform the administrator's duties
10 pursuant to Section 9 of the Uniform Debt-Management Services
11 Act.

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

18 Section 8. APPLICATION FOR REGISTRATION--PUBLIC
19 INFORMATION.--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 registration as a
24 provider available to the public.

25 Section 9. CERTIFICATE OF REGISTRATION--ISSUANCE OR

.169959.3

underscored material = new
[bracketed material] = delete

1 DENIAL.--

2 A. Except as otherwise provided in Subsections B
3 and C of this section, the administrator shall issue a
4 certificate of registration as a provider to a person that
5 complies with Sections 5 and 6 of the Uniform Debt-Management
6 Services Act.

7 B. The administrator may deny registration if:

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

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

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

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

22 C. The administrator shall deny registration if:

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

25 (2) with respect to an applicant that is

.169959.3

underscored material = new
[bracketed material] = delete

1 organized as a not-for-profit entity or has obtained tax-exempt
2 status pursuant to the Internal Revenue Code of 1986, 26 U.S.C.
3 Section 501, as amended, the applicant's board of directors is
4 not independent of the applicant's employees and agents.

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

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

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

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

.169959.3

underscoring material = new
[bracketed material] = delete

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

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

9 Section 11. RENEWAL OF REGISTRATION.--

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

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

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

17 (2) be accompanied by the fee established by
18 the administrator and the bond required by Section 13 of the
19 Uniform Debt-Management Services Act;

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

.169959.3

underscored material = new
[bracketed material] = delete

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

5 (5) supply evidence of insurance in an amount
6 equal to the greater of two hundred fifty thousand dollars
7 (\$250,000) or the highest daily balance in the trust account
8 required by Section 22 of the Uniform Debt-Management Services
9 Act during the six-month period immediately preceding the
10 application:

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

14 (b) issued by an insurance company
15 authorized to do business in this state and rated at least A by
16 a nationally recognized rating organization;

17 (c) with no deductible;

18 (d) payable to the applicant, the
19 individuals who have agreements with the applicant and this
20 state as their interests may appear; and

21 (e) not subject to cancellation by the
22 applicant without the approval of the administrator;

23 (6) disclose the total amount of money
24 received by the applicant pursuant to plans during the
25 preceding twelve months from or on behalf of individuals who

.169959.3

underscored material = new
[bracketed material] = delete

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

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

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

11 C. 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 renewal of
16 registration as a provider available to the public.

17 D. If a registered provider files a timely and
18 complete application for renewal of registration, the
19 registration remains effective until the administrator, in a
20 record, notifies the applicant of a denial and states the
21 reasons for the denial.

22 E. If the administrator denies an application for
23 renewal of registration as a provider, the applicant within
24 thirty days after receiving notice of the denial may appeal and
25 request a hearing. Subject to Section 34 of the Uniform

.169959.3

underscoring material = new
[bracketed material] = delete

1 Debt-Management Services Act, while the appeal is pending the
2 applicant shall continue to provide debt-management services to
3 individuals with whom it has agreements. If the denial is
4 affirmed, subject to the administrator's order and Section 34
5 of the Uniform Debt-Management Services Act, the applicant
6 shall continue to provide debt-management services to
7 individuals with whom it has agreements until, with the
8 approval of the administrator, it transfers the agreements to
9 another registered provider or returns to the individuals all
10 unexpended money that is under the applicant's control.

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

23 A. the application in the other state contains
24 information substantially similar to or more comprehensive than
25 that required in an application submitted in this state;

.169959.3

underscored material = new
[bracketed material] = delete

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

4 C. the applicant, upon oath or affirmation,
5 certifies that the information contained in the application is
6 current or, to the extent it is not current, supplements the
7 application to make the information current.

8 Section 13. BOND REQUIRED.--

9 A. Except as otherwise provided in Section 14 of
10 the Uniform Debt-Management Services Act, a provider that is
11 required to be registered pursuant to the provisions of that
12 act shall file a surety bond with the administrator, which
13 shall:

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

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

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

.169959.3

underscoring material = new
[bracketed material] = delete

1 (1) be in the amount of fifty thousand dollars
2 (\$50,000) or other larger or smaller amount that the
3 administrator determines is warranted by the financial
4 condition and business experience of the provider, the history
5 of the provider in performing debt-management services, the
6 risk to individuals and any other factor the administrator
7 considers appropriate;

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

12 (3) have payment conditioned upon
13 noncompliance of the provider or its agent with the Uniform
14 Debt-Management Services Act.

15 C. If the principal amount of a surety bond is
16 reduced by payment of a claim or a judgment, the provider shall
17 immediately notify the administrator and within thirty days
18 after notice by the administrator file a new or additional
19 surety bond in an amount set by the administrator. The amount
20 of the new or additional bond shall be at least the amount of
21 the bond immediately before payment of the claim or judgment.
22 If for any reason a surety terminates a bond, the provider
23 shall immediately file a new surety bond in the amount of fifty
24 thousand dollars (\$50,000) or other amount determined pursuant
25 to Subsection B of this section.

.169959.3

underscored material = new
[bracketed material] = delete

1 D. The administrator or an individual may obtain
2 satisfaction out of the surety bond procured pursuant to this
3 section if:

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

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

15 E. If claims against a surety bond exceed or are
16 reasonably expected to exceed the amount of the bond, the
17 administrator, on the initiative of the administrator or on
18 petition of the surety, shall, unless the proceeds are adequate
19 to pay all costs, judgments and claims, distribute the proceeds
20 in the following order:

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

25 (2) to final judgments recovered by

.169959.3

underscored material = new
[bracketed material] = delete

1 individuals pursuant to Subsection A or B of Section 35 of the
2 Uniform Debt-Management Services Act or Paragraph (1), (2) or
3 (4) of Subsection C of Section 35 of that act, pro rata;

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

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

10 Section 14. BOND REQUIRED--SUBSTITUTE.--

11 A. Instead of the surety bond required by Section
12 13 of the Uniform Debt-Management Services Act, a provider may
13 deliver to the administrator, in the amount required by
14 Subsection B of Section 13 of that act, and, except as
15 otherwise provided in Subparagraph (a) of Paragraph (2) of this
16 subsection, payable or available to this state and to
17 individuals who reside in this state when they agree to receive
18 debt-management services from the provider, as their interests
19 may appear, if the provider or its agent does not comply with
20 the Uniform Debt-Management Services Act:

21 (1) a certificate of insurance issued by an
22 insurance company authorized to do business in this state and
23 rated at least A by a nationally recognized rating
24 organization, with no deductible; or

25 (2) with the approval of the administrator:

.169959.3

underscored material = new
[bracketed material] = delete

1 (a) an irrevocable letter of credit,
2 issued or confirmed by a bank approved by the administrator,
3 payable upon presentation of a certificate by the administrator
4 stating that the provider or its agent has not complied with
5 the Uniform Debt-Management Services Act; or

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

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

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

18 Section 16. CUSTOMER SERVICE.--A provider that is
19 required to be registered pursuant to the Uniform Debt-
20 Management Services Act shall maintain a toll-free
21 communication system, staffed at a level that reasonably
22 permits an individual to speak to a certified counselor or
23 customer-service representative, as appropriate, during
24 ordinary business hours.

25 Section 17. PREREQUISITES FOR PROVIDING DEBT-MANAGEMENT

.169959.3

underscored material = new
[bracketed material] = delete

1 SERVICES.--

2 A. Before providing debt-management services, a
3 registered provider shall give the individual an itemized list
4 of goods and services and the charges for each. The list shall
5 be clear and conspicuous, be in a record the individual may
6 keep, whether or not the individual assents to an agreement,
7 and describe the goods and services the provider offers:

8 (1) free of additional charge if the
9 individual enters into an agreement;

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

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

15 "Set-up fee:

16

17 *(dollar amount of fee)*

18 Monthly service

19 fee:

20

21 *(dollar amount of fee or method of determining amount)*

22 Settlement fee:

23

24 *(dollar amount of fee or method of determining amount)*

25 Goods and services in addition to those provided in connection

.169959.3

1 with a plan:

2

3 _____
4 (item) (dollar amount or method of determining amount)

4

5 _____
6 (item) (dollar amount or method of determining amount)".

6

7

8

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

9

10

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

11

12

(2) has prepared a financial analysis; and

13

(3) if the individual is to make regular, periodic payments:

14

15

(a) has prepared a plan for the individual;

16

17

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

21

22

23

24

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

25

C. Before an individual assents to an agreement to

.169959.3

1 engage in a plan, a provider shall:

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

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

10 (3) with respect to all creditors identified
11 by the individual or otherwise known by the provider to be
12 creditors of the individual, provide the individual with a list
13 of:

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

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

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

20 (d) all other creditors.

21 D. Before an individual assents to an agreement to
22 engage in a plan, the provider shall inform the individual, in
23 a record that contains nothing else, that is given separately
24 and that the individual may keep whether or not the individual
25 assents to the agreement:

.169959.3

underscored material = new
[bracketed material] = delete

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

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

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

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

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

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

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

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

.169959.3

- 1 (1) Debt-management plans are not right for
2 all individuals, and you may ask us to
3 provide information about other ways,
4 including bankruptcy, to deal with your
5 debts.
- 6 (2) Using a debt-management plan may hurt
7 your credit rating or credit scores.
- 8 (3) We may receive compensation for our
9 services from your creditors.

10 _____
11 *Name and business address of provider".*

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

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

- 19 (1) Debt-management plans are not right for
20 all individuals, and you may ask us to
21 provide information about other ways,
22 including bankruptcy, to deal with your
23 debts.
- 24 (2) Using a debt-management plan may hurt
25 your credit rating or credit scores.

underscoring material = new
[bracketed material] = delete

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Name and business address of provider".

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

"IMPORTANT INFORMATION FOR YOU TO CONSIDER

- (1) Our program is not right for all individuals, and you may ask us to provide information about bankruptcy and other ways to deal with your debts.
- (2) Nonpayment of your debts under our program may:
 - hurt your credit rating or credit scores;
 - lead your creditors to increase finance and other charges; and
 - lead your creditors to undertake activity, including lawsuits, to collect the debts.
- (3) Reduction of debt under our program may result in taxable income to you, even though you will not actually receive any money.

underscored material = new
[bracketed material] = delete

1 *Name and business address of provider".*

2 Section 18. COMMUNICATION BY ELECTRONIC OR OTHER

3 MEANS.--

4 A. As used in this section:

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

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

11 B. A provider may satisfy the requirements of
12 Section 17, 19 or 27 of the Uniform Debt-Management Services
13 Act by means of the internet or other electronic means if the
14 provider obtains a consumer's consent in the manner provided by
15 Section 101(c)(1) of the federal act.

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

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

24 (1) contain no other information; and

25 (2) the individual shall see before proceeding

.169959.3

underscored material = new
[bracketed material] = delete

1 to assent to formation of a plan.

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

9 F. If a provider is requested, before the
10 expiration of ninety days after a plan is completed or
11 terminated, to send a written copy of the materials required by
12 Subsections C and D of Section 17 and Sections 19 and 27 of the
13 Uniform Debt-Management Services Act, the provider shall send
14 the materials at no charge within three business days after the
15 request, but the provider need not comply with a request more
16 than once per calendar month or if it reasonably believes the
17 request is made for purposes of harassment. If a request is
18 made more than ninety days after a plan is completed or
19 terminated, the provider shall send within a reasonable time a
20 written copy of the materials requested.

21 G. A provider that maintains an internet web site
22 shall disclose on the home page of its web site or on a page
23 that is clearly and conspicuously connected to the home page by
24 a link that clearly reveals its contents:

25 (1) its name and all names under which it does

underscored material = new
[bracketed material] = delete

1 business;

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

4 (3) the names of its principal officers.

5 H. Subject to Subsection I of this section, if a
6 consumer who has consented to electronic communication in the
7 manner provided by Section 101 of the federal act withdraws
8 consent as provided in the federal act, a provider may
9 terminate its agreement with the consumer.

10 I. If a provider wishes to terminate an agreement
11 with a consumer pursuant to Subsection H of this section, it
12 shall notify the consumer that it will terminate the agreement
13 unless the consumer, within thirty days after receiving the
14 notification, consents to electronic communication in the
15 manner provided in Section 101(c) of the federal act. If the
16 consumer consents, the provider may terminate the agreement
17 only as permitted by Subparagraph (g) of Paragraph (6) of
18 Subsection A of Section 19 of the Uniform Debt-Management
19 Services Act.

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

21 A. An agreement shall:

22 (1) be in a record;

23 (2) be dated and signed by the provider and
24 the individual;

25 (3) include the name of the individual and the

.169959.3

1 address where the individual resides;

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

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

6 (6) disclose:

7 (a) the services to be provided;

8 (b) the amount, or method of determining
9 the amount, of all fees, individually itemized, to be paid by
10 the individual;

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

15 (d) if a plan provides for regular
16 periodic payments to creditors: 1) each creditor of the
17 individual to which payment will be made, the amount owed to
18 each creditor and any concessions the provider reasonably
19 believes each creditor will offer; and 2) the schedule of
20 expected payments to each creditor, including the amount of
21 each payment and the date on which it will be made;

22 (e) each creditor that the provider
23 believes will not participate in the plan and to which the
24 provider will not direct payment;

25 (f) how the provider will comply with

.169959.3

underscored material = new
[bracketed material] = delete

1 its obligations pursuant to Subsection A of Section 27 of the
2 Uniform Debt-Management Services Act;

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

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

9 (i) that the individual may contact the
10 administrator with any questions or complaints regarding the
11 provider; and

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

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

19 C. If the administrator supplies the provider with
20 any information required pursuant to Subparagraph (j) of
21 Paragraph (6) of Subsection A of this section, the provider may
22 comply with that requirement only by disclosing the information
23 supplied by the administrator.

24 D. An agreement shall provide that:

25 (1) the individual has a right to terminate

.169959.3

1 the agreement at any time, without penalty or obligation, by
2 giving the provider written or electronic notice, in which
3 event:

4 (a) the provider will refund all
5 unexpended money that the provider or its agent has received
6 from or on behalf of the individual for the reduction or
7 satisfaction of the individual's debt;

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

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

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

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

23 (a) the identity of the creditor; and
24 (b) the right of the individual to
25 modify or terminate the agreement.

underscored material = new
[bracketed material] = delete

1 E. An agreement may confer on a provider a power of
2 attorney to settle the individual's debt for no more than fifty
3 percent of the principal amount of the debt. An agreement
4 shall not confer a power of attorney to settle a debt for more
5 than fifty percent of that amount, but may confer a power of
6 attorney to negotiate with creditors of the individual on
7 behalf of the individual. An agreement shall provide that the
8 provider will obtain the assent of the individual after a
9 creditor has assented to a settlement for more than fifty
10 percent of the principal amount of the debt.

11 F. An agreement shall not:

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

14 (2) except as permitted by the Uniform
15 Arbitration Act, contain a provision that modifies or limits
16 otherwise available forums or procedural rights, including the
17 right to trial by jury, that are generally available to the
18 individual pursuant to law other than the Uniform Debt-
19 Management Services Act;

20 (3) contain a provision that restricts the
21 individual's remedies pursuant to the Uniform Debt-Management
22 Services Act or law other than the Uniform Debt-Management
23 Services Act; or

24 (4) contain a provision that:

25 (a) limits or releases the liability of

underscored material = new
[bracketed material] = delete

1 any person for not performing the agreement or for violating
2 the Uniform Debt-Management Services Act; or

3 (b) indemnifies any person for liability
4 arising pursuant to the agreement or the Uniform Debt-
5 Management Services Act.

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

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

12 A. An individual may cancel an agreement before
13 midnight of the third business day after the individual assents
14 to it, unless the agreement does not comply with Subsection B
15 of this section or Section 19 or 28 of the Uniform Debt-
16 Management Services Act, in which event the individual may
17 cancel the agreement within thirty days after the individual
18 assents to it. To exercise the right to cancel, the individual
19 shall give notice in a record to the provider. Notice by mail
20 is given when mailed.

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

23 **"Notice of Right to Cancel**

24 You may cancel this agreement, without any penalty
25 or obligation, at any time before midnight of the

.169959.3

underscoring material = new
[bracketed material] = delete

1 third business day that begins the day after you
2 agree to it by electronic communication or by
3 signing it.

4 To cancel this agreement during this period, send an
5 email to _____ (*email address*
6 *of provider*) or mail or deliver a signed, dated copy
7 of this notice, or any other written notice to
8 _____ (*name of provider*)
9 at _____ (*address of*
10 *provider*) before midnight on _____
11 (*date*).

12 If you cancel this agreement within the three-day
13 period, we will refund all money you already have
14 paid us.

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

18 I cancel this agreement,

19 _____

20 Print your name

21 _____

22 Signature

23 _____

24 Date".

25 C. If a personal financial emergency necessitates

underscored material = new
[bracketed material] = delete

1 the disbursement of an individual's money to one or more of the
2 individual's creditors before the expiration of three days
3 after an agreement is signed, an individual may waive the right
4 to cancel. To waive the right, the individual shall send or
5 deliver a signed, dated statement in the individual's own words
6 describing the circumstances that necessitate a waiver. The
7 waiver shall explicitly waive the right to cancel. A waiver by
8 means of a standard-form record is void.

9 Section 21. REQUIRED LANGUAGE.--Unless the
10 administrator, by rule, provides otherwise, the disclosures and
11 documents required by the Uniform Debt-Management Services Act
12 shall be in English. If a provider communicates with an
13 individual primarily in a language other than English, the
14 provider shall furnish a translation into the other language of
15 the disclosures and documents required by the Uniform Debt-
16 Management Services Act.

17 Section 22. TRUST ACCOUNT.--

18 A. All money paid to a provider by or on behalf of
19 an individual pursuant to a plan for distribution to creditors
20 is held in trust. Within two business days after receipt, the
21 provider shall deposit the money in a trust account established
22 for the benefit of individuals to whom the provider is
23 furnishing debt-management services.

24 B. Money held in trust by a provider is not
25 property of the provider or its designee. The money is not

.169959.3

1 available to creditors of the provider or designee, except an
2 individual from whom or on whose behalf the provider received
3 money, to the extent that the money has not been disbursed to
4 creditors of the individual.

5 C. A provider shall:

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

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

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

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

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

22 D. A provider shall not commingle money in a trust
23 account established for the benefit of individuals to whom the
24 provider is furnishing debt-management services with money of
25 other persons.

underscoring material = new
[bracketed material] = delete

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

4 F. If a provider has established a trust account
5 pursuant to Subsection A of this section, the provider shall
6 reconcile the trust account at least once a month. The
7 reconciliation shall compare the cash balance in the trust
8 account with the sum of the balances in each individual's
9 account. If the provider or its designee has more than one
10 trust account, each trust account shall be individually
11 reconciled.

12 G. If a provider discovers, or has a reasonable
13 suspicion of, embezzlement or other unlawful appropriation of
14 money held in trust, the provider immediately shall notify the
15 administrator by a method approved by the administrator.
16 Unless the administrator by rule provides otherwise, within
17 five days thereafter, the provider shall give notice to the
18 administrator describing the remedial action taken or to be
19 taken.

20 H. If an individual terminates an agreement or it
21 becomes reasonably apparent to a provider that a plan has
22 failed, the provider shall promptly refund to the individual
23 all money paid by or on behalf of the individual that has not
24 been paid to creditors, less fees that are payable to the
25 provider pursuant to Section 23 of the Uniform Debt-Management

.169959.3

underscoring material = new
[bracketed material] = delete

1 Services Act.

2 I. Before relocating a trust account from one bank
3 to another, a provider shall inform the administrator of the
4 name, business address and telephone number of the new bank.
5 As soon as practicable, the provider shall inform the
6 administrator of the account number of the trust account at the
7 new bank.

8 Section 23. FEES AND OTHER CHARGES.--

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

13 B. A provider shall not impose charges or receive
14 payment for debt-management services until the provider and the
15 individual have signed an agreement that complies with Sections
16 19 and 28 of the Uniform Debt-Management Services Act.

17 C. If an individual assents to an agreement, a
18 provider shall not impose a fee or other charge for educational
19 or counseling services, or the like, except as otherwise
20 provided in this subsection and Subsection D of Section 28 of
21 the Uniform Debt-Management Services Act. The administrator
22 may authorize a provider to charge a fee based on the nature
23 and extent of the educational or counseling services furnished
24 by the provider.

25 D. Subject to adjustment of dollar amounts pursuant

.169959.3

underscored material = new
[bracketed material] = delete

1 to Subsection E of Section 32 of the Uniform Debt-Management
2 Services Act, the following rules apply:

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

7 (a) a fee not exceeding fifty dollars
8 (\$50.00) for consultation, obtaining a credit report, setting
9 up an account and the like; 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 (2) if an individual assents to a plan that
15 contemplates that creditors will settle debts for less than the
16 principal amount of the debt, a provider may charge:

17 (a) subject to Subsection D of Section
18 19 of the Uniform Debt-Management Services Act, a fee for
19 consultation, obtaining a credit report, setting up an account
20 and the like in an amount not exceeding the lesser of four
21 hundred dollars (\$400) and four percent of the debt in the plan
22 at the inception of the plan; and

23 (b) a monthly service fee, not to exceed
24 ten dollars (\$10.00) multiplied by the number of creditors
25 remaining in a plan at the time the fee is assessed, but not

.169959.3

underscored material = new
[bracketed material] = delete

1 more than fifty dollars (\$50.00) in any month;

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

5 (4) except as otherwise provided in Subsection
6 D of Section 28 of the Uniform Debt-Management Services Act, if
7 an individual does not assent to an agreement, a provider may
8 receive for educational and counseling services it provides to
9 the individual a fee not exceeding one hundred dollars (\$100)
10 or, with the approval of the administrator, a larger fee. The
11 administrator may approve a fee larger than one hundred dollars
12 (\$100) if the nature and extent of the educational and
13 counseling services warrant the larger fee.

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

19 F. Except as otherwise provided in Subsections C
20 and D of this section, if a plan contemplates that creditors
21 will settle an individual's debts for less than the principal
22 amount of the debt, compensation for services in connection
23 with settling a debt may not exceed, with respect to each debt,
24 thirty percent of the excess of the principal amount of the
25 debt over the amount paid the creditor pursuant to the plan,

.169959.3

underscored material = new
[bracketed material] = delete

1 less, to the extent it has not been credited against an earlier
2 settlement fee:

3 (1) the fee charged pursuant to Subparagraph
4 (a) of Paragraph (2) of Subsection D of this section; and

5 (2) the aggregate of fees charged pursuant to
6 Subparagraph (b) of Paragraph (2) of Subsection D of this
7 section.

8 G. Subject to adjustment of the dollar amount
9 pursuant to Subsection E of Section 32 of the Uniform Debt-
10 Management Services Act, if a payment to a provider by an
11 individual pursuant to the Uniform Debt-Management Services Act
12 is dishonored, a provider may impose a reasonable charge on the
13 individual, not to exceed the lesser of twenty-five dollars
14 (\$25.00) and the amount permitted by law other than that act.

15 Section 24. VOLUNTARY CONTRIBUTIONS.--A provider shall
16 not solicit a voluntary contribution from an individual or an
17 affiliate of the individual for any service provided to the
18 individual. A provider may accept voluntary contributions from
19 an individual but, until thirty days after completion or
20 termination of a plan, the aggregate amount of money received
21 from or on behalf of the individual shall not exceed the total
22 amount the provider may charge the individual pursuant to
23 Section 23 of the Uniform Debt-Management Services Act.

24 Section 25. VOIDABLE AGREEMENTS.--

25 A. If a provider imposes a fee or other charge or

.169959.3

underscored material = new
[bracketed material] = delete

1 receives money or other payments not authorized by Section 23
2 or 24 of the Uniform Debt-Management Services Act, the
3 individual may void the agreement and recover as provided in
4 Section 35 of that act.

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

9 C. If an individual voids an agreement pursuant to
10 Subsection B of this section, the provider does not have a
11 claim against the individual for breach of contract or for
12 restitution.

13 Section 26. TERMINATION OF AGREEMENTS.--

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

17 B. If a provider or an individual terminates an
18 agreement, the provider shall immediately return to the
19 individual:

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

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

.169959.3

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

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

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

6 (2) before cancellation or termination of any
7 agreement:

8 (a) at least once each month; and

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

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

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

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

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

23 (4) the amount held in reserve; and

24 (5) if, since the last report, a creditor has
25 agreed to accept as payment in full an amount less than the

.169959.3

underscoring material = new
[bracketed material] = delete

1 principal amount of the debt owed by the individual:

2 (a) the total amount and terms of the
3 settlement;

4 (b) the amount of the debt when the
5 individual assented to the plan;

6 (c) the amount of the debt when the
7 creditor agreed to the settlement; and

8 (d) the calculation of a settlement fee.

9 C. A provider shall maintain records for each
10 individual for whom it provides debt-management services for
11 five years after the final payment made by the individual and
12 produce a copy of them to the individual within a reasonable
13 time after a request for them. The provider may use electronic
14 or other means of storage of the records.

15 Section 28. PROHIBITED ACTS AND PRACTICES.--

16 A. A provider shall not, directly or indirectly:

17 (1) misappropriate or misapply money held in
18 trust;

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

23 (3) take a power of attorney that authorizes
24 it to settle a debt, unless the power of attorney expressly
25 limits the provider's authority to settle debts for not more

.169959.3

1 than fifty percent of the principal amount of the debt owed a
2 creditor;

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

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

8 (a) a return of money to the individual;
9 or

10 (b) before termination of an agreement,
11 properly authorized by the agreement and the Uniform Debt-
12 Management Services Act, and for: 1) payment to one or more
13 creditors pursuant to a plan; or 2) payment of a fee;

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

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

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

25 (9) structure a plan in a manner that would

1 result in a negative amortization of any of an individual's
2 debts, unless a creditor that is owed a negatively amortizing
3 debt agrees to refund or waive the finance charge upon payment
4 of the principal amount of the debt;

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

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

13 (12) make a representation that:

14 (a) the provider will furnish money to
15 pay bills or prevent attachments;

16 (b) payment of a certain amount will
17 permit satisfaction of a certain amount or range of
18 indebtedness; or

19 (c) participation in a plan will or may
20 prevent litigation, garnishment, attachment, repossession,
21 foreclosure, eviction or loss of employment;

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

24 (14) represent that it is a not-for-profit
25 entity, unless it is organized and properly operating as a

1 not-for-profit pursuant to the law of the state in which it was
2 formed, or that it is a tax-exempt entity unless it has
3 received certification of tax-exempt status from the internal
4 revenue service;

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

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

10 B. If a provider furnishes debt-management services
11 to an individual, the provider shall not, directly or
12 indirectly:

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

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

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

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

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

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

.169959.3

underscoring material = new
[bracketed material] = delete

1 (5) except as permitted by federal law,
2 disclose the identity or identifying information of the
3 individual or the identity of the individual's creditors,
4 except to:

5 (a) the administrator, upon proper
6 demand;

7 (b) a creditor of the individual, to the
8 extent necessary to secure the cooperation of the creditor in a
9 plan; or

10 (c) the extent necessary to administer
11 the plan;

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

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

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

.169959.3

underscored material = new
[bracketed material] = delete

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

3 D. A provider shall not receive a gift or bonus,
4 premium, reward or other compensation, directly or indirectly,
5 for advising, arranging or assisting an individual in
6 connection with obtaining an extension of credit or other
7 service from a lender or service provider, except for
8 educational or counseling services required in connection with
9 a government-sponsored program.

10 E. Unless a person supplies goods, services or
11 facilities generally and supplies them to the provider at a
12 cost no greater than the cost the person generally charges to
13 others, a provider shall not purchase goods, services or
14 facilities from the person if an employee or a person that the
15 provider should reasonably know is an affiliate of the
16 provider:

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

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

20 Section 29. NOTICE OF LITIGATION.--No later than thirty
21 days after a provider has been served with notice of a civil
22 action for violation of the Uniform Debt-Management Services
23 Act by or on behalf of an individual who resides in this state
24 at either the time of an agreement or the time the notice is
25 served, the provider shall notify the administrator in a record

.169959.3

underscored material = new
[bracketed material] = delete

1 that it has been sued.

2 Section 30. ADVERTISING.--A provider that advertises
3 debt-management services shall disclose, in an easily
4 comprehensible manner, the information specified in Paragraphs
5 (3) and (4) of Subsection D of Section 17 of the Uniform
6 Debt-Management Services Act.

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

14 Section 32. POWERS OF ADMINISTRATOR.--

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

21 B. The administrator may investigate and examine,
22 in this state or elsewhere, by subpoena or otherwise, the
23 activities, books, accounts and records of a person that
24 provides or offers to provide debt-management services, or a
25 person to which a provider has delegated its obligations

.169959.3

underscoring material = new
[bracketed material] = delete

1 pursuant to an agreement or the Uniform Debt-Management
2 Services Act, to determine compliance with the Uniform
3 Debt-Management Services Act. Information that identifies
4 individuals who have agreements with the provider shall not be
5 disclosed to the public. In connection with the investigation,
6 the administrator may:

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

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

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

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

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

25 E. The administrator, by rule, shall adopt dollar

.169959.3

underscoring material = new
[bracketed material] = delete

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

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

18 Section 33. ADMINISTRATIVE REMEDIES.--

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

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

25 (2) ordering a provider or a person that has

.169959.3

underscored material = new
[bracketed material] = delete

1 caused a violation to correct the violation, including making
2 restitution of money or property to a person aggrieved by a
3 violation;

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

9 (4) prosecuting a civil action to:

10 (a) enforce an order; or

11 (b) obtain restitution or an injunction
12 or other equitable relief, or both; or

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

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

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

24 D. The administrator may recover the reasonable
25 expenses of enforcing the Uniform Debt-Management Services Act

.169959.3

underscored material = new
[bracketed material] = delete

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

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

13 Section 34. SUSPENSION, REVOCATION OR NONRENEWAL OF
14 REGISTRATION.--

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

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

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

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

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

.169959.3

underscoring material = new
[bracketed material] = delete

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

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

7 (3) the provider is insolvent;

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

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

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

25 D. If the administrator suspends, revokes or denies

.169959.3

underscored material = new
[bracketed material] = delete

1 renewal of the registration of a provider, the administrator
2 may seek a court order authorizing seizure of any or all of the
3 money in a trust account required by Section 22 of the Uniform
4 Debt-Management Services Act, books, records, accounts and
5 other property of the provider that are located in this state.

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

9 Section 35. PRIVATE ENFORCEMENT.--

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

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

24 C. Subject to Subsection D of this section, an
25 individual with respect to whom a provider violates the Uniform

.169959.3

underscored material = new
[bracketed material] = delete

1 Debt-Management Services Act may recover in a civil action from
2 the provider and any person that caused the violation:

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

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

13 (3) punitive damages; and

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

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

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

.169959.3

underscored material = new
[bracketed material] = delete

1 to creditors.

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

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

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

24 Section 37. STATUTE OF LIMITATIONS.--

25 A. An action or proceeding brought pursuant to

.169959.3

underscored material = new
[bracketed material] = delete

1 Subsection A, B or C of Section 33 of the Uniform Debt-
2 Management Services Act shall be commenced within four years
3 after the conduct that is the basis of the administrator's
4 complaint.

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

8 (1) the individual's last transmission of
9 money to a provider;

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

12 (3) the provider's last disbursement to a
13 creditor of the individual;

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

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

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

23 C. The period prescribed in Paragraph (5) of
24 Subsection B of this section is tolled during any period during
25 which the provider or, if different, the defendant has

.169959.3

underscored material = new
[bracketed material] = delete

1 materially and willfully misrepresented information required by
2 the Uniform Debt-Management Services Act to be disclosed to the
3 individual, if the information so misrepresented is material to
4 the establishment of the liability of the defendant pursuant to
5 that act.

6 Section 38. UNIFORMITY OF APPLICATION AND CONSTRUCTION.-

7 -In applying and construing the Uniform Debt-Management
8 Services Act, consideration shall be given to the need to
9 promote uniformity of the law with respect to its subject
10 matter among states that enact it.

11 Section 39. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL

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

20 Section 40. TRANSITIONAL PROVISIONS--APPLICATION TO

21 EXISTING TRANSACTIONS.--Transactions entered into before the
22 Uniform Debt-Management Services Act takes effect and the
23 rights, duties and interests resulting from them may be
24 completed, terminated or enforced as required or permitted by a
25 law amended, repealed or modified by the Uniform Debt-

.169959.3

underscoring material = new
~~[bracketed material] = delete~~

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Management Services Act as though the amendment, repeal or modification had not occurred.

Section 41. SEVERABILITY.--If any part or application of this act is held invalid, the remainder or its application to other situations or persons shall not be affected.

Section 42. EFFECTIVE DATE.--The effective date of the provisions of this act is July 1, 2008.