

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

HOUSE BILL 175

**49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010**

INTRODUCED BY

Joseph Cervantes

FOR THE COURTS, CORRECTIONS AND JUSTICE COMMITTEE

AN ACT

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

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

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

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

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

B. "affiliate" means:

(1) with respect to an individual:

(a) the spouse of the individual;

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

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

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

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

12 (2) with respect to an entity:

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

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

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

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

.179316.2

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

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

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

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

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

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

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

25 F. "certified counselor" means an individual

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

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

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

18 I. "day" means a calendar day;

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

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

.179316.2

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

.179316.2

underscored material = new  
[bracketed material] = delete

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

.179316.2

underscored material = new  
[bracketed material] = delete

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

.179316.2



underscoring material = new  
[bracketed material] = delete

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

.179316.2

underscored material = new  
[bracketed material] = delete

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:

.179316.2

underscoring material = new  
[bracketed material] = delete

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

.179316.2

underscored material = new  
[bracketed material] = delete

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;

.179316.2

underscored material = new  
[bracketed material] = delete

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

.179316.2

underscored material = new  
[bracketed material] = delete

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,

.179316.2

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

.179316.2

underscored material = new  
[bracketed material] = delete

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

.179316.2



underscored material = new  
[bracketed material] = delete

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

.179316.2

underscoring material = new  
[bracketed material] = delete

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

.179316.2

underscored material = new  
[bracketed material] = delete

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

.179316.2

underscoring material = new  
[bracketed material] = delete

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

.179316.2

underscored material = new  
[bracketed material] = delete

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

.179316.2

underscored material = new  
[bracketed material] = delete

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

.179316.2

underscored material = new  
[bracketed material] = delete

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

.179316.2

underscoring material = new  
[bracketed material] = delete

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

.179316.2



underscored material = new  
[bracketed material] = delete

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,

.179316.2

underscored material = new  
[bracketed material] = delete

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

.179316.2

underscored material = new  
[bracketed material] = delete

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,

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

.179316.2

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

.179316.2

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

underscored material = new  
[bracketed material] = delete

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

.179316.2



underscored material = new  
[bracketed material] = delete

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

.179316.2

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

underscoring material = new  
[bracketed material] = delete

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.

.179316.2

underscoring material = new  
[bracketed material] = delete

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

underscored material = new  
[bracketed material] = delete

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;

.179316.2

underscored material = new  
[bracketed material] = delete

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

.179316.2

underscored material = new  
[bracketed material] = delete

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



underscored material = new  
[bracketed material] = delete

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

.179316.2

underscored 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

.179316.2

underscored material = new  
[bracketed material] = delete

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

.179316.2

underscored material = new  
[bracketed material] = delete

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

.179316.2

underscoring material = new  
[bracketed material] = delete

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;

.179316.2

underscored material = new  
[bracketed material] = delete

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.

.179316.2

underscoring material = new  
[bracketed material] = delete

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

.179316.2

underscored material = new  
[bracketed material] = delete

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

.179316.2



underscored material = new  
[bracketed material] = delete

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

.179316.2

underscored material = new  
[bracketed material] = delete

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.--

underscored material = new  
[bracketed material] = delete

- 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;

.179316.2

underscored material = new  
[bracketed material] = delete

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;

.179316.2

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

.179316.2

underscoring material = new  
[bracketed material] = delete

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

.179316.2



underscored material = new  
[bracketed material] = delete

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

.179316.2

underscored material = new  
[bracketed material] = delete

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

.179316.2

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

underscored material = new  
[bracketed material] = delete

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

.179316.2

underscored 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.

.179316.2

underscored material = new  
[bracketed material] = delete

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.

.179316.2

underscored material = new  
[bracketed material] = delete

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

.179316.2

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.

.179316.2



underscored material = new  
[bracketed material] = delete

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

.179316.2

underscored material = new  
[bracketed material] = delete

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.

.179316.2

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

.179316.2

underscoring material = new  
[bracketed material] = delete

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

.179316.2

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

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 January  
14 1, 2011.

15 B. The effective date of the provisions of Sections  
16 4 through 14 of this act is January 1, 2014.