

UTAH DIVISION OF CONSUMER PROTECTION

AMENDMENTS

2012 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Derek E. Brown

Senate Sponsor: _____

LONG TITLE

General Description:

This bill modifies provisions relating to matters under the jurisdiction of the Utah Division of Consumer Protection.

Highlighted Provisions:

This bill:

- ▶ modifies what constitutes a deceptive act or practice for purposes of the Consumer Sales Practices Act;
- ▶ modifies dollar threshold amounts for purposes of plans subject to the Business Opportunity Disclosure Act;
- ▶ modifies the definition of "telephone solicitation" for purposes of the Telephone Fraud Prevention Act; and
- ▶ modifies the Uniform Debt-Management Services Act.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

13-11-4, as last amended by Laws of Utah 2010, Chapter 54



- 28 13-15-2, as last amended by Laws of Utah 2001, Chapter 196
- 29 13-26-2, as last amended by Laws of Utah 2005, Chapter 18
- 30 13-42-102, as enacted by Laws of Utah 2006, Chapter 154
- 31 13-42-112, as last amended by Laws of Utah 2008, Chapter 382
- 32 13-42-117, as last amended by Laws of Utah 2010, Chapter 378
- 33 13-42-119, as last amended by Laws of Utah 2010, Chapter 378
- 34 13-42-122, as last amended by Laws of Utah 2010, Chapter 378
- 35 13-42-123, as last amended by Laws of Utah 2009, Chapter 229
- 36 13-42-126, as enacted by Laws of Utah 2006, Chapter 154
- 37 13-42-128, as last amended by Laws of Utah 2009, Chapter 229
- 38 13-42-130, as last amended by Laws of Utah 2009, Chapter 229
- 39 13-42-134, as last amended by Laws of Utah 2008, Chapter 382

41 *Be it enacted by the Legislature of the state of Utah:*

42 Section 1. Section 13-11-4 is amended to read:

43 **13-11-4. Deceptive act or practice by supplier.**

44 (1) A deceptive act or practice by a supplier in connection with a consumer transaction
 45 violates this chapter whether it occurs before, during, or after the transaction.

46 (2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or
 47 practice if the supplier knowingly or intentionally:

48 (a) indicates that the subject of a consumer transaction has sponsorship, approval,
 49 performance characteristics, accessories, uses, or benefits, if it has not;

50 (b) indicates that the subject of a consumer transaction is of a particular standard,
 51 quality, grade, style, or model, if it is not;

52 (c) indicates that the subject of a consumer transaction is new, or unused, if it is not, or
 53 has been used to an extent that is materially different from the fact;

54 (d) indicates that the subject of a consumer transaction is available to the consumer for
 55 a reason that does not exist, including any of the following reasons falsely used in an
 56 advertisement:

57 (i) "going out of business";

58 (ii) "bankruptcy sale";

- 59 (iii) "lost our lease";
- 60 (iv) "building coming down";
- 61 (v) "forced out of business";
- 62 (vi) "final days";
- 63 (vii) "liquidation sale";
- 64 (viii) "fire sale";
- 65 (ix) "quitting business"; or
- 66 (x) an expression similar to any of the expressions in Subsections (2)(d)(i) through
- 67 (ix);
- 68 (e) indicates that the subject of a consumer transaction has been supplied in accordance
- 69 with a previous representation, if it has not;
- 70 (f) indicates that the subject of a consumer transaction will be supplied in greater
- 71 quantity than the supplier intends;
- 72 (g) indicates that replacement or repair is needed, if it is not;
- 73 (h) indicates that a specific price advantage exists, if it does not;
- 74 (i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier
- 75 does not have;
- 76 (j) (i) indicates that a consumer transaction involves or does not involve a warranty, a
- 77 disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if
- 78 the representation is false; or
- 79 (ii) fails to honor a warranty or a particular warranty term;
- 80 (k) indicates that the consumer will receive a rebate, discount, or other benefit as an
- 81 inducement for entering into a consumer transaction in return for giving the supplier the names
- 82 of prospective consumers or otherwise helping the supplier to enter into other consumer
- 83 transactions, if receipt of the benefit is contingent on an event occurring after the consumer
- 84 enters into the transaction;
- 85 (l) after receipt of payment for goods or services, fails to ship the goods or furnish the
- 86 services within the time advertised or otherwise represented or, if no specific time is advertised
- 87 or represented, fails to ship the goods or furnish the services within 30 days, unless within the
- 88 applicable time period the supplier provides the buyer with the option to:
- 89 (i) cancel the sales agreement and receive a refund of all previous payments to the

90 supplier if the refund is mailed or delivered to the buyer within 10 business days after the day
91 on which the seller receives written notification from the buyer of the buyer's intent to cancel
92 the sales agreement and receive the refund; or

93 (ii) extend the shipping date to a specific date proposed by the supplier;

94 (m) except as provided in Subsection (3)(b), fails to furnish a notice meeting the
95 requirements of Subsection (3)(a) of the purchaser's right to cancel a direct solicitation sale
96 within three business days of the time of purchase if:

97 (i) the sale is made other than at the supplier's established place of business pursuant to
98 the supplier's personal contact, whether through mail, electronic mail, facsimile transmission,
99 telephone, or any other form of direct solicitation; and

100 (ii) the sale price exceeds \$25;

101 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title
102 76, Chapter 6a, Pyramid Scheme Act;

103 (o) represents that the funds or property conveyed in response to a charitable
104 solicitation will be donated or used for a particular purpose or will be donated to or used by a
105 particular organization, if the representation is false;

106 (p) if a consumer indicates the consumer's intention of making a claim for a motor
107 vehicle repair against the consumer's motor vehicle insurance policy:

108 (i) commences the repair without first giving the consumer oral and written notice of:

109 (A) the total estimated cost of the repair; and

110 (B) the total dollar amount the consumer is responsible to pay for the repair, which
111 dollar amount may not exceed the applicable deductible or other copay arrangement in the
112 consumer's insurance policy; or

113 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a
114 consumer was initially told the consumer was responsible to pay as an insurance deductible or
115 other copay arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that
116 amount is less than the full amount the motor vehicle insurance policy requires the insured to
117 pay as a deductible or other copay arrangement, unless:

118 (A) the consumer's insurance company denies that coverage exists for the repair, in
119 which case, the full amount of the repair may be charged and collected from the consumer; or

120 (B) the consumer misstates, before the repair is commenced, the amount of money the

121 insurance policy requires the consumer to pay as a deductible or other copay arrangement, in
122 which case, the supplier may charge and collect from the consumer an amount that does not
123 exceed the amount the insurance policy requires the consumer to pay as a deductible or other
124 copay arrangement;

125 (q) includes in any contract, receipt, or other written documentation of a consumer
126 transaction, or any addendum to any contract, receipt, or other written documentation of a
127 consumer transaction, any confession of judgment or any waiver of any of the rights to which a
128 consumer is entitled under this chapter;

129 (r) charges a consumer for a consumer transaction or a portion of a consumer
130 transaction that has not previously been agreed to by the consumer;

131 (s) solicits or enters into a consumer transaction with a person who lacks the mental
132 ability to comprehend the nature and consequences of:

133 (i) the consumer transaction; or

134 (ii) the person's ability to benefit from the consumer transaction;

135 (t) solicits for the sale of a product or service by providing a consumer with an
136 unsolicited check or negotiable instrument the presentment or negotiation of which obligates
137 the consumer to purchase a product or service, unless the supplier is:

138 (i) a depository institution under Section 7-1-103;

139 (ii) an affiliate of a depository institution; or

140 (iii) an entity regulated under Title 7, Financial Institutions Act;

141 (u) sends an unsolicited mailing to a person that appears to be a billing, statement, or
142 request for payment for a product or service the person has not ordered or used, or that implies
143 that the mailing requests payment for an ongoing product or service the person has not received
144 or requested;

145 (v) issues a gift certificate, instrument, or other record in exchange for payment to
146 provide the bearer, upon presentation, goods or services in a specified amount without printing
147 in a readable manner on the gift certificate, instrument, packaging, or record any expiration
148 date or information concerning a fee to be charged and deducted from the balance of the gift
149 certificate, instrument, or other record; or

150 (w) misrepresents the geographical origin or location of the supplier's business [~~in~~
151 ~~connection with the sale of cut flowers, flower arrangements, or floral products~~].

152 (3) (a) The notice required by Subsection (2)(m) shall:

153 (i) be a conspicuous statement written in dark bold with at least 12-point type on the
154 first page of the purchase documentation; and

155 (ii) read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT
156 ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time period
157 reflecting the supplier's cancellation policy but not less than three business days) AFTER THE
158 DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT, WHICHEVER IS
159 LATER".

160 (b) A supplier is exempt from the requirements of Subsection (2)(m) if the supplier's
161 cancellation policy:

162 (i) is communicated to the buyer; and

163 (ii) offers greater rights to the buyer than Subsection (2)(m).

164 (4) (a) A gift certificate, instrument, or other record that does not print an expiration
165 date in accordance with Subsection (2)(v) does not expire.

166 (b) A gift certificate, instrument, or other record that does not include printed
167 information concerning a fee to be charged and deducted from the balance of the gift
168 certificate, instrument, or other record is not subject to the charging and deduction of the fee.

169 (c) Subsections (2)(v) and (4)(b) do not apply to a gift certificate, instrument, or other
170 record useable at multiple, unaffiliated sellers of goods or services if an expiration date is
171 printed on the gift certificate, instrument, or other record.

172 Section 2. Section **13-15-2** is amended to read:

173 **13-15-2. Definitions.**

174 As used in this chapter:

175 (1) (a) "Assisted marketing plan" means the sale or lease of any products, equipment,
176 supplies, or services that are sold to the purchaser upon payment of an initial required
177 consideration of [~~\$300~~] \$500 or more for the purpose of enabling the purchaser to start a
178 business, and in which the seller represents:

179 (i) that the seller will provide locations or assist the purchaser in finding locations for
180 the use or operation of vending machines, racks, display cases, or other similar devices, or
181 currency operated amusement machines or devices, on premises neither owned nor leased by
182 the purchaser or seller;

183 (ii) that the seller will purchase any or all products made, produced, fabricated, grown,
184 or modified by the purchaser, using in whole or in part the supplies, services, or chattels sold to
185 the purchaser;

186 (iii) that the seller will provide the purchaser with a guarantee that the purchaser will
187 receive income from the assisted marketing plan that exceeds the price paid for the assisted
188 marketing plan, or repurchase any of the products, equipment, supplies, or chattels supplied by
189 the seller if the purchaser is dissatisfied with the assisted marketing plan; or

190 (iv) that upon payment by the purchaser of a fee or sum of money, which exceeds
191 [~~\$300~~] \$500 to the seller, the seller will provide a sales program or marketing program that will
192 enable the purchaser to derive income from the assisted marketing plan that exceeds the price
193 paid for the marketing plan.

194 (b) "Assisted marketing plan" does not include:

195 (i) the sale of an ongoing business when the owner of that business sells and intends to
196 sell only that one assisted marketing plan;

197 (ii) not-for-profit sale of sales demonstration equipment, materials, or samples for a
198 total price of [~~\$300~~] \$500 or less; or

199 (iii) the sale of a package franchise or a product franchise defined by and in compliance
200 with Federal Trade Commission rules governing franchise and business opportunity ventures.

201 (c) As used in Subsection (1)(a)(iii) "guarantee" means a written agreement, signed by
202 the purchaser and seller, disclosing the complete details and any limitations or exceptions of
203 the agreement.

204 (2) "Business opportunity" means an assisted marketing plan subject to this chapter.

205 (3) "Division" means the Division of Consumer Protection of the Department of
206 Commerce.

207 (4) (a) "Initial required consideration" means the total amount a purchaser is obligated
208 to pay under the terms of the assisted marketing plan, either prior to or at the time of delivery
209 of the products, equipment, supplies, or services, or within six months of the commencement
210 of operation of the assisted marketing plan by the purchaser. If payment is over a period of
211 time, "initial required consideration" means the sum of the down payment and the total
212 monthly payments.

213 (b) "Initial required consideration" does not mean the not-for-profit sale of sales

214 demonstration equipment, materials, or supplies for a total price of less than [~~\$300~~] \$500.

215 (5) "Person" means any natural person, corporation, partnership, organization,
216 association, trust, or any other legal entity.

217 (6) "Purchaser" means a person who becomes obligated to pay for an assisted
218 marketing plan.

219 (7) "Registered trademark" or "service mark" means a trademark, trade name, or
220 service mark registered with the United States Patent and Trademark Office, or Utah, or the
221 state of incorporation if a corporation.

222 (8) "Seller" means a person who sells or offers to sell an assisted marketing plan.

223 Section 3. Section **13-26-2** is amended to read:

224 **13-26-2. Definitions.**

225 As used in this chapter, unless the context otherwise requires:

226 (1) "Continuity plan" means a shipment, with the prior express consent of the buyer, at
227 regular intervals of similar special-interest products. A continuity plan is distinguished from a
228 subscription arrangement by no binding commitment period or purchase amount.

229 (2) "Division" means the Division of Consumer Protection.

230 (3) "Fictitious personal name" means a name other than an individual's true name. An
231 "individual's true name" is the name taken at birth unless changed by operation of law or by
232 civil action.

233 (4) "Material statement" or "material fact" means information that a person of ordinary
234 intelligence or prudence would consider important in deciding whether or not to accept an offer
235 extended through a telephone solicitation.

236 (5) "Premium" means a gift, bonus, prize, award, certificate, or other document by
237 which a prospective purchaser is given a right, chance, or privilege to purchase or receive
238 goods or services with a stated or represented value of \$25 or more as an inducement to a
239 prospective purchaser to purchase other goods or services.

240 (6) "Subscription arrangements," "standing order arrangements," "supplements," and
241 "series arrangements" mean products or services provided, with the prior express request or
242 consent of the buyer, for a specified period of time at a price dependent on the duration of
243 service and to complement an initial purchase.

244 (7) (a) "Telephone solicitation," "sale," "selling," or "solicitation of sale" means:

- 245 (i) a sale or solicitation of goods or services in which:
246 (A) (I) the seller solicits the sale over the telephone;
247 (II) the purchaser's agreement to purchase is made over the telephone; and
248 (III) the purchaser, over the telephone, pays for or agrees to commit to payment for
249 goods or services prior to or upon receipt by the purchaser of the goods or services;
250 (B) the solicitor, not exempt under Section 13-26-4, induces a prospective purchaser
251 over the telephone, to make and keep an appointment that directly results in the purchase of
252 goods or services by the purchaser that would not have occurred without the telephone
253 solicitation and inducement by the solicitor;
254 (C) the seller offers or promises a premium to a prospective purchaser if:
255 (I) the seller induces the prospective purchaser to initiate a telephone contact with the
256 telephone soliciting business; and
257 (II) the resulting solicitation meets the requirements of Subsection (7)(a); or
258 (D) the solicitor solicits a charitable donation involving the exchange of any premium,
259 prize, gift, ticket, subscription, or other benefit in connection with any appeal made for a
260 charitable purpose by an organization that is not otherwise exempt under Subsection
261 13-26-4(2)(b)(iv); or
262 (ii) a telephone solicitation as defined in Section 13-25a-102.
263 (b) "Telephone solicitation," "sale," "selling," or "solicitation of sale" does not include
264 a sale or solicitation that occurs solely through an Internet website without the use of a
265 telephone call.
266 [~~(b)~~] (c) A solicitation of sale or telephone solicitation is considered complete when
267 made, whether or not the person receiving the solicitation agrees to the sale or to make a
268 charitable donation.
269 (8) "Telephone soliciting business" means a sole proprietorship, partnership, limited
270 liability company, corporation, or other association of individuals engaged in a common effort
271 to conduct telephone solicitations.
272 (9) "Telephone solicitor" or "solicitor" means a person, partnership, limited liability
273 company, corporation, or other entity that:
274 (a) makes a telephone solicitation; or
275 (b) causes a telephone solicitation to be made.

276 Section 4. Section **13-42-102** is amended to read:

277 **13-42-102. Definitions.**

278 In this chapter:

279 (1) "Administrator" means the Division of Consumer Protection.

280 (2) "Affiliate":

281 (a) with respect to an individual, means:

282 (i) the spouse of the individual;

283 (ii) a sibling of the individual or the spouse of a sibling;

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

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

289 (v) any other individual occupying the residence of the individual; and

290 (b) with respect to an entity, means:

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

293 (ii) an officer of, or an individual performing similar functions with respect to, the
294 entity;

295 (iii) a director of, or an individual performing similar functions with respect to, the
296 entity;

297 (iv) subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), a
298 person that receives or received more than \$25,000 from the entity in either the current year or
299 the preceding year or a person that owns more than 10% of, or an individual who is employed
300 by or is a director of, a person that receives or received more than \$25,000 from the entity in
301 either the current year or the preceding year;

302 (v) an officer or director of, or an individual performing similar functions with respect
303 to, a person described in Subsection (2)(b)(i);

304 (vi) the spouse of, or an individual occupying the residence of, an individual described
305 in Subsections (2)(b)(i) through (v); or

306 (vii) an individual who has the relationship specified in Subsection (2)(a)(iv) to an

307 individual or the spouse of an individual described in Subsections (2)(b)(i) through (v).

308 (3) "Agreement" means an agreement between a provider and an individual for the
309 performance of debt-management services.

310 (4) "Bank" means a financial institution, including a commercial bank, savings bank,
311 savings and loan association, credit union, and trust company, engaged in the business of
312 banking, chartered under federal or state law, and regulated by a federal or state banking
313 regulatory authority.

314 (5) "Business address" means the physical location of a business, including the name
315 and number of a street.

316 (6) "Certified counselor" means an individual certified by a training program or
317 certifying organization, approved by the administrator, that authenticates the competence of
318 individuals providing education and assistance to other individuals in connection with
319 debt-management services.

320 (7) "Concessions" means assent to repayment of a debt on terms more favorable to an
321 individual than the terms of the contract between the individual and a creditor.

322 (8) "Day" means calendar day.

323 (9) "Debt-management services" means services as an intermediary between an
324 individual and one or more creditors of the individual for the purpose of obtaining concessions,
325 but does not include:

326 (a) legal services provided in an attorney-client relationship by an attorney licensed or
327 otherwise authorized, by pro hac vice admission, to practice law in this state;

328 (b) accounting services provided in an accountant-client relationship by a certified
329 public accountant licensed to provide accounting services in this state; or

330 (c) financial-planning services provided in a financial planner-client relationship by a
331 member of a financial-planning profession whose members the administrator, by rule,
332 determines are:

333 (i) licensed by this state;

334 (ii) subject to a disciplinary mechanism;

335 (iii) subject to a code of professional responsibility; and

336 (iv) subject to a continuing education requirement.

337 (10) "Entity" means a person other than an individual.

338 (11) "Good faith" means honesty in fact and the observance of reasonable standards of
339 fair dealing.

340 (12) "Person" means an individual, corporation, business trust, estate, trust,
341 partnership, limited liability company, association, joint venture, or any other legal or
342 commercial entity. The term does not include a public corporation, government, or
343 governmental subdivision, agency, or instrumentality.

344 (13) "Plan" means a program or strategy in which a provider furnishes
345 debt-management services to an individual and which includes a schedule of payments to be
346 made by or on behalf of the individual and used to pay debts owed by the individual.

347 (14) "Principal amount of the debt" means the amount of a debt at the time of an
348 agreement.

349 (15) "Provider" means a person that provides, offers to provide, or agrees to provide
350 debt-management services directly or through others.

351 (16) "Record" means information that is inscribed on a tangible medium or that is
352 stored in an electronic or other medium and is retrievable in perceivable form.

353 (17) "Settlement fee" means a charge imposed on or paid by an individual in
354 connection with a creditor's assent to accept in full satisfaction of a debt an amount less than
355 the principal amount of the debt.

356 (18) "Sign" means, with present intent to authenticate or adopt a record:

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

358 (b) to attach to or logically associate with the record an electronic sound, symbol, or
359 process.

360 (19) "State" means a state of the United States, the District of Columbia, Puerto Rico,
361 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
362 of the United States.

363 (20) "Trust account" means an account held by a provider that is:

364 (a) established in an insured bank;

365 (b) separate from other accounts of the provider or its designee;

366 (c) designated as a trust account or other account designated to indicate that the money
367 in the account is not the money of the provider or its designee; and

368 (d) used to hold money of one or more individuals for disbursement to creditors of the

369 individuals.

370 Section 5. Section **13-42-112** is amended to read:

371 **13-42-112. Registration in another state -- Rulemaking.**

372 (1) (a) Subject to rules made by the administrator, if a provider holds a license or
373 certificate of registration in another state authorizing it to provide debt-management services,
374 the provider may submit a copy of that license or certificate and the application for it instead of
375 an application in the form prescribed by Subsection 13-42-105(1), Section 13-42-106, or
376 Subsection 13-42-111(2).

377 (b) The administrator shall accept the application and the license or certificate from
378 the other state as an application for registration as a provider or for renewal of registration as a
379 provider, as appropriate, in this state if:

380 (i) the application in the other state contains information substantially similar to or
381 more comprehensive than that required in an application submitted in this state;

382 (ii) the applicant provides the information required by Subsections 13-42-105(2)(d) and
383 13-42-106(1), (3), (7), (10), (12), and (13);

384 (iii) the applicant, under penalty of perjury, certifies that the information contained in
385 the application is current or, to the extent it is not current, supplements the application to make
386 the information current; and

387 (iv) the applicant files a surety bond or substitute in accordance with Section
388 13-42-113 or 13-42-114 that is solely payable or available to this state and to individuals who
389 reside in this state.

390 (2) The administrator, in accordance with Title 63G, Chapter 3, Utah Administrative
391 Rulemaking Act, shall make rules designating the states in which a provider may have a license
392 or certificate that may be submitted to the administrator in compliance with this section.

393 Section 6. Section **13-42-117** is amended to read:

394 **13-42-117. Prerequisites for providing debt-management services.**

395 (1) Before providing debt-management services, a registered provider shall give the
396 individual an itemized list of goods and services and the charges for each. The list shall be
397 clear and conspicuous, be in a record the individual may keep whether or not the individual
398 assents to an agreement, and describe the goods and services the provider offers:

399 (a) free of additional charge if the individual enters into an agreement;

400 (b) for a charge if the individual does not enter into an agreement; and

401 (c) for a charge if the individual enters into an agreement, using the following
402 terminology, as applicable, and format:

403 Set-up fee _____

404 dollar amount of fee

405 Monthly service fee _____

406 dollar amount of fee or method of determining amount

407 Settlement fee _____

408 dollar amount of fee or method of determining amount

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

410 _____

411 (item) dollar amount or method of determining amount

412 _____

413 (item) dollar amount or method of determining amount.

414 (2) A provider may not furnish debt-management services unless the provider, through
415 the services of a certified counselor:

416 (a) provides the individual with reasonable education about the management of
417 personal finance;

418 (b) has prepared a financial analysis; and

419 (c) if the individual is to make regular, periodic payments to a creditor or a provider:

420 (i) has prepared a plan for the individual;

421 (ii) has made a determination, based on the provider's analysis of the information

422 provided by the individual and otherwise available to it, that the plan is suitable for the

423 individual and the individual will be able to meet the payment obligations under the plan; and

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

426 (3) Before an individual assents to an agreement to engage in a plan, a provider shall:

427 (a) provide the individual with a copy of the analysis and plan required by Subsection

428 (2) in a record that identifies the provider and that the individual may keep whether or not the
429 individual assents to the agreement;

430 (b) inform the individual of the availability, at the individual's option, of assistance by

431 a toll-free communication system or in person to discuss the financial analysis and plan
432 required by Subsection (2); and

433 (c) with respect to all creditors identified by the individual or otherwise known by the
434 provider to be creditors of the individual, provide the individual with a list of:

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

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

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

439 (iv) all other creditors.

440 (4) Before an individual assents to an agreement, the provider shall inform the
441 individual, in a record that contains nothing else, that is given separately, and that the
442 individual may keep whether or not the individual assents to the agreement:

443 (a) of the name and business address of the provider;

444 (b) that plans are not suitable for all individuals and the individual may ask the
445 provider about other ways, including bankruptcy, to deal with indebtedness;

446 (c) of the amount of time necessary to achieve the results that the provider represents to
447 be achievable;

448 (d) if the provider intends to include a settlement offer to any of the individual's
449 creditors or debt collectors:

450 (i) of the time by which the provider will make a bona fide settlement offer to any of
451 the individual's creditors or debt collectors; and

452 (ii) of the amount of money or the percentage of each outstanding debt that the
453 individual must accumulate before the provider will make a bona fide settlement offer to each
454 creditor or debt collector;

455 [~~(e)~~] (e) that establishment of a plan may adversely affect the individual's credit rating
456 or credit scores;

457 [~~(f)~~] (f) that nonpayment of debt may lead creditors to increase finance and other
458 charges or undertake collection activity, including litigation;

459 (g) if the provider requests or requires the individual to place money in an account at
460 an insured financial institution, that the individual:

461 (i) owns the funds held in the account;

462 (ii) may withdraw from the provider's plan at any time without penalty; and
 463 (iii) is entitled to receive all money in the account, other than money that the provider
 464 earns as provided in Section 13-42-123, at the time the individual withdraws from the
 465 provider's plan;

466 [~~e~~] (h) unless it is not true, that the provider may receive compensation from the
 467 creditors of the individual; and

468 [~~f~~] (i) that, unless the individual is insolvent, if a creditor settles for less than the full
 469 amount of the debt, the plan may result in the creation of taxable income to the individual, even
 470 though the individual does not receive any money.

471 (5) If a provider may receive payments from an individual's creditors and the plan
 472 contemplates that the individual's creditors will reduce finance charges or fees for late payment,
 473 default, or delinquency, the provider may comply with Subsection (4) by providing the
 474 following disclosure, surrounded by black lines:

475 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

- 476 (1) Debt-management plans are not right for all individuals, and you may ask us to
- 477 provide information about other ways, including bankruptcy, to deal with your debts.
- 478 (2) Using a debt-management plan may make it harder for you to obtain credit.
- 479 (3) We may receive compensation for our services from your creditors.

480 _____
 481 Name and business address of provider

482 (6) If a provider will not receive payments from an individual's creditors and the plan
 483 contemplates that the individual's creditors will reduce finance charges or fees for late payment,
 484 default, or delinquency, a provider may comply with Subsection (4) by providing the following
 485 disclosure, surrounded by black lines:

486 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

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

490 _____
 491 Name and business address of provider

492 (7) If an agreement contemplates that creditors will settle debts for less than the full

493 principal amount of debt owed, a provider may comply with Subsection (4) by providing the
494 following disclosure, surrounded by black lines:

495 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

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

498 (2) Nonpayment of your debts under our program may
499 hurt your credit rating or credit scores;
500 lead your creditors to increase finance and other charges; and
501 lead your creditors to undertake activity, including lawsuits, to collect the debts.

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

504 _____
505 Name and business address of provider

506 Section 7. Section **13-42-119** is amended to read:

507 **13-42-119. Form and contents of agreement.**

508 (1) An agreement shall:

509 (a) be in a record;

510 (b) be dated and signed by the provider and the individual;

511 (c) include the name of the individual and the address where the individual resides;

512 (d) include the name, business address, and telephone number of the provider;

513 (e) be delivered to the individual immediately upon formation of the agreement; and

514 (f) disclose:

515 (i) the services to be provided;

516 (ii) the amount, or method of determining the amount, of all fees, individually
517 itemized, to be paid by the individual;

518 (iii) the schedule of payments to be made by or on behalf of the individual, including
519 the amount of each payment, the date on which each payment is due, and an estimate of the
520 date of the final payment;

521 (iv) if a plan provides for regular periodic payments to creditors:

522 (A) each creditor of the individual to which payment will be made, the amount owed to
523 each creditor, and any concessions the provider reasonably believes each creditor will offer;

524 and

525 (B) the schedule of expected payments to each creditor, including the amount of each
526 payment and the date on which it will be made;

527 (v) each creditor that the provider believes will not participate in the plan and to which
528 the provider will not direct payment;

529 (vi) how the provider will comply with its obligations under Subsection 13-42-127(1);

530 (vii) that the provider may terminate the agreement for good cause, upon return of
531 unexpended money of the individual;

532 (viii) that the individual may cancel the agreement as provided in Section 13-42-120;

533 (ix) that the individual may contact the administrator with any questions or complaints
534 regarding the provider; and

535 (x) the address, telephone number, and Internet address or website of the administrator.

536 (2) For purposes of Subsection (1)(e), delivery of an electronic record occurs when it is
537 made available in a format in which the individual may retrieve, save, and print it and the
538 individual is notified that it is available.

539 (3) If the administrator supplies the provider with any information required under
540 Subsection (1)(f)(x), the provider may comply with that requirement only by disclosing the
541 information supplied by the administrator.

542 (4) An agreement shall provide that:

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

545 (i) the provider will refund all unexpended money that the provider or its agent has
546 received from or on behalf of the individual, including any accrued interest, for the reduction or
547 satisfaction of the individual's debt;

548 (ii) with respect to an agreement that contemplates that creditors will settle debts for
549 less than the principal amount of debt, the provider will refund 65% of any portion of the
550 set-up fee that has not been credited against the settlement fee, if a set-up fee was charged; and

551 (iii) all powers of attorney granted by the individual to the provider are revoked and
552 ineffective;

553 (b) the individual authorizes any bank in which the provider or its agent has established
554 a trust account to disclose to the administrator any financial records relating to the trust

555 account; and

556 (c) the provider will notify the individual within five days after learning of a creditor's
557 final decision to reject or withdraw from a plan and that this notice will include:

558 (i) the identity of the creditor; and

559 (ii) the right of the individual to modify or terminate the agreement.

560 (5) An agreement may confer on a provider a power of attorney to settle the
561 individual's debt for no more than 50% of the principal amount of the debt. An agreement may
562 not confer a power of attorney to settle a debt for more than 50% of that amount, but may
563 confer a power of attorney to negotiate with creditors of the individual on behalf of the
564 individual. An agreement shall provide that the provider will obtain the assent of the
565 individual after a creditor has assented to a settlement for more than 50% of the principal
566 amount of the debt.

567 (6) An agreement may not:

568 (a) provide for application of the law of any jurisdiction other than the United States
569 and this state;

570 (b) except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. Section 2,
571 or Title 78B, Chapter 11, Utah Uniform Arbitration Act, contain a provision that modifies or
572 limits otherwise available forums or procedural rights, including the right to trial by jury, that
573 are generally available to the individual under law other than this chapter;

574 (c) contain a provision that restricts the individual's remedies under this chapter or law
575 other than this chapter; or

576 (d) contain a provision that:

577 (i) limits or releases the liability of any person for not performing the agreement or for
578 violating this chapter; or

579 (ii) indemnifies any person for liability arising under the agreement or this chapter.

580 (7) All rights and obligations specified in Subsection (4) and Section 13-42-120 exist
581 even if not provided in the agreement. A provision in an agreement which violates Subsection
582 (4), (5), or (6) is void.

583 Section 8. Section **13-42-122** is amended to read:

584 **13-42-122. Trust account.**

585 (1) (a) All money paid to a provider by or on behalf of an individual for distribution to

586 creditors pursuant to a plan is held in trust.

587 (b) Within two business days after receipt, the provider shall deposit the money in a
588 trust account established for the benefit of individuals to whom the provider is furnishing
589 debt-management services.

590 (c) A person administering a trust account under this Subsection (1) may not:

591 (i) be owned or controlled by or affiliated with the provider; or

592 (ii) give or accept money or other compensation in exchange for referrals of business
593 involving the provider's service.

594 (2) Money held in trust by a provider is not property of the provider or its designee.
595 The money is not available to creditors of the provider or designee, except an individual from
596 whom or on whose behalf the provider received money, to the extent that the money has not
597 been disbursed to creditors of the individual.

598 (3) A provider shall:

599 (a) maintain separate records of account for each individual to whom the provider is
600 furnishing debt-management services;

601 (b) disburse money paid by or on behalf of the individual to creditors of the individual
602 as disclosed in the agreement, except that:

603 (i) the provider may delay payment to the extent that a payment by the individual is not
604 final; and

605 (ii) if a plan provides for regular periodic payments to creditors, the disbursement shall
606 comply with the due dates established by each creditor; and

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

611 (4) A provider may not commingle money in a trust account established for the benefit
612 of individuals to whom the provider is furnishing debt-management services with money of
613 other persons.

614 (5) A trust account shall at all times have a cash balance equal to the sum of the
615 balances of each individual's account.

616 (6) If a provider has established a trust account pursuant to Subsection (1), the provider

617 shall reconcile the trust account at least once a month. The reconciliation shall compare the
618 cash balance in the trust account with the sum of the balances in each individual's account. If
619 the provider or its designee has more than one trust account, each trust account shall be
620 individually reconciled.

621 (7) If a provider discovers, or has a reasonable suspicion of, embezzlement or other
622 unlawful appropriation of money held in trust, the provider immediately shall notify the
623 administrator by a method approved by the administrator. Unless the administrator by rule
624 provides otherwise, within five days thereafter, the provider shall give notice to the
625 administrator describing the remedial action taken or to be taken.

626 (8) If an individual terminates an agreement or it becomes reasonably apparent to a
627 provider that a plan has failed, the provider shall [~~promptly~~], within seven business days after
628 the individual's request, refund to the individual all money paid by or on behalf of the
629 individual, including any accrued interest, which has not been paid to creditors, less fees that
630 are payable to the provider under Section 13-42-123.

631 (9) Before relocating a trust account from one bank to another, a provider shall inform
632 the administrator of the name, business address, and telephone number of the new bank. As
633 soon as practicable, the provider shall inform the administrator of the account number of the
634 trust account at the new bank.

635 Section 9. Section **13-42-123** is amended to read:

636 **13-42-123. Fees and other charges.**

637 (1) A provider may not impose directly or indirectly a fee or other charge on an
638 individual or receive money from or on behalf of an individual for debt-management services
639 except as permitted by this section.

640 (2) A provider may not impose charges or receive payment for debt-management
641 services until the provider and the individual have signed an agreement that complies with
642 Sections 13-42-119 and 13-42-128.

643 (3) If an individual assents to an agreement, a provider may not impose a fee or other
644 charge for educational or counseling services, or the like, except as otherwise provided in this
645 Subsection (3) and Subsection 13-42-128(4). The administrator may authorize a provider to
646 charge a fee based on the nature and extent of the educational or counseling services furnished
647 by the provider.

648 (4) ~~[Subject]~~ (a) Subsections (4)(b) through (d) are subject to adjustment of dollar
649 amounts pursuant to Subsection 13-42-132(6)~~[-the following rules apply:].~~

650 ~~[(a)]~~ (b) If an individual assents to a plan that contemplates that creditors will reduce
651 finance charges or fees for late payment, default, or delinquency, the provider may charge:

652 (i) a fee not exceeding \$50 for consultation, obtaining a credit report, setting up an
653 account, and the like; and

654 (ii) a monthly service fee, not to exceed \$10 times the number of accounts remaining in
655 a plan at the time the fee is assessed, but not more than \$50 in any month.

656 ~~[(b)]~~ (c) If an individual assents to an agreement that contemplates that creditors will
657 settle debts for less than the principal amount of the debt, a provider may ~~[charge:]~~ not request
658 or receive payment of any fee or consideration for the provider's service unless:

659 ~~[(i) subject to Subsection 13-42-119(4), a fee for consultation, obtaining a credit report,~~
660 ~~setting up an account, and the like, in an amount not exceeding the lesser of \$400 and 4% of~~
661 ~~the debt in the plan at the inception of the plan; and]~~

662 ~~[(ii) a monthly service fee, not to exceed \$10 times the number of accounts remaining~~
663 ~~in a plan at the time the fee is assessed, but not more than \$50 in any month.]~~

664 ~~[(c) A provider may not impose or receive fees under both Subsections (4)(a) and (b):]~~

665 (i) the provider has renegotiated, settled, reduced, or otherwise altered the terms of at
666 least one debt under an agreement executed by the individual;

667 (ii) the individual has made at least one payment pursuant to that agreement between
668 the individual and the creditor or debt collector; and

669 (iii) the fee or consideration for any individual debt that is renegotiated, settled,
670 reduced, or otherwise altered:

671 (A) bears the same proportion to the total fee for renegotiating, settling, reducing, or
672 altering the terms of the entire debt as the individual debt amount at the time the debt was
673 enrolled in the service bears to the entire debt amount at the time the debt was enrolled in the
674 service; or

675 (B) is a percentage of the amount saved as a result of the renegotiation, settlement,
676 reduction, or alteration, as calculated under Subsection (4)(e), which percentage may not
677 change from one individual debt to another.

678 (d) Except as otherwise provided in Subsection 13-42-128(4), if an individual does not

679 assent to an agreement, a provider may receive for educational and counseling services it
 680 provides to the individual a fee not exceeding \$100 or, with the approval of the administrator, a
 681 larger fee. The administrator may approve a fee larger than \$100 if the nature and extent of the
 682 educational and counseling services warrant the larger fee.

683 (e) For purposes of Subsection (4)(a)(iii)(B), the amount saved is calculated as the
 684 difference between the amount owed at the time the debt is enrolled in the service and the
 685 amount actually paid to satisfy the debt.

686 (5) If, before the expiration of 90 days after the completion or termination of
 687 educational or counseling services, an individual assents to an agreement, the provider shall
 688 refund to the individual any fee paid pursuant to Subsection (4)(d).

689 (6) ~~H→ [(a)] ←H~~ Except as otherwise provided in Subsections (3) and (4), if an agreement
 690 contemplates that creditors will settle an individual's debts for less than the principal amount of
 691 the debt ~~H→ [;] :~~

691a (a) ←H compensation for services in connection with settling a debt H→ [may not exceed
 691b one of
 692 the following applicable settlement fee limits in Subsection (6)(b) or (c), the terms of which
 693 shall be clearly disclosed in the agreement.] shall be reasonable and clearly disclosed in the
 693a agreement; and

693b (b) a fee for settling a debt may be collected only as the debt is settled.

694 ~~[(b) (i) With respect to agreements where a flat settlement fee is charged based on the~~
 695 ~~overall amount of included debt, total aggregate fees charged may not exceed 17% of the~~
 696 ~~principal amount of debt included in the agreement[, including any fees charged under~~
 697 ~~Subsections (4)(b)(i) and (ii)].~~

698 ~~—— (ii) The flat settlement fee authorized under this Subsection (6)(b) [shall be assessed in~~
 699 ~~equal monthly payments over no less than half of the length of the plan, as estimated at the~~
 700 ~~plan's inception, unless:] may be collected only upon the settlement of all debt included in the~~
 701 ~~settlement fee agreement.~~

702 ~~—— [(A) payment is voluntarily accelerated by the individual in a separate record; and]~~

703 ~~—— [(B) at least half of the principal amount of overall debt included in the agreement at its~~
 704 ~~inception has been settled.]~~

705 ~~—— (c) (i) With respect to agreements where fees are calculated as a percentage of the~~
 706 ~~amount saved by an individual, a settlement fee may not exceed 30% of the excess of the~~
 707 ~~outstanding amount of each debt over the amount actually paid to the creditor, as calculated at~~
 708 ~~the time of settlement.~~

709 ~~—— (ii) Settlement fees authorized under this Subsection (6)(c):~~

710 ~~—— (A) may be collected only as debts are settled; and~~

711 ~~—— (B) the total aggregate amount of fees charged to any individual under this chapter[,]~~
 712 ~~including fees charged under Subsections (4)(b)(i) and (ii),] may not exceed 20% of the~~
 713 ~~principal amount of debt included in the agreement at the agreement's inception.~~

714 ~~—— (d) A provider may not impose or receive fees under both Subsections (6)(b) and (c).] ←H~~

715 (7) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), if
 716 a payment to a provider by an individual under this chapter is dishonored, a provider may
 717 impose a reasonable charge on the individual, not to exceed the lesser of \$25 and the amount
 718 permitted by law other than this chapter.

719 Section 10. Section **13-42-126** is amended to read:

720 **13-42-126. Termination of agreements.**

721 (1) If an individual who has entered into an agreement fails for 60 days to make
 722 payments required by the agreement, a provider may terminate the agreement.

723 (2) If a provider or an individual terminates an agreement, the provider shall
 724 immediately return to the individual:

725 (a) any money of the individual held in trust for the benefit of the individual, including
 726 any accrued interest; and

727 (b) 65% of any [~~portion of the~~] remaining set-up fee [~~received pursuant to Subsection~~
 728 ~~13-42-123(4)(b) which~~] that has not been credited against settlement fees.

729 Section 11. Section **13-42-128** is amended to read:

730 **13-42-128. Prohibited acts and practices.**

731 (1) A provider may not, directly or indirectly:

732 (a) misappropriate or misapply money held in trust;

733 (b) settle a debt on behalf of an individual for more than 50% of the principal amount
 734 of the debt owed a creditor, unless the individual assents to the settlement after the creditor has
 735 assented;

736 (c) take a power of attorney that authorizes it to settle a debt, unless the power of
 737 attorney expressly limits the provider's authority to settle debts for not more than 50% of the
 738 principal amount of the debt owed a creditor;

739 (d) exercise or attempt to exercise a power of attorney after an individual has
 740 terminated an agreement;

741 (e) initiate a transfer from an individual's account at a bank or with another person
742 unless the transfer is:

- 743 (i) a return of money to the individual; or
- 744 (ii) before termination of an agreement, properly authorized by the agreement and this
745 chapter, and for:
 - 746 (A) payment to one or more creditors pursuant to an agreement; or
 - 747 (B) payment of a fee;
- 748 (f) offer a gift or bonus, premium, reward, or other compensation to an individual for
749 executing an agreement;
- 750 (g) offer, pay, or give a gift or bonus, premium, reward, or other compensation to a
751 person for referring a prospective customer, if the person making the referral has a financial
752 interest in the outcome of debt-management services provided to the customer, unless neither
753 the provider nor the person making the referral communicates to the prospective customer the
754 identity of the source of the referral;
- 755 (h) receive a bonus, commission, or other benefit for referring an individual to a
756 person;
- 757 (i) structure a plan in a manner that would result in a negative amortization of any of an
758 individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund
759 or waive the finance charge upon payment of the principal amount of the debt;
- 760 (j) compensate its employees on the basis of a formula that incorporates the number of
761 individuals the employee induces to enter into agreements;
- 762 (k) settle a debt or lead an individual to believe that a payment to a creditor is in
763 settlement of a debt to the creditor unless, at the time of settlement, the individual:
 - 764 (i) receives a certification by the creditor that the payment is in full settlement of the
765 debt; or
 - 766 (ii) is part of a payment plan, the terms of which are included in the certification, which
767 upon completion will result in full settlement of the debt;
- 768 (l) make a representation that:
 - 769 (i) the provider will furnish money to pay bills or prevent attachments;
 - 770 (ii) payment of a certain amount will permit satisfaction of a certain amount or range of
771 indebtedness; or

772 (iii) participation in a plan will or may prevent litigation, garnishment, attachment,
773 repossession, foreclosure, eviction, or loss of employment;

774 (m) misrepresent that it is authorized or competent to furnish legal advice or perform
775 legal services;

776 (n) represent in its agreements, disclosures required by this chapter, advertisements, or
777 Internet website that it is:

778 (i) a not-for-profit entity unless it is organized and properly operating as a
779 not-for-profit entity under the law of the state in which it was formed; or

780 (ii) a tax-exempt entity unless it has received certification of tax-exempt status from
781 the Internal Revenue Service and is properly operating as a not-for-profit entity under the law
782 of the state in which it was formed;

783 (o) take a confession of judgment or power of attorney to confess judgment against an
784 individual;

785 (p) employ an unfair, unconscionable, or deceptive act or practice[; ~~including the~~
786 ~~knowing omission of~~];

787 (q) knowingly omit any material information[;] or material aspect of any provider's
788 service, including:

789 (i) the amount of money or the percentage of the debt amount that an individual may
790 save by using the provider's service;

791 (ii) the amount of time necessary to achieve the results that the provider represents as
792 achievable;

793 (iii) the amount of money or the percentage of each outstanding debt that the individual
794 is required to accumulate before the provider will:

795 (A) initiate an attempt with the individual's creditors or debt collectors to negotiate,
796 settle, or modify the terms of the individual's debt; or

797 (B) make a bona fide offer to negotiate, settle, or modify the terms of the individual's
798 debt;

799 (iv) the effect of the service on:

800 (A) an individual's creditworthiness; or

801 (B) collection efforts of the individual's creditors or debt collectors;

802 (v) the percentage or number of individuals who achieve the results that the provider

803 represents are achievable; and

804 (vi) whether a provider's service is offered or provided by a nonprofit entity; or

805 ~~[(r)]~~ (r) make or use any untrue or misleading statement:

806 (i) to the administrator; or

807 (ii) in the provision of services subject to this chapter.

808 (2) If a provider furnishes debt-management services to an individual, the provider may
809 not, directly or indirectly:

810 (a) purchase a debt or obligation of the individual;

811 (b) receive from or on behalf of the individual:

812 (i) a promissory note or other negotiable instrument other than a check or a demand
813 draft; or

814 (ii) a post-dated check or demand draft;

815 (c) lend money or provide credit to the individual, except as a deferral of a settlement
816 fee at no additional expense to the individual;

817 (d) obtain a mortgage or other security interest from any person in connection with the
818 services provided to the individual;

819 (e) except as permitted by federal law, disclose the identity or identifying information
820 of the individual or the identity of the individual's creditors, except to:

821 (i) the administrator, upon proper demand;

822 (ii) a creditor of the individual, to the extent necessary to secure the cooperation of the
823 creditor in a plan; or

824 (iii) the extent necessary to administer the plan;

825 (f) except as otherwise provided in Subsection 13-42-123(6), provide the individual
826 less than the full benefit of a compromise of a debt arranged by the provider;

827 (g) charge the individual for or provide credit or other insurance, coupons for goods or
828 services, membership in a club, access to computers or the Internet, or any other matter not
829 directly related to debt-management services or educational services concerning personal
830 finance, except to the extent such services are expressly authorized by the administrator; or

831 (h) furnish legal advice or perform legal services, unless the person furnishing that
832 advice to or performing those services for the individual is licensed to practice law.

833 (3) This chapter does not authorize any person to engage in the practice of law.

834 (4) A provider may not receive a gift or bonus, premium, reward, or other
835 compensation, directly or indirectly, for advising, arranging, or assisting an individual in
836 connection with obtaining, an extension of credit or other service from a lender or service
837 provider, except for educational or counseling services required in connection with a
838 government-sponsored program.

839 (5) Unless a person supplies goods, services, or facilities generally and supplies them
840 to the provider at a cost no greater than the cost the person generally charges to others, a
841 provider may not purchase goods, services, or facilities from the person if an employee or a
842 person that the provider should reasonably know is an affiliate of the provider:

- 843 (a) owns more than 10% of the person; or
- 844 (b) is an employee or affiliate of the person.

845 Section 12. Section **13-42-130** is amended to read:

846 **13-42-130. Advertising.**

847 (1) If a provider whose agreements contemplate that creditors will reduce finance
848 charges or fees for late payment, default, or delinquency advertises debt-management services,
849 it shall disclose, in an easily comprehensible manner, that using a debt-management plan may
850 make it harder for the individual to obtain credit.

851 (2) If a provider whose agreements contemplate that creditors will settle for less than
852 the full principal amount of debt that advertises debt-management services, it shall disclose, in
853 an easily comprehensible manner:

- 854 (a) the information specified in Subsections 13-42-117(4)~~(e)~~(e) and ~~(f)~~ (f); and
- 855 (b) the provider's settlement fee structure, consistent with the limitations of Section
856 13-42-123.

857 Section 13. Section **13-42-134** is amended to read:

858 **13-42-134. Suspension, revocation, or nonrenewal of registration.**

859 (1) In this section, "insolvent" means:

- 860 (a) having generally ceased to pay debts in the ordinary course of business other than as
861 a result of good-faith dispute;
- 862 (b) being unable to pay debts as they become due; or
- 863 (c) being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C.

864 Section 101 et seq.

865 (2) The administrator may suspend, revoke, or deny renewal of a provider's registration
866 if:

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

869 (b) the provider has committed a material violation of this chapter or a rule or order of
870 the administrator under this chapter;

871 (c) the provider is insolvent;

872 (d) the provider or an employee or affiliate of the provider has refused to permit the
873 administrator to make an examination authorized by this chapter, failed to comply with
874 Subsection 13-42-132(2)(b) within 15 days after request, or made a material misrepresentation
875 or omission in complying with Subsection 13-42-132(2)(b); or

876 (e) the provider has not responded within a reasonable time and in an appropriate
877 manner to communications from the administrator.

878 (3) If a provider becomes insolvent, the provider shall continue to provide
879 debt-management services to an individual with whom the provider has an agreement until:

880 (a) with the administrator's approval, the provider transfers the agreement to another
881 registered provider; or

882 (b) the provider returns to the individual all unexpended money that is under the
883 provider's control.

884 [~~3~~] (4) If a provider does not comply with Subsection 13-42-122(6) or if the
885 administrator otherwise finds that the public health or safety or general welfare requires
886 emergency action, the administrator may order a summary suspension of the provider's
887 registration, effective on the date specified in the order.

888 [~~4~~] (5) If the administrator suspends, revokes, or denies renewal of the registration of
889 a provider, the administrator may seek a court order authorizing seizure of any or all of the
890 money in a trust account required by Section 13-42-122, books, records, accounts, and other
891 property of the provider which are located in this state.

892 [~~5~~] (6) If the administrator suspends or revokes a provider's registration, the provider
893 may appeal and request a hearing pursuant to Title 63G, Chapter 4, Administrative Procedures
894 Act.

Legislative Review Note
as of 12-29-11 12:30 PM

Office of Legislative Research and General Counsel