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HOUSE BILL 1213

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State of Washington

61st Legislature

2009 Regular Session

By Representative Kirby; by request of Uniform Legislation Commission

Read first time 01/15/09. Referred to Committee on Financial Institutions & Insurance.

1 AN ACT Relating to debt management services; adding a new chapter  
2 to Title 18 RCW; repealing RCW 18.28.010, 18.28.080, 18.28.090,  
3 18.28.100, 18.28.110, 18.28.120, 18.28.130, 18.28.140, 18.28.150,  
4 18.28.165, 18.28.180, 18.28.185, 18.28.190, 18.28.200, 18.28.210,  
5 18.28.220, 18.28.900, and 18.28.910; prescribing penalties; and  
6 providing an effective date.

7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF WASHINGTON:

8 NEW SECTION. **Sec. 1.** This act may be known and cited as the  
9 uniform debt management services act.

10 NEW SECTION. **Sec. 2.** The definitions in this section apply  
11 throughout this chapter unless the context clearly requires otherwise.

12 (1) "Administrator" means the director of the department of  
13 financial institutions.

14 (2) "Affiliate":

15 (a) With respect to an individual, means:

16 (i) The spouse of the individual;

17 (ii) A sibling of the individual or the spouse of a sibling;

1 (iii) An individual or the spouse of an individual who is a lineal  
2 ancestor or lineal descendant of the individual or the individual's  
3 spouse;

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

7 (v) Any other individual occupying the residence of the individual;  
8 and

9 (b) With respect to an entity, means:

10 (i) A person that directly or indirectly controls, is controlled  
11 by, or is under common control with the entity;

12 (ii) An officer of, or an individual performing similar functions  
13 with respect to, the entity;

14 (iii) A director of, or an individual performing similar functions  
15 with respect to, the entity;

16 (iv) Subject to adjustment of the dollar amount pursuant to section  
17 32(6) of this act, a person that receives or received more than twenty-  
18 five thousand dollars from the entity in either the current year or the  
19 preceding year or a person that owns more than ten percent of, or an  
20 individual who is employed by or is a director of, a person that  
21 receives or received more than twenty-five thousand dollars from the  
22 entity in either the current year or the preceding year;

23 (v) An officer or director of, or an individual performing similar  
24 functions with respect to, a person described in (b)(i) of this  
25 subsection;

26 (vi) The spouse of, or an individual occupying the residence of, an  
27 individual described in (b)(i) through (v) of this subsection; or

28 (vii) An individual who has the relationship specified in (a)(iv)  
29 of this subsection to an individual or the spouse of an individual  
30 described in (b)(i) through (v) of this subsection.

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

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

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

3 (6) "Certified counselor" means an individual certified by a  
4 training program or certifying organization, approved by the  
5 administrator, that authenticates the competence of individuals  
6 providing education and assistance to other individuals in connection  
7 with debt management services in which an agreement contemplates that  
8 creditors will reduce finance charges or fees for late payment,  
9 default, or delinquency.

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

17 (8) "Concessions" means assent to repayment of a debt on terms more  
18 favorable to an individual than the terms of the contract between the  
19 individual and a creditor.

20 (9) "Day" means calendar day.

21 (10) "Debt management services" means services as an intermediary  
22 between an individual and one or more creditors of the individual for  
23 the purpose of obtaining concessions, but does not include:

24 (a) Legal services provided in an attorney-client relationship by  
25 an attorney licensed or otherwise authorized to practice law in this  
26 state;

27 (b) Accounting services provided in an accountant-client  
28 relationship by a certified public accountant licensed to provide  
29 accounting services in this state; or

30 (c) Financial planning services provided in a financial planner-  
31 client relationship by a member of a financial planning profession  
32 whose members the administrator, by rule, determines are:

33 (i) Licensed by this state;

34 (ii) Subject to a disciplinary mechanism;

35 (iii) Subject to a code of professional responsibility; and

36 (iv) Subject to a continuing education requirement.

37 (11) "Entity" means a person other than an individual.

1 (12) "Good faith" means honesty in fact and the observance of  
2 reasonable standards of fair dealing.

3 (13) "Person" means an individual, corporation, business trust,  
4 estate, trust, partnership, limited liability company, association,  
5 joint venture, or any other legal or commercial entity. The term does  
6 not include a public corporation, government, or governmental  
7 subdivision, agency, or instrumentality.

8 (14) "Plan" means a program or strategy in which a provider  
9 furnishes debt management services to an individual and which includes  
10 a schedule of payments to be made by or on behalf of the individual and  
11 used to pay debts owed by the individual.

12 (15) "Principal amount of the debt" means the amount of a debt at  
13 the time of an agreement.

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

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

19 (18) "Settlement fee" means a charge imposed on or paid by an  
20 individual in connection with a creditor's assent to accept in full  
21 satisfaction of a debt an amount less than the principal amount of the  
22 debt.

23 (19) "Sign" means, with present intent to authenticate or adopt a  
24 record:

25 (a) To execute or adopt a tangible symbol; or

26 (b) To attach to or logically associate with the record an  
27 electronic sound, symbol, or process.

28 (20) "State" means a state of the United States, the District of  
29 Columbia, Puerto Rico, the United States Virgin Islands, or any  
30 territory or insular possession subject to the jurisdiction of the  
31 United States.

32 (21) "Trust account" means an account held by a provider that is:

33 (a) Established in an insured bank;

34 (b) Separate from other accounts of the provider or its designee;

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

1 (d) Used to hold money of one or more individuals for disbursement  
2 to creditors of the individuals.

3 NEW SECTION. **Sec. 3.** (1) This chapter does not apply to an  
4 agreement with an individual who the provider has no reason to know  
5 resides in this state at the time of the agreement.

6 (2) This chapter does not apply to a provider to the extent that  
7 the provider:

8 (a) Provides or agrees to provide debt management, educational, or  
9 counseling services to an individual who the provider has no reason to  
10 know resides in this state at the time the provider agrees to provide  
11 the services; or

12 (b) Receives no compensation for debt management services from or  
13 on behalf of the individuals to whom it provides the services or from  
14 their creditors.

15 (3) This chapter does not apply to the following persons or their  
16 employees when the person or the employee is engaged in the regular  
17 course of the person's business or profession:

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

21 (b) A bank;

22 (c) An affiliate, as defined in section 2(2)(b)(i) of this act, of  
23 a bank if the affiliate is regulated by a federal or state banking  
24 regulatory authority; or

25 (d) A title insurer, escrow company, or other person that provides  
26 bill paying services if the provision of debt management services is  
27 incidental to the bill paying services.

28 NEW SECTION. **Sec. 4.** (1) Except as otherwise provided in  
29 subsection (2) of this section, a provider may not provide debt  
30 management services to an individual who it reasonably should know  
31 resides in this state at the time it agrees to provide the services,  
32 unless the provider is registered under this chapter.

33 (2) If a provider is registered under this chapter, subsection (1)  
34 of this section does not apply to an employee or agent of the provider.

35 (3) The administrator shall maintain and publicize a list of the  
36 names of all registered providers.

1 (4) A provider whose agreements contemplate that creditors will  
2 reduce finance charges or fees for late payment, default, or  
3 delinquency or whose agreements contemplate that creditors will settle  
4 debts for less than the full principal amount of debt owed may be  
5 registered only if it is:

6 (a) Organized and properly operating as a not-for-profit entity  
7 under the law of the state in which it was formed; and

8 (b) Exempt from taxation under the internal revenue code (26 U.S.C.  
9 Sec. 501).

10 NEW SECTION. **Sec. 5.** (1) An application for registration as a  
11 provider must be in a form prescribed by the administrator.

12 (2) Subject to adjustment of dollar amounts pursuant to section  
13 32(6) of this act, an application for registration as a provider must  
14 be accompanied by:

15 (a) The fee established by the administrator;

16 (b) The bond required by section 13 of this act;

17 (c) Identification of all trust accounts required by section 22 of  
18 this act and an irrevocable consent authorizing the administrator to  
19 review and examine the trust accounts;

20 (d) Evidence of insurance in the amount of two hundred fifty  
21 thousand dollars:

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

25 (ii) Issued by an insurance company authorized to do business in  
26 this state and rated at least an "A" or equivalent by a nationally  
27 recognized rating organization approved by the administrator;

28 (iii) With a deductible, not exceeding five thousand dollars;

29 (iv) Payable for the benefit of the applicant, Washington state,  
30 and individuals who are residents of Washington state, as their  
31 interests may appear; and

32 (v) Not subject to cancellation by the applicant or the insurer  
33 until sixty days after written notice has been given to the  
34 administrator;

35 (e) Proof of:

36 (i) Registration for a master business license with the department  
37 of revenue; and

1 (ii) Filing with the secretary of state any documents to be filed  
2 for that type of business entity; and

3 (f) If the applicant is exempt from taxation under the internal  
4 revenue code (26 U.S.C. Sec. 501), evidence of that status.

5 NEW SECTION. **Sec. 6.** An application for registration must be  
6 signed under oath and include:

7 (1) The applicant's name, principal business address and telephone  
8 number, and all other business addresses in this state, e-mail  
9 addresses, and internet web site addresses;

10 (2) All names under which the applicant conducts business;

11 (3) The address of each location in this state at which the  
12 applicant will provide debt management services or a statement that the  
13 applicant will have no such location;

14 (4) The name and home address of each officer and director of the  
15 applicant and each person that owns at least ten percent of the  
16 applicant;

17 (5) Identification of every jurisdiction in which, during the five  
18 years immediately preceding the application:

19 (a) The applicant or any of its officers or directors has been  
20 licensed or registered to provide debt management services; or

21 (b) Individuals have resided when they received debt management  
22 services from the applicant;

23 (6) A statement describing, to the extent it is known or should be  
24 known by the applicant, any material civil or criminal judgment or  
25 litigation and any material administrative or enforcement action by a  
26 governmental agency in any jurisdiction against the applicant, any of  
27 its officers, directors, owners, or agents, or any person who is  
28 authorized to have access to the trust account required by section 22  
29 of this act;

30 (7) The applicant's financial statements, audited by an accountant  
31 licensed to conduct audits, for each of the two years immediately  
32 preceding the application or, if it has not been in operation for the  
33 two years preceding the application, for the period of its existence;

34 (8) Evidence of accreditation by an independent accrediting  
35 organization approved by the administrator;

36 (9) Evidence that, within twelve months after initial employment,

1 each of the applicant's counselors becomes certified as a certified  
2 counselor or certified debt specialist;

3 (10) A description of the three most commonly used educational  
4 programs that the applicant provides or intends to provide to  
5 individuals who reside in this state and a copy of any materials used  
6 or to be used in those programs;

7 (11) A description of the applicant's financial analysis and  
8 initial budget plan, including any form or electronic model, used to  
9 evaluate the financial condition of individuals;

10 (12) A copy of each form of agreement that the applicant will use  
11 with individuals who reside in this state;

12 (13) The schedule of fees and charges that the applicant will use  
13 with individuals who reside in this state;

14 (14) At the applicant's expense, the results of a criminal records  
15 check, including fingerprints, conducted within the immediately  
16 preceding twelve months, covering every officer of the applicant and  
17 every employee or agent of the applicant who is authorized to have  
18 access to the trust account required by section 22 of this act;

19 (15) The names and addresses of all employers of each director  
20 during the ten years immediately preceding the application;

21 (16) A description of any ownership interest of at least ten  
22 percent by a director, owner, or employee of the applicant in:

- 23 (a) Any affiliate of the applicant; or
- 24 (b) Any entity that provides products or services to the applicant  
25 or any individual relating to the applicant's debt management services;

26 (17) A statement of the amount of compensation of the applicant's  
27 five most highly compensated employees for each of the three years  
28 immediately preceding the application or, if it has not been in  
29 operation for the three years preceding the application, for the period  
30 of its existence;

31 (18) The identity of each director who is an affiliate, as defined  
32 in section 2(2) (a) or (b)(i), (ii), (iv), (v), (vi), or (vii) of this  
33 act, of the applicant; and

34 (19) Any other information that the administrator reasonably  
35 requires to perform the administrator's duties under section 9 of this  
36 act.



1        NEW SECTION.    **Sec. 7.**    An applicant or registered provider shall  
2        notify the administrator within ten days after a change in the  
3        information specified in section 5(2) (d) or (f) or 6 (1), (3), (6),  
4        (12), or (13) of this act.

5        NEW SECTION.    **Sec. 8.**    Except for the information required by  
6        section 6 (7), (14), and (17) of this act and the addresses required by  
7        section 6(4) of this act, the administrator shall make the information  
8        in an application for registration as a provider available to the  
9        public.

10       NEW SECTION.    **Sec. 9.**    (1) Except as otherwise provided in  
11       subsections (2) and (4) of this section, the administrator shall issue  
12       a certificate of registration as a provider to a person that complies  
13       with sections 5 and 6 of this act.

14       (2) If an applicant has otherwise complied with sections 5 and 6 of  
15       this act, including a timely effort to obtain the information required  
16       by section 6(14) of this act, but the information has not been  
17       received, the administrator may issue a temporary certificate of  
18       registration. The temporary certificate shall expire no later than one  
19       hundred eighty days after issuance.

20       (3) The administrator may deny registration if:

21       (a) The application contains information that is materially  
22       erroneous or incomplete;

23       (b) An officer, director, or owner of the applicant has been  
24       convicted of a crime, or suffered a civil judgment, involving  
25       dishonesty or the violation of state or federal securities laws;

26       (c) The applicant or any of its officers, directors, or owners has  
27       defaulted in the payment of money collected for others; or

28       (d) The administrator finds that the financial responsibility,  
29       experience, character, or general fitness of the applicant or its  
30       owners, directors, employees, or agents does not warrant belief that  
31       the business will be operated in compliance with this chapter.

32       (4) The administrator shall deny registration if with respect to an  
33       applicant that is organized as a not-for-profit entity or has obtained  
34       tax-exempt status under the internal revenue code (26 U.S.C. Sec. 501),  
35       the applicant's board of directors is not independent of the  
36       applicant's employees and agents.

1 (5) Subject to adjustment of the dollar amount pursuant to section  
2 32(6) of this act, a board of directors is not independent for purposes  
3 of subsection (4) of this section if more than one-fourth of its  
4 members:

5 (a) Are affiliates of the applicant, as defined in section 2(2) (a)  
6 or (b)(i), (ii), (iv), (v), (vi), or (vii); or

7 (b) After the date ten years before first becoming a director of  
8 the applicant, were employed by or directors of a person that received  
9 from the applicant more than twenty-five thousand dollars in either the  
10 current year or the preceding year.

11 NEW SECTION. **Sec. 10.** (1) The administrator shall approve or deny  
12 an initial registration as a provider within one hundred twenty days  
13 after an application is filed. In connection with a request pursuant  
14 to section 6(19) of this act for additional information, the  
15 administrator may extend the one hundred twenty-day period for not more  
16 than sixty days. Within seven days after denying an application, the  
17 administrator, in a record, shall inform the applicant of the reasons  
18 for the denial.

19 (2) If the administrator denies an application for registration as  
20 a provider or does not act on an application within the time prescribed  
21 in subsection (1) of this section, the applicant may appeal and request  
22 a hearing.

23 (3) Subject to sections 11(4) and 34 of this act, a registration as  
24 a provider is valid for one year.

25 NEW SECTION. **Sec. 11.** (1) A provider must obtain a renewal of its  
26 registration annually.

27 (2) An application for renewal of registration as a provider must  
28 be in a form prescribed by the administrator, signed under oath, and:

29 (a) Be filed no fewer than thirty and no more than sixty days  
30 before the registration expires;

31 (b) Be accompanied by the fee established by the administrator and  
32 the bond required by section 13 of this act;

33 (c) Contain the matter required for initial registration as a  
34 provider by section 6 (8) and (9) of this act, and a financial  
35 statement, audited by an accountant licensed to conduct audits, for the  
36 applicant's fiscal year immediately preceding the application;

1 (d) Disclose any changes in the information contained in the  
2 applicant's application for registration or its immediately previous  
3 application for renewal, as applicable. If an application is otherwise  
4 complete and the applicant has made a timely effort to obtain the  
5 information required by section 6(14) of this act, but the information  
6 has not been received, the administrator may issue a temporary renewal  
7 of registration. The temporary renewal shall expire no later than one  
8 hundred eighty days after issuance;

9 (e) Supply evidence of insurance in an amount equal to the larger  
10 of two hundred fifty thousand dollars or the highest daily balance in  
11 the trust account required by section 22 of this act during the six-  
12 month period immediately preceding the application:

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

16 (ii) Issued by an insurance company authorized to do business in  
17 this state and rated not less than "A" or equivalent by a nationally  
18 recognized rating organization approved by the administrator;

19 (iii) With a deductible, not exceeding five thousand dollars;

20 (iv) Payable for the benefit of the applicant, Washington state,  
21 and individuals who are residents of Washington state, as their  
22 interests may appear; and

23 (v) Not subject to cancellation by the applicant or the insurer  
24 until sixty days after written notice has been given to the  
25 administrator;

26 (f) Disclose the total amount of money received by the applicant  
27 pursuant to plans during the preceding twelve months from or on behalf  
28 of individuals who reside in this state and the total amount of money  
29 distributed to creditors of those individuals during that period;

30 (g) Disclose, to the best of the applicant's knowledge, the gross  
31 amount of money accumulated during the preceding twelve months pursuant  
32 to plans by or on behalf of individuals who reside in this state and  
33 with whom the applicant has agreements; and

34 (h) Provide any other information that the administrator reasonably  
35 requires to perform the administrator's duties under this section.

36 (3) Except for the information required by section 6 (7), (14), and  
37 (17) of this act and the addresses required by section 6(4) of this

1 act, the administrator shall make the information in an application for  
2 renewal of registration as a provider available to the public.

3 (4) If a registered provider files a timely and complete  
4 application for renewal of registration, the registration remains  
5 effective until the administrator, in a record, notifies the applicant  
6 of a denial and states the reasons for the denial.

7 (5) If the administrator denies an application for renewal of  
8 registration as a provider, the applicant, within thirty days after  
9 receiving notice of the denial, may appeal and request a hearing under  
10 chapter 34.05 RCW. Subject to section 34 of this act, while the appeal  
11 is pending the applicant shall continue to provide debt management  
12 services to individuals with whom it has agreements. If the denial is  
13 affirmed, subject to the administrator's order and section 34 of this  
14 act, the applicant shall continue to provide debt management services  
15 to individuals with whom it has agreements until, with the approval of  
16 the administrator, it transfers the agreements to another registered  
17 provider or returns to the individuals all unexpended money that is  
18 under the applicant's control.

19 NEW SECTION. **Sec. 12.** If a provider holds a license or  
20 certificate of registration in another state authorizing it to provide  
21 debt management services, the provider may submit a copy of that  
22 license or certificate and the application for it instead of an  
23 application in the form prescribed by section 5(1), 6, or 11(2) of this  
24 act. The administrator shall accept the application and the license or  
25 certificate from the other state as an application for registration as  
26 a provider or for renewal of registration as a provider, as  
27 appropriate, in this state if:

28 (1) The application in the other state contains information  
29 substantially similar to or more comprehensive than that required in an  
30 application submitted in this state;

31 (2) The applicant provides the information required by section 6  
32 (1), (3), (10), (12), and (13) of this act; and

33 (3) The applicant, under oath, certifies that the information  
34 contained in the application is current or, to the extent it is not  
35 current, supplements the application to make the information current.

1        NEW SECTION.    **Sec. 13.**    (1) Except as otherwise provided in section  
2 14 of this act, a provider that is required to be registered under this  
3 chapter shall file a surety bond with the administrator, which must:

4        (a) Be in effect during the period of registration and for two  
5 years after the provider ceases providing debt management services to  
6 individuals in this state; and

7        (b) Run to this state for the benefit of this state and of  
8 individuals who reside in this state when they agree to receive debt  
9 management services from the provider, as their interests may appear.

10       (2) Subject to adjustment of the dollar amount pursuant to section  
11 32(6) of this act, a surety bond filed under subsection (1) of this  
12 section must:

13       (a) Be in the amount of fifty thousand dollars or other larger or  
14 smaller amount that the administrator determines is warranted by the  
15 financial condition and business experience of the provider, the  
16 history of the provider in performing debt management services, the  
17 risk to individuals, and any other factor the administrator considers  
18 appropriate;

19       (b) Be issued by a bonding, surety, or insurance company authorized  
20 to do business in this state and rated not less than "A" by a  
21 nationally recognized rating organization; and

22       (c) Have payment conditioned upon noncompliance of the provider or  
23 its agent with this chapter.

24       (3) If the principal amount of a surety bond is reduced by payment  
25 of a claim or a judgment, the provider shall immediately notify the  
26 administrator and, within thirty days after notice by the  
27 administrator, file a new or additional surety bond in an amount set by  
28 the administrator. The amount of the new or additional bond must be at  
29 least the amount of the bond immediately before payment of the claim or  
30 judgment. If for any reason a surety terminates a bond, the provider  
31 shall immediately file a new surety bond in the amount of fifty  
32 thousand dollars or other amount determined pursuant to subsection (2)  
33 of this section.

34       (4) The administrator or an individual may obtain satisfaction out  
35 of the surety bond procured pursuant to this section if:

36       (a) The administrator assesses expenses under section 32(1)(a) of  
37 this act, issues a final order under section 33(1)(b) of this act, or

1 recovers a final judgment under section 33 (1)(d) or (e) or (4) of this  
2 act; or

3 (b) An individual recovers a final judgment pursuant to section 35  
4 (1), (2) or (3)(a), (b), or (d) of this act.

5 (5) If claims against a surety bond exceed or are reasonably  
6 expected to exceed the amount of the bond, the administrator, on the  
7 initiative of the administrator or on petition of the surety, shall,  
8 unless the proceeds are adequate to pay all costs, judgments, and  
9 claims, distribute the proceeds in the following order:

10 (a) To satisfaction of a final order or judgment under section 33  
11 (1)(b), (d), (e), or (4) of this act;

12 (b) To final judgments recovered by individuals pursuant to section  
13 35 (1), (2), or (3)(a), (b), or (d) of this act, pro rata;

14 (c) To claims of individuals established to the satisfaction of the  
15 administrator, pro rata; and

16 (d) If a final order or judgment is issued under section 33(1) of  
17 this act, to the expenses charged pursuant to section 32(2)(a) of this  
18 act.

19 NEW SECTION. **Sec. 14.** (1) Instead of the surety bond required by  
20 section 13 of this act, a provider may deliver to the administrator, in  
21 the amount required by section 13(2) of this act, and, except as  
22 otherwise provided in (b)(i) of this subsection, payable or available  
23 to this state and to individuals who reside in this state when they  
24 agree to receive debt management services from the provider, as their  
25 interests may appear, if the provider or its agent does not comply with  
26 this chapter:

27 (a) A certificate of insurance:

28 (i) Issued by an insurance company authorized to do business in  
29 this state and rated at least an "A" or equivalent by a nationally  
30 recognized rating organization approved by the administrator; and

31 (ii) With no deductible, or if the provider supplies a bond in the  
32 amount of five thousand dollars, a deductible not exceeding five  
33 thousand dollars; or

34 (b) With the approval of the administrator:

35 (i) An irrevocable letter of credit, issued or confirmed by a bank  
36 approved by the administrator, payable upon presentation of a

1 certificate by the administrator stating that the provider or its agent  
2 has not complied with this chapter; or

3 (ii) Bonds or other obligations of the United States or guaranteed  
4 by the United States or bonds or other obligations of this state or a  
5 political subdivision of this state, to be deposited and maintained  
6 with a bank approved by the administrator for this purpose.

7 (2) If a provider furnishes a substitute pursuant to subsection (1)  
8 of this section, the provisions of section 13 (1), (3), (4), and (5) of  
9 this act apply to the substitute.

10 NEW SECTION. **Sec. 15.** A provider shall act in good faith in all  
11 matters under this chapter.

12 NEW SECTION. **Sec. 16.** A provider that is required to be  
13 registered under this chapter shall maintain a toll-free communication  
14 system, staffed at a level that reasonably permits an individual to  
15 speak to a certified counselor, certified debt specialist, or customer  
16 service representative, as appropriate, during ordinary business hours.

17 NEW SECTION. **Sec. 17.** (1) Before providing debt management  
18 services, a registered provider shall give the individual an itemized  
19 list of goods and services and the charges for each. The list must be  
20 clear and conspicuous, be in a record the individual may keep whether  
21 or not the individual assents to an agreement, and describe the goods  
22 and services the provider offers:

23 (a) Free of additional charge if the individual enters into an  
24 agreement;

25 (b) For a charge if the individual does not enter into an  
26 agreement; and

27 (c) For a charge if the individual enters into an agreement, using  
28 the following terminology, as applicable, and format:

- 29 Set up fee . . . . .  
30 *dollar amount of fee*  
31 Monthly service fee . . . . .  
32 *dollar amount of fee or method of determining amount*  
33 Settlement fee . . . . .  
34 *dollar amount of fee or method of determining amount*

1 Goods and services in addition to those provided in connection with  
2 a plan . . . . .

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

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

6 (2) A provider may not furnish debt management services unless the  
7 provider, through the services of a certified counselor or certified  
8 debt specialist:

9 (a) Provides the individual with reasonable education about the  
10 management of personal finance;

11 (b) Has prepared a financial analysis; and

12 (c) If the individual is to make regular, periodic payments:

13 (i) Has prepared a plan for the individual;

14 (ii) Has made a determination, based on the provider's analysis of  
15 the information provided by the individual and otherwise available to  
16 it, that the plan is suitable for the individual and the individual  
17 will be able to meet the payment obligations under the plan; and

18 (iii) Believes that each creditor of the individual listed as a  
19 participating creditor in the plan will accept payment of the  
20 individual's debts as provided in the plan.

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

23 (a) Provide the individual with a copy of the analysis and plan  
24 required by subsection (2) of this section in a record that identifies  
25 the provider and that the individual may keep whether or not the  
26 individual assents to the agreement;

27 (b) Inform the individual of the availability, at the individual's  
28 option, of assistance by a toll-free communication system or in person  
29 to discuss the financial analysis and plan required by subsection (2)  
30 of this section; and

31 (c) With respect to all creditors identified by the individual or  
32 otherwise known by the provider to be creditors of the individual,  
33 provide the individual with a list of:

34 (i) Creditors that the provider expects to participate in the plan  
35 and grant concessions;

36 (ii) Creditors that the provider expects to participate in the plan  
37 but not grant concessions;



1 (iii) Creditors that the provider expects not to participate in the  
2 plan; and

3 (iv) All other creditors.

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

8 (a) Of the name and business address of the provider;

9 (b) That plans are not suitable for all individuals and the  
10 individual may ask the provider about other ways, including bankruptcy,  
11 to deal with indebtedness;

12 (c) That establishment of a plan may adversely affect the  
13 individual's credit rating or credit scores;

14 (d) That nonpayment of debt may lead creditors to increase finance  
15 and other charges or undertake collection activity, including  
16 litigation;

17 (e) Unless it is not true, that the provider may receive  
18 compensation from the creditors of the individual; and

19 (f) That, unless the individual is insolvent, if a creditor settles  
20 for less than the full amount of the debt, the plan may result in the  
21 creation of taxable income to the individual, even though the  
22 individual does not receive any money.

23 (5) If a provider may receive payments from an individual's  
24 creditors and the plan contemplates that the individual's creditors  
25 will reduce finance charges or fees for late payment, default, or  
26 delinquency, the provider may comply with subsection (4) of this  
27 section by providing the following disclosure, surrounded by black  
28 lines:

29 IMPORTANT INFORMATION FOR YOU TO CONSIDER

30 (1) Debt management plans are not right for all individuals, and  
31 you may ask us to provide information about other ways, including  
32 bankruptcy, to deal with your debts.

33 (2) Using a debt management plan may make it harder for you to  
34 obtain credit.

35 (3) We may receive compensation for our services from your  
36 creditors.

1 . . . . .

2 *Name and business address of provider*

3 (6) If a provider will not receive payments from an individual's  
4 creditors and the plan contemplates that the individual's creditors  
5 will reduce finance charges or fees for late payment, default, or  
6 delinquency, a provider may comply with subsection (4) of this section  
7 by providing the following disclosure, surrounded by black lines:

8 IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

12 (2) Using a debt management plan may make it harder for you to  
13 obtain credit.

14 . . . . .

15 *Name and business address of provider*

16 (7) If an agreement contemplates that creditors will settle debts  
17 for less than the full principal amount of debt owed, a provider may  
18 comply with subsection (4) of this section by providing the following  
19 disclosure, surrounded by black lines:

20 IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

- 24 (2) Nonpayment of your debts under our program may:  
25 (a) Hurt your credit rating or credit scores;  
26 (b) Lead your creditors to increase finance and other charges; and  
27 (c) Lead your creditors to undertake activity, including lawsuits,  
28 to collect the debts.

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

31 . . . . .

32 *Name and business address of provider*

33 NEW SECTION. **Sec. 18.** (1) A provider may satisfy the requirements  
34 of section 17, 19, or 27 of this act by means of the internet or other

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

3 (2) The disclosures and materials required by sections 17, 19, and  
4 27 of this act shall be presented in a form that is capable of being  
5 accurately reproduced for later reference.

6 (3) With respect to disclosure by means of an internet web site,  
7 the disclosure of the information required by section 17(4) of this act  
8 must appear on one or more screens that:

9 (a) Contain no other information; and

10 (b) The individual must see before proceeding to assent to  
11 formation of an agreement.

12 (4) At the time of providing the materials and agreement required  
13 by sections 17 (3) and (4), 19, and 27 of this act, a provider shall  
14 inform the individual that upon electronic, telephonic, or written  
15 request, it will send the individual a written copy of the materials,  
16 and shall comply with a request as provided in subsection (5) of this  
17 section.

18 (5) If a provider is requested, before the expiration of ninety  
19 days after an agreement is completed or terminated, to send a written  
20 copy of the materials required by section 17 (3) and (4), 19, or 27 of  
21 this act, the provider shall send them at no charge within three  
22 business days after the request, but the provider need not comply with  
23 a request more than once per calendar month or if it reasonably  
24 believes the request is made for purposes of harassment. If a request  
25 is made more than ninety days after an agreement is completed or  
26 terminated, the provider shall send within a reasonable time a written  
27 copy of the materials requested.

28 (6) A provider that maintains an internet web site shall disclose  
29 on the home page of its web site or on a page that is clearly and  
30 conspicuously connected to the home page by a link that clearly reveals  
31 its contents:

32 (a) Its name and all names under which it does business;

33 (b) Its principal business address, telephone number, and e-mail  
34 address, if any; and

35 (c) The names of its principal officers.

36 (7) Subject to subsection (8) of this section, if a consumer who  
37 has consented to electronic communication in the manner provided by

1 section 101 of the federal act withdraws consent as provided in the  
2 federal act, a provider may terminate its agreement with the consumer.

3 (8) If a provider wishes to terminate an agreement with a consumer  
4 pursuant to subsection (7) of this section, it shall notify the  
5 consumer that it will terminate the agreement unless the consumer,  
6 within thirty days after receiving the notification, consents to  
7 electronic communication in the manner provided in section 101(c) of  
8 the federal act. If the consumer consents, the provider may terminate  
9 the agreement only as permitted by section 19(1)(f)(vii) of this act.

10 (9) For the purposes of this section:

11 (a) "Federal act" means the electronic signatures in global and  
12 national commerce act (15 U.S.C. Sec. 7001 et seq.).

13 (b) "Consumer" means an individual who seeks or obtains goods or  
14 services that are used primarily for personal, family, or household  
15 purposes.

16 NEW SECTION. **Sec. 19.** (1) An agreement must:

17 (a) Be in a record;

18 (b) Be dated and signed by the provider and the individual;

19 (c) Include the name of the individual and the address where the  
20 individual resides;

21 (d) Include the name, business address, and telephone number of the  
22 provider;

23 (e) Be delivered to the individual immediately upon formation of  
24 the agreement; and

25 (f) Disclose:

26 (i) The services to be provided;

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

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

32 (iv) If a plan provides for regular periodic payments to creditors:

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

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

1 (v) Each creditor that the provider believes will not participate  
2 in the plan and to which the provider will not direct payment;

3 (vi) How the provider will comply with its obligations under  
4 section 27(1) of this act;

5 (vii) That the provider may terminate the agreement for good cause,  
6 upon return of unexpended money of the individual;

7 (viii) That the individual may cancel the agreement as provided in  
8 section 20 of this act;

9 (ix) That the individual may contact the administrator with any  
10 questions or complaints regarding the provider; and

11 (x) The address, telephone number, and internet address or web site  
12 of the administrator.

13 (2) For purposes of subsection (1)(e) of this section, delivery of  
14 an electronic record occurs when it is made available in a format in  
15 which the individual may retrieve, save, and print it and the  
16 individual is notified that it is available.

17 (3) If the administrator supplies the provider with any information  
18 required under subsection (1)(f)(x) of this section, the provider may  
19 comply with that requirement only by disclosing the information  
20 supplied by the administrator.

21 (4) An agreement must provide that:

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

25 (i) The provider will refund all unexpended money that the provider  
26 or its agent has received from or on behalf of the individual for the  
27 reduction or satisfaction of the individual's debt;

28 (ii) With respect to an agreement that contemplates that creditors  
29 will settle debts for less than the principal amount of debt, the  
30 provider will refund sixty-five percent of any portion of the set up  
31 fee that has not been credited against the settlement fee; and

32 (iii) All powers of attorney granted by the individual to the  
33 provider are revoked and ineffective;

34 (b) The individual authorizes any bank in which the provider or its  
35 agent has established a trust account to disclose to the administrator  
36 any financial records relating to the trust account; and

37 (c) The provider will notify the individual within five days after

1 learning of a creditor's final decision to reject or withdraw from a  
2 plan and that this notice will include:

3 (i) The identity of the creditor; and

4 (ii) The right of the individual to modify or terminate the  
5 agreement.

6 (5) An agreement may confer on a provider a power of attorney to  
7 settle the individual's debt for no more than fifty percent of the  
8 principal amount of the debt. An agreement may not confer a power of  
9 attorney to settle a debt for more than fifty percent of that amount,  
10 but may confer a power of attorney to negotiate with creditors of the  
11 individual on behalf of the individual. An agreement must provide that  
12 the provider will obtain the assent of the individual after a creditor  
13 has assented to a settlement for more than fifty percent of the  
14 principal amount of the debt.

15 (6) An agreement may not:

16 (a) Provide for application of the law of any jurisdiction other  
17 than the United States and this state;

18 (b) Except as permitted by section 2 of the federal arbitration act  
19 (9 U.S.C. Sec. 2), contain a provision that modifies or limits  
20 otherwise available forums or procedural rights, including the right to  
21 trial by jury, that are generally available to the individual under law  
22 other than this chapter;

23 (c) Contain a provision that restricts the individual's remedies  
24 under this chapter or law other than this chapter; or

25 (d) Contain a provision that:

26 (i) Limits or releases the liability of any person for not  
27 performing the agreement or for violating this chapter; or

28 (ii) Indemnifies any person for liability arising under the  
29 agreement or this chapter.

30 (7) All rights and obligations specified in subsection (4) of this  
31 section and section 20 of this act exist even if not provided in the  
32 agreement. A provision in an agreement which violates subsection (4),  
33 (5), or (6) of this section is void.

34 NEW SECTION. **Sec. 20.** (1) An individual may cancel an agreement  
35 before midnight of the third business day after the individual assents  
36 to it, unless the agreement does not comply with subsection (2) of this  
37 section or section 19 or 28 of this act, in which event the individual

1 may cancel the agreement within thirty days after the individual  
2 assents to it. To exercise the right to cancel, the individual must  
3 give notice in a record to the provider. Notice by mail is given when  
4 mailed.

5 (2) An agreement must be accompanied by a form that contains in  
6 bold-face type, surrounded by bold black lines:

7 Notice of Right to Cancel

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

11 To cancel this agreement during this period, send an e-mail to (*E-mail*  
12 *address of provider*) or mail or deliver a signed, dated copy of this  
13 notice, or any other written notice to (*Name of provider*) at (*Address*  
14 *of provider*) before midnight on (*Date*).

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

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

19 I cancel this agreement,

20 . . . . .

21 *Print your name*

22 . . . . .

23 *Signature*

24 . . . . .

25 *Date*

26 (3) If a personal financial emergency necessitates the disbursement  
27 of an individual's money to one or more of the individual's creditors  
28 before the expiration of three days after an agreement is signed, an  
29 individual may waive the right to cancel. To waive the right, the  
30 individual must send or deliver a signed, dated statement in the  
31 individual's own words describing the circumstances that necessitate a  
32 waiver. The waiver must explicitly waive the right to cancel. A  
33 waiver by means of a standard form record is void.

34 NEW SECTION. **Sec. 21.** Unless the administrator, by rule, provides  
35 otherwise, the disclosures and documents required by this chapter must

1 be in English. If a provider communicates with an individual primarily  
2 in a language other than English, the provider must furnish a  
3 translation into the other language of the disclosures and documents  
4 required by this chapter.

5 NEW SECTION. **Sec. 22.** (1) All money paid to a provider by or on  
6 behalf of an individual for distribution to creditors pursuant to an  
7 agreement is held in trust. Within two business days after receipt,  
8 the provider shall deposit the money in a trust account established for  
9 the benefit of individuals to whom the provider is furnishing debt  
10 management services.

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

16 (3) A provider shall:

17 (a) Maintain separate records of account for each individual to  
18 whom the provider is furnishing debt management services;

19 (b) Disburse money paid by or on behalf of the individual to  
20 creditors of the individual as disclosed in the agreement, except that:

21 (i) The provider may delay payment to the extent that a payment by  
22 the individual is not final; and

23 (ii) If a plan provides for regular periodic payments to creditors,  
24 the disbursement must comply with the due dates established by each  
25 creditor; and

26 (c) Promptly correct any payments that are not made or that are  
27 misdirected as a result of an error by the provider or other person in  
28 control of the trust account and reimburse the individual for any costs  
29 or fees imposed by a creditor as a result of the failure to pay or  
30 misdirection.

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

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

36 (6) If a provider has established a trust account pursuant to  
37 subsection (1) of this section, the provider shall reconcile the trust



1 account at least once a month. The reconciliation must compare the  
2 cash balance in the trust account with the sum of the balances in each  
3 individual's account. If the provider or its designee has more than  
4 one trust account, each trust account must be individually reconciled.

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

12 (8) If an individual terminates an agreement or it becomes  
13 reasonably apparent to a provider that a plan has failed, the provider  
14 shall promptly refund to the individual all money paid by or on behalf  
15 of the individual which has not been paid to creditors, less fees that  
16 are payable to the provider under section 23 of this act.

17 (9) Before relocating a trust account from one bank to another, a  
18 provider shall inform the administrator of the name, business address,  
19 and telephone number of the new bank. As soon as practicable, the  
20 provider shall inform the administrator of the account number of the  
21 trust account at the new bank.

22 NEW SECTION. **Sec. 23.** (1) A provider may not impose directly or  
23 indirectly a fee or other charge on an individual or receive money from  
24 or on behalf of an individual for debt management services except as  
25 permitted by this section.

26 (2) A provider may not impose charges or receive payment for debt  
27 management services until the provider and the individual have signed  
28 an agreement that complies with sections 19 and 28 of this act.

29 (3) If an individual assents to an agreement, a provider may not  
30 impose a fee or other charge for educational or counseling services, or  
31 the like, except as otherwise provided in this subsection and section  
32 28(4) of this act. The administrator may authorize a provider to  
33 charge a fee based on the nature and extent of the educational or  
34 counseling services furnished by the provider.

35 (4) Subject to adjustment of dollar amounts pursuant to section  
36 32(6) of this act, the following rules apply:

1 (a) If an individual assents to an agreement that contemplates that  
2 creditors will reduce finance charges or fees for late payment,  
3 default, or delinquency, the provider may charge:

4 (i) A fee not exceeding fifty dollars for consultation, obtaining  
5 a credit report, setting up an account, and the like; and

6 (ii) A monthly service fee, not to exceed ten dollars times the  
7 number of creditors remaining in a plan at the time the fee is  
8 assessed, but not more than fifty dollars in any month.

9 (b) If an individual assents to an agreement that contemplates that  
10 creditors will settle debts for less than the principal amount of the  
11 debt, a provider may charge:

12 (i) Subject to section 19(4) of this act, a fee for consultation,  
13 obtaining a credit report, setting up an account, and the like, in an  
14 amount not exceeding the lesser of four hundred dollars and four  
15 percent of the debt in the plan at the inception of the plan; and

16 (ii) A monthly service fee, not to exceed ten dollars times the  
17 number of creditors remaining in a plan at the time the fee is  
18 assessed, but not more than fifty dollars in any month.

19 (c) A provider may not impose or receive fees under (a) and (b) of  
20 this subsection.

21 (d) Except as otherwise provided in section 28(4) of this act, if  
22 an individual does not assent to an agreement, a provider may receive  
23 for educational and counseling services it provides to the individual  
24 a fee not exceeding one hundred dollars or, with the approval of the  
25 administrator, a larger fee. The administrator may approve a fee  
26 larger than one hundred dollars if the nature and extent of the  
27 educational and counseling services warrant the larger fee.

28 (5) If, before the expiration of ninety days after the completion  
29 or termination of educational or counseling services, an individual  
30 assents to an agreement, the provider shall refund to the individual  
31 any fee paid under subsection (4)(d) of this section.

32 (6) Except as otherwise provided in subsections (3) and (4) of this  
33 section, if an agreement contemplates that creditors will settle an  
34 individual's debts for less than the principal amount of the debt,  
35 compensation for services in connection with settling a debt may not  
36 exceed, with respect to each debt:

37 (a) Thirty percent of the excess of the principal amount of the  
38 debt over the amount paid the creditor pursuant to the agreement, less

1 (b) To the extent it has not been credited against an earlier  
2 settlement fee:

3 (i) The fee charged under subsection (4)(b)(i) of this section; and

4 (ii) The aggregate of fees charged under subsection (4)(b)(ii) of  
5 this section.

6 (7) Subject to adjustment of the dollar amount pursuant to section  
7 32(6) of this section, if a payment to a provider by an individual  
8 under this chapter is dishonored, a provider may impose a reasonable  
9 charge on the individual, not to exceed the lesser of twenty-five  
10 dollars and the amount permitted by law other than this chapter.

11 NEW SECTION. **Sec. 24.** A provider may not solicit a voluntary  
12 contribution from an individual or an affiliate of the individual for  
13 any service provided to the individual. A provider may accept  
14 voluntary contributions from an individual but, until thirty days after  
15 completion or termination of a plan, the aggregate amount of money  
16 received from or on behalf of the individual may not exceed the total  
17 amount the provider may charge the individual under section 23 of this  
18 act.

19 NEW SECTION. **Sec. 25.** (1) If a provider imposes a fee or other  
20 charge or receives money or other payments not authorized by section 23  
21 or 24 of this act, the individual may void the agreement and recover as  
22 provided in section 35 of this act.

23 (2) If a provider is not registered as required by this chapter  
24 when an individual assents to an agreement, the agreement is voidable  
25 by the individual.

26 (3) If an individual voids an agreement under subsection (2) of  
27 this section, the provider does not have a claim against the individual  
28 for breach of contract or for restitution.

29 NEW SECTION. **Sec. 26.** (1) If an individual who has entered into  
30 an agreement fails for sixty days to make payments required by the  
31 agreement, a provider may terminate the agreement.

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

34 (a) Any money of the individual held in trust for the benefit of  
35 the individual; and

1 (b) Sixty-five percent of any portion of the set up fee received  
2 pursuant to section 23(4)(b) of this act which has not been credited  
3 against settlement fees.

4 NEW SECTION. **Sec. 27.** (1) A provider shall provide the accounting  
5 required by subsection (2) of this section:

- 6 (a) Upon cancellation or termination of an agreement; and
- 7 (b) Before cancellation or termination of any agreement:
  - 8 (i) At least once each month; and
  - 9 (ii) Within five business days after a request by an individual,  
10 but the provider need not comply with more than one request in any  
11 calendar month.

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

- 14 (a) The amount of money received from the individual since the last  
15 report;
- 16 (b) The amounts and dates of disbursement made on the individual's  
17 behalf, or by the individual upon the direction of the provider, since  
18 the last report to each creditor listed in the plan;
- 19 (c) The amounts deducted from the amount received from the  
20 individual;
- 21 (d) The amount held in reserve; and
- 22 (e) If, since the last report, a creditor has agreed to accept as  
23 payment in full an amount less than the principal amount of the debt  
24 owed by the individual:
  - 25 (i) The total amount and terms of the settlement;
  - 26 (ii) The amount of the debt when the individual assented to the  
27 plan;
  - 28 (iii) The amount of the debt when the creditor agreed to the  
29 settlement; and
  - 30 (iv) The calculation of a settlement fee.

31 (3) A provider shall maintain records for each individual for whom  
32 it provides debt management services for five years after the final  
33 payment made by the individual and produce a copy of them to the  
34 individual within a reasonable time after a request for them. The  
35 provider may use electronic or other means of storage of the records.

1        NEW SECTION.    **Sec. 28.**    (1) A provider may not, directly or  
2 indirectly:

3        (a) Misappropriate or misapply money held in trust;

4        (b) Settle a debt on behalf of an individual for more than fifty  
5 percent of the principal amount of the debt owed a creditor, unless the  
6 individual assents to the settlement after the creditor has assented;

7        (c) Take a power of attorney that authorizes it to settle a debt,  
8 unless the power of attorney expressly limits the provider's authority  
9 to settle debts for not more than fifty percent of the principal amount  
10 of the debt owed a creditor;

11       (d) Exercise or attempt to exercise a power of attorney after an  
12 individual has terminated an agreement;

13       (e) Initiate a transfer from an individual's account at a bank or  
14 with another person unless the transfer is:

15       (i) A return of money to the individual; or

16       (ii) Before termination of an agreement, properly authorized by the  
17 agreement and this chapter, and for:

18       (A) Payment to one or more creditors pursuant to an agreement; or

19       (B) Payment of a fee;

20       (f) Offer a gift or bonus, premium, reward, or other compensation  
21 to an individual for executing an agreement;

22       (g) Offer, pay, or give a gift or bonus, premium, reward, or other  
23 compensation to a person for referring a prospective customer, if the  
24 person making the referral has a financial interest in the outcome of  
25 debt management services provided to the customer, unless neither the  
26 provider nor the person making the referral communicates to the  
27 prospective customer the identity of the source of the referral;

28       (h) Receive a bonus, commission, or other benefit for referring an  
29 individual to a person;

30       (i) Structure a plan in a manner that would result in a negative  
31 amortization of any of an individual's debts, unless a creditor that is  
32 owed a negatively amortizing debt agrees to refund or waive the finance  
33 charge upon payment of the principal amount of the debt;

34       (j) Compensate its employees on the basis of a formula that  
35 incorporates the number of individuals the employee induces to enter  
36 into agreements;

37       (k) Settle a debt or lead an individual to believe that a payment

1 to a creditor is in settlement of a debt to the creditor unless, at the  
2 time of settlement, the individual receives a certification by the  
3 creditor that the payment is in full settlement of the debt;

4 (l) Make a representation that:

5 (i) The provider will furnish money to pay bills or prevent  
6 attachments;

7 (ii) Payment of a certain amount will permit satisfaction of a  
8 certain amount or range of indebtedness; or

9 (iii) Participation in a plan will or may prevent litigation,  
10 garnishment, attachment, repossession, foreclosure, eviction, or loss  
11 of employment;

12 (m) Misrepresent that it is authorized or competent to furnish  
13 legal advice or perform legal services;

14 (n) Represent in its agreements, disclosures required by this  
15 chapter, advertisements, or internet web site that it is a:

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

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

23 (o) Take a confession of judgment or power of attorney to confess  
24 judgment against an individual; or

25 (p) Employ an unfair, unconscionable, or deceptive act or practice,  
26 including the knowing omission of any material information.

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

29 (a) Purchase a debt or obligation of the individual;

30 (b) Receive from or on behalf of the individual:

31 (i) A promissory note or other negotiable instrument other than a  
32 check or a demand draft; or

33 (ii) A postdated check or demand draft;

34 (c) Lend money or provide credit to the individual, except as a  
35 deferral of a settlement fee at no additional expense to the  
36 individual;

37 (d) Obtain a mortgage or other security interest from any person in  
38 connection with the services provided to the individual;

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

4 (i) The administrator, upon proper demand;

5 (ii) A creditor of the individual, to the extent necessary to  
6 secure the cooperation of the creditor in a plan; or

7 (iii) The extent necessary to administer the plan;

8 (f) Except as otherwise provided in section 23(6) of this act,  
9 provide the individual less than the full benefit of a compromise of a  
10 debt arranged by the provider;

11 (g) Charge the individual for or provide credit or other insurance,  
12 coupons for goods or services, membership in a club, access to  
13 computers or the internet, or any other matter not directly related to  
14 debt management services or educational services concerning personal  
15 finance; or

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

19 (3) This section does not authorize any person to engage in the  
20 practice of law.

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

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

33 (a) Owns more than ten percent of the person; or

34 (b) Is an employee or affiliate of the person.

35 NEW SECTION. **Sec. 29.** No later than thirty days after a provider  
36 has been served with notice of a civil action for violation of this  
37 chapter by or on behalf of an individual who resides in this state at

1 either the time of an agreement or the time the notice is served, the  
2 provider shall notify the administrator in a record that it has been  
3 sued.

4 NEW SECTION. **Sec. 30.** (1) If a provider whose agreements  
5 contemplate that creditors will reduce finance charges or fees for late  
6 payment, default, or delinquency advertises debt management services,  
7 it shall disclose, in an easily comprehensible manner, that using a  
8 debt management plan may make it harder for the individual to obtain  
9 credit.

10 (2) If a provider whose agreements contemplate that creditors will  
11 settle for less than the full principal amount of debt advertises debt  
12 management services, it shall disclose, in an easily comprehensible  
13 manner, the information specified in section 17(4) (c) and (d) of this  
14 act.

15 NEW SECTION. **Sec. 31.** If a provider delegates any of its duties  
16 or obligations under an agreement or this chapter to another person,  
17 including an independent contractor, the provider is liable for conduct  
18 of the person which, if done by the provider, would violate the  
19 agreement or this chapter.

20 NEW SECTION. **Sec. 32.** (1) The administrator may act on its own  
21 initiative or in response to complaints and may receive complaints,  
22 take action to obtain voluntary compliance with this chapter, refer  
23 cases to the attorney general, and seek or provide remedies as provided  
24 in this chapter.

25 (2) The administrator may investigate and examine, in this state or  
26 elsewhere, by subpoena or otherwise, the activities, books, accounts,  
27 and records of a person that provides or offers to provide debt  
28 management services, or a person to which a provider has delegated its  
29 obligations under an agreement or this chapter, to determine compliance  
30 with this chapter. Information that identifies individuals who have  
31 agreements with the provider shall not be disclosed to the public. In  
32 connection with the investigation, the administrator may:

33 (a) Charge the person the reasonable expenses necessarily incurred  
34 to conduct the examination;



1 (b) Require or permit a person to file a statement under oath as to  
2 all the facts and circumstances of a matter to be investigated; and

3 (c) Seek a court order authorizing seizure from a bank at which the  
4 person maintains a trust account required by section 22 of this act,  
5 any or all money, books, records, accounts, and other property of the  
6 provider that is in the control of the bank and relates to individuals  
7 who reside in this state.

8 (3) The administrator may adopt rules to implement the provisions  
9 of this chapter in accordance with chapter 34.05 RCW.

10 (4) The administrator may enter into cooperative arrangements with  
11 any other federal or state agency having authority over providers and  
12 may exchange with any of those agencies information about a provider,  
13 including information obtained during an examination of the provider.

14 (5) The administrator, by rule, shall establish reasonable fees to  
15 be paid by providers for the expense of administering this chapter.

16 (6) The administrator, by rule, shall adopt dollar amounts instead  
17 of those specified in sections 2, 5, 9, 13, 23, 33, and 35 of this act  
18 to reflect inflation, as measured by the United States bureau of labor  
19 statistics consumer price index for all urban consumers or, if that  
20 index is not available, another index adopted by rule by the  
21 administrator. The administrator shall adopt a base year and adjust  
22 the dollar amounts, effective July 1st of each year, if the change in  
23 the index from the base year, as of December 31st of the preceding  
24 year, is at least ten percent. The dollar amount must be rounded to  
25 the nearest one hundred dollars, except that the amounts in section 23  
26 of this act must be rounded to the nearest dollar.

27 (7) The administrator shall notify registered providers of any  
28 change in dollar amounts made pursuant to subsection (6) of this  
29 section and make that information available to the public.

30 NEW SECTION. **Sec. 33.** (1) The administrator may enforce this  
31 chapter and rules adopted under this chapter by taking one or more of  
32 the following actions:

33 (a) Ordering a provider or a director, employee, or other agent of  
34 a provider to cease and desist from any violations;

35 (b) Ordering a provider or a person that has caused a violation to  
36 correct the violation, including making restitution of money or  
37 property to a person aggrieved by a violation;

1 (c) Subject to adjustment of the dollar amount pursuant to section  
2 32(6) of this act, imposing on a provider or a person that has caused  
3 a violation a civil penalty not exceeding ten thousand dollars for each  
4 violation;

5 (d) Prosecuting a civil action to:

6 (i) Enforce an order; or

7 (ii) Obtain restitution or an injunction or other equitable relief,  
8 or both;

9 (e) Intervening in an action brought under section 35 of this act.

10 (2) Subject to adjustment of the dollar amount pursuant to section  
11 32(6) of this act, if a person violates or knowingly authorizes,  
12 directs, or aids in the violation of a final order issued under  
13 subsection (1)(a) or (b) of this section, the administrator may impose  
14 a civil penalty not exceeding twenty thousand dollars for each  
15 violation.

16 (3) The administrator may maintain an action to enforce this  
17 chapter in any county.

18 (4) The administrator may recover the reasonable costs of enforcing  
19 this chapter under subsections (1) through (3) of this section,  
20 including attorneys' fees based on the hours reasonably expended and  
21 the hourly rates for attorneys of comparable experience in the  
22 community.

23 (5) In determining the amount of a civil penalty to impose under  
24 subsection (1) or (2) of this section, the administrator shall consider  
25 the seriousness of the violation, the good faith of the violator, any  
26 previous violations by the violator, the deleterious effect of the  
27 violation on the public, the net worth of the violator, and any other  
28 factor the administrator considers relevant to the determination of the  
29 civil penalty.

30 NEW SECTION. **Sec. 34.** (1) The administrator may suspend, revoke,  
31 or deny renewal of a provider's registration if:

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

35 (b) The provider has committed a material violation of this chapter  
36 or a rule or order of the administrator under this chapter;

37 (c) The provider is insolvent;

1 (d) The provider or an employee or affiliate of the provider has  
2 refused to permit the administrator to make an examination authorized  
3 by this chapter, failed to comply with section 32(2)(b) of this act  
4 within fifteen days after request, or made a material misrepresentation  
5 or omission in complying with section 32(2)(b) of this act; or

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

8 (2) If a provider does not comply with section 22(6) of this act,  
9 or if the administrator otherwise finds that the public health or  
10 safety or general welfare requires emergency action, the administrator  
11 may order a summary suspension of the provider's registration,  
12 effective on the date specified in the order.

13 (3) If the administrator suspends, revokes, or denies renewal of  
14 the registration of a provider, the administrator may seek a court  
15 order authorizing seizure of any or all of the money in a trust account  
16 required by section 22 of this act, books, records, accounts, and other  
17 property of the provider which are located in this state.

18 (4) If the administrator suspends or revokes a provider's  
19 registration, the provider may appeal and request a hearing under  
20 chapter 34.05 RCW, the administrative procedure act.

21 (5) For the purposes of this section, "insolvent" means:

22 (a) Having generally ceased to pay debts in the ordinary course of  
23 business other than as a result of good faith dispute;

24 (b) Being unable to pay debts as they become due; or

25 (c) Being insolvent within the meaning of the federal bankruptcy  
26 law (11 U.S.C. Sec. 101 et seq.).

27 NEW SECTION. **Sec. 35.** (1) If an individual voids an agreement  
28 pursuant to section 25(2) of this act, the individual may recover in a  
29 civil action all money paid or deposited by or on behalf of the  
30 individual pursuant to the agreement, except amounts paid to creditors,  
31 in addition to the recovery under subsection (3)(c) and (d) of this  
32 section.

33 (2) If an individual voids an agreement pursuant to section 25(1)  
34 of this act, the individual may recover in a civil action three times  
35 the total amount of the fees, charges, money, and payments made by the  
36 individual to the provider, in addition to the recovery under  
37 subsection (3)(d) of this section.

1 (3) Subject to subsection (4) of this section, an individual with  
2 respect to whom a provider violates this chapter may recover in a civil  
3 action from the provider and any person that caused the violation:

4 (a) Compensatory damages for injury, including noneconomic injury,  
5 caused by the violation;

6 (b) Except as otherwise provided in subsection (4) of this section  
7 and subject to adjustment of the dollar amount pursuant to section  
8 32(6) of this act, with respect to a violation of section 17, 19, 20,  
9 21, 22, 23, 24, 27, or 28 (1), (2), or (4) of this act, the greater of  
10 the amount recoverable under subsection (1) of this section or five  
11 thousand dollars;

12 (c) Punitive damages; and

13 (d) Reasonable attorneys' fees and costs.

14 (4) In a class action, except for a violation of section 28(1)(e)  
15 of this act, the minimum damages provided in subsection (3)(b) of this  
16 section do not apply.

17 (5) In addition to the remedy available under subsection (3) of  
18 this section, if a provider violates an individual's rights under  
19 section 20 of this act, the individual may recover in a civil action  
20 all money paid or deposited by or on behalf of the individual pursuant  
21 to the agreement, except for amounts paid to creditors.

22 (6) A provider is not liable under this section for a violation of  
23 this chapter if the provider proves that the violation was not  
24 intentional and resulted from a good faith error notwithstanding the  
25 maintenance of procedures reasonably adapted to avoid the error. An  
26 error of legal judgment with respect to a provider's obligations under  
27 this chapter is not a good faith error. If, in connection with a  
28 violation, the provider has received more money than authorized by an  
29 agreement or this chapter, the defense provided by this subsection is  
30 not available unless the provider refunds the excess within two  
31 business days of learning of the violation.

32 (7) The administrator shall assist an individual in enforcing a  
33 judgment against the surety bond or other security provided under  
34 section 13 or 14 of this act.

35 NEW SECTION. **Sec. 36.** If an act or practice of a provider  
36 violates both this chapter and is an unfair or deceptive act in trade

1 or commerce for the purpose of applying the consumer protection act,  
2 chapter 19.86 RCW, an individual may not recover under both for the  
3 same act or practice.

4 NEW SECTION. **Sec. 37.** (1) An action or proceeding brought  
5 pursuant to section 33 (1), (2), or (3) of this act must be commenced  
6 within four years after the conduct that is the basis of the  
7 administrator's complaint.

8 (2) An action brought pursuant to section 35 of this act must be  
9 commenced within two years after the latest of:

10 (a) The individual's last transmission of money to a provider;

11 (b) The individual's last transmission of money to a creditor at  
12 the direction of the provider;

13 (c) The provider's last disbursement to a creditor of the  
14 individual;

15 (d) The provider's last accounting to the individual pursuant to  
16 section 27(1) of this act;

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

20 (f) Termination of actions or proceedings by the administrator with  
21 respect to a violation of this chapter.

22 (3) The period prescribed in subsection (2)(e) of this section is  
23 tolled during any period during which the provider or, if different,  
24 the defendant has materially and willfully misrepresented information  
25 required by this chapter to be disclosed to the individual, if the  
26 information so misrepresented is material to the establishment of the  
27 liability of the defendant under this chapter.

28 NEW SECTION. **Sec. 38.** In applying and construing this act,  
29 consideration must be given to the need to promote uniformity of the  
30 law with respect to its subject matter among states that enact it.

31 NEW SECTION. **Sec. 39.** This act modifies, limits, and supersedes  
32 the federal electronic signatures in global and national commerce act  
33 (15 U.S.C. Sec. 7001 et seq.) but does not modify, limit, or supersede  
34 section 101(c) of that act (15 U.S.C. Sec. 7001(c)) or authorize

1 electronic delivery of any of the notices described in section 103(b)  
2 of that act (15 U.S.C. Sec. 7003(b)).

3 NEW SECTION. **Sec. 40.** Transactions entered into before the  
4 effective date of this act and the rights, duties, and interests  
5 resulting from them may be completed, terminated, or enforced as  
6 required or permitted by a law amended, repealed, or modified by this  
7 act as though the amendment, repeal, or modification had not occurred.

8 NEW SECTION. **Sec. 41.** The following acts or parts of acts are  
9 each repealed:

10 (1) RCW 18.28.010 (Definitions) and 1999 c 151 s 101, 1979 c 156 s  
11 1, 1970 ex.s. c 97 s 1, & 1967 c 201 s 1;

12 (2) RCW 18.28.080 (Fees for debt adjusting services--Limitations--  
13 Requirements) and 1999 c 151 s 102, 1979 c 156 s 4, 1967 ex.s. c 141 s  
14 2, & 1967 c 201 s 8;

15 (3) RCW 18.28.090 (Excess charges--Contract void--Return of  
16 payments) and 1999 c 151 s 103 & 1967 c 201 s 9;

17 (4) RCW 18.28.100 (Contract requirements) and 1999 c 151 s 104,  
18 1979 c 156 s 5, & 1967 c 201 s 10;

19 (5) RCW 18.28.110 (Debt adjuster--Functions required to be  
20 performed) and 1999 c 151 s 105, 1979 c 156 s 6, & 1967 c 201 s 11;

21 (6) RCW 18.28.120 (Debt adjuster--Prohibited acts) and 1999 c 151  
22 s 106 & 1967 c 201 s 12;

23 (7) RCW 18.28.130 (Legal services--Rendering or obtaining--Using  
24 name of attorney--Prohibited) and 1999 c 151 s 107 & 1967 c 201 s 13;

25 (8) RCW 18.28.140 (Assignment of wages not prohibited) and 1999 c  
26 151 s 108 & 1967 c 201 s 14;

27 (9) RCW 18.28.150 (Trust account for payments by debtor--  
28 Disbursements) and 1999 c 151 s 109, 1979 c 156 s 8, & 1967 c 201 s 15;

29 (10) RCW 18.28.165 (Investigations) and 1999 c 151 s 110 & 1979 c  
30 156 s 7;

31 (11) RCW 18.28.180 (Administrative procedure act to govern  
32 administration) and 1967 c 201 s 18;

33 (12) RCW 18.28.185 (Violations--Unfair practice under chapter 19.86  
34 RCW) and 1979 c 156 s 10;

35 (13) RCW 18.28.190 (Violations--Penalty) and 1999 c 151 s 111 &  
36 1967 c 201 s 19;

- 1 (14) RCW 18.28.200 (Violations--Injunctions) and 1967 c 201 s 20;  
2 (15) RCW 18.28.210 (Violations--Assurance of discontinuance--  
3 Effect) and 1967 c 201 s 21;  
4 (16) RCW 18.28.220 (Violation of injunction--Civil penalty) and  
5 1967 c 201 s 22;  
6 (17) RCW 18.28.900 (Saving prior contracts) and 1967 c 201 s 23;  
7 and  
8 (18) RCW 18.28.910 (Severability--1967 c 201) and 1967 c 201 s 24.

9 NEW SECTION. **Sec. 42.** If any provision of this act or its  
10 application to any person or circumstance is held invalid, the  
11 remainder of the act or the application of the provision to other  
12 persons or circumstances is not affected.

13 NEW SECTION. **Sec. 43.** Sections 1 through 40 of this act  
14 constitute a new chapter in Title 18 RCW.

15 NEW SECTION. **Sec. 44.** This act takes effect October 1, 2009.

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