

FOR APPROVAL

**AMENDMENTS TO UNIFORM DEBT-MANAGEMENT
SERVICES ACT**

NATIONAL CONFERENCE OF COMMISSIONERS
ON UNIFORM STATE LAWS

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**AMENDMENTS TO UNIFORM DEBT-MANAGEMENT
SERVICES ACT**

UNIFORM DEBT-MANAGEMENT SERVICES ACT

Legislative Note: The state must decide whether to permit for profit entities to provide credit counseling services, debt settlement services, or both. To implement its decision on this question, the state should follow the directions in the Legislative Notes to Sections 4, 5, and 9.

SECTION 1. SHORT TITLE. This [act] may be cited as the Uniform Debt-Management Services Act.

SECTION 2. DEFINITIONS. In this [act]:

(1) “Administrator” means the [insert the name of the agency or entity that will be charged with enforcement of this act].

(2) “Affiliate”:

(A) with respect to an individual, means:

(i) the spouse of the individual;

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

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

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

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

(B) with respect to an entity, means:

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

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

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

(iv) subject to adjustment of the dollar amount pursuant to Section 32(f), a person that receives or received more than \$25,000 from the entity in either the current year or the preceding year or a person that owns more than 10 percent of, or an individual who is employed by or is a director of, a person that receives or received more than \$25,000 from the entity in either the current year or the preceding year;

(v) an officer or director of, or an individual performing similar functions with respect to, a person described in ~~subsubparagraph~~ clause (i);

(vi) the spouse of, or an individual occupying the residence of, an individual described in ~~subsubparagraphs~~ clauses (i) through (v); or

(vii) an individual who has the relationship specified in subparagraph (A)(iv) to an individual or the spouse of an individual described in ~~subsubparagraphs~~ clauses (i) through (v).

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

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

(5) “Business address” means the physical location of a business, including the name and number of a street.

(6) ~~(A)~~ “Certified counselor” means an individual certified by a training program or

certifying organization, approved by the administrator, that authenticates the competence of individuals providing education and assistance to other individuals in connection with debt-management services in which an agreement contemplates that creditors will reduce finance charges or fees for late payment, default, or delinquency.

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

~~(7)~~(8) “Concessions” means assent to repayment of a debt on terms more favorable to an individual than the terms of the contract between the individual and a creditor.

~~(8)~~(9) “Day” means calendar day.

~~(9)~~(10) “Debt-management services” means services as an intermediary between an individual and one or more creditors of the individual for the purpose of obtaining concessions, but does not include:

(A) legal services provided in an attorney-client relationship, if:

(i) the services are provided by an attorney who:

(I) is licensed or otherwise authorized to practice law in this state;

and

(II) provides legal services in representing the individual in the

individual’s relationship with a creditor; and

(ii) there is no intermediary between the individual and the creditor other than the attorney or a person under the direct supervision of the attorney;

(B) accounting services provided in an accountant-client relationship, if:

(i) the services are provided by a certified public accountant who:

(I) is licensed to provide accounting services in this state; ~~or~~ and

(II) provides accounting services in representing the individual in the individual's relationship with a creditor; and

(ii) there is no intermediary between the individual and the creditor other than the accountant or a person under the direct supervision of the accountant;

(C) financial-planning services provided in a financial planner-client relationship by a member of a financial-planning profession:

(i) whose members the administrator, by rule, determines are

~~(i)~~(I) licensed by this state;

~~(ii)~~(II) subject to a disciplinary mechanism;

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

~~(iv)~~(IV) subject to a continuing-education requirement; and

(ii) there is no intermediary between the individual and the creditor other than the financial planner or a person under the direct supervision of the financial planner.

~~(10)~~(11) "Entity" means a person other than an individual.

~~(11)~~(12) "Good faith" means honesty in fact and the observance of reasonable standards of fair dealing.

(13) "Lead generator" means a person that, in the regular course of business, supplies a provider with the name of a potential customer, directs a communication of an individual to a provider, or otherwise refers a customer to a provider.

~~(12)~~(14) "Person" means an individual, corporation, statutory trust, business trust, estate,

trust, partnership, limited liability company, association, joint venture, or any other legal or commercial entity. The term does not include a public corporation, government, or governmental subdivision, agency, or instrumentality.

~~(13)~~(15) “Plan” means a program or strategy in which a provider furnishes debt-management services to an individual and which includes a schedule of payments to be made by or on behalf of the individual and used to pay debts owed by the individual.

~~(14)~~(16) “Principal amount of the debt” means the amount of a debt at the time of an agreement.

~~(15)~~(17) “Provider” means a person that provides, offers to provide, or agrees to provide debt-management services directly or through others.

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

~~(17)~~(19) “Settlement fee” means a charge imposed on or paid by an individual in connection with a creditor’s assent to accept in full satisfaction of a debt an amount less than the principal amount of the debt.

~~(18)~~(20) “Sign” means, with present intent to authenticate or adopt a record:

- (A) to execute or adopt a tangible symbol; or
- (B) to attach to or logically associate with the record an electronic sound, symbol, or process.

~~(19)~~(21) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

~~(20)~~(22) “Trust account” means an account held by a provider ~~that~~ which is:

- (A) established in ~~an insured~~ a bank in which the deposit accounts are insured;
- (B) separate from other accounts of the provider or its designee;
- (C) designated as a trust account or other account designated to indicate that the money in the account is not the money of the provider or its designee; and
- (D) used to hold money of one or more individuals for disbursement to creditors of the individuals.

Legislative Note: *In connection with paragraph (1), the state must decide whether to create a new administrative agency or charge an existing entity with enforcement of this ~~Act~~ act. If the latter, the state must decide which existing entity to select. Logical choices include the attorney general or other entity charged with consumer protection ~~generally~~ (under a little-FTC act, deceptive trade practices act, or similar statute) or the entity charged with regulation of consumer credit or financial institutions. It may be desirable to amend that entity's organic statute to refer specifically to this ~~Act~~ act.*

SECTION 3. EXEMPT AGREEMENTS AND PERSONS.

- (a) This [act] does not apply to an agreement with an individual who the provider has no reason to know resides in this state at the time of the agreement.
- (b) This [act] does not apply to a provider to the extent that the provider:
 - (1) provides or agrees to provide debt-management, educational, or counseling services to an individual who the provider has no reason to know resides in this state at the time the provider agrees to provide the services; or
 - (2) receives no compensation for debt-management services from or on behalf of the individuals to whom it provides the services or from their creditors.
- (c) This [act] does not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person's business or profession:
 - (1) a judicial officer, a person acting under an order of a court or an administrative agency, or an assignee for the benefit of creditors;

(2) a bank;

(3) an affiliate, as defined in Section 2(2)(B)(i), of a bank if the affiliate is regulated by a federal or state banking regulatory authority; or

(4) a title insurer, escrow company, or other person that provides bill-paying services if the provision of debt-management services is incidental to the bill-paying services.

SECTION 4. REGISTRATION ~~[AND NOT FOR PROFIT STATUS]~~ REQUIRED.

(a) Except as otherwise provided in subsection (b), a provider may not provide debt-management services to an individual who it reasonably should know resides in this state at the time it agrees to provide the services, unless the provider is registered under this [act].

(b) If a provider is registered under this [act], subsection (a) does not apply to an employee or agent of the provider.

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

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

~~(1) organized and properly operating as a not for profit entity under the law of the state in which it was formed; and~~

~~(2) exempt from taxation under the Internal Revenue Code, 26 U.S.C. Section 501 [as amended]].~~

Legislative Note: ~~This section implements the state's decision concerning whether for profit entities are permitted to provide debt management services.~~

~~If the state wishes to permit only not for profit entities to provide debt management~~

~~services, use subsection (d) without the either of the two bracketed phrases, so that the introduction to subsection (d) states:~~

~~(d) A provider may be registered only if it is:~~

~~If the state wishes to permit for-profit entities to provide all kinds of debt management services, omit subsection (d) and delete the bracketed material in the section caption.~~

~~If the state wishes to permit for-profit entities to provide debt settlement services but not credit counseling services, use the language in the first set of brackets, so that the introduction to subsection (d) states:~~

~~(d) A provider whose agreements contemplate that creditors will reduce finance charges or fees for late payment, default, or delinquency may be registered only if it is:~~

~~If the state wishes to permit for-profit entities to provide credit counseling services but not debt settlement services, use the language in the second set of brackets, so that the introduction to subsection (d) states:~~

~~(d) A provider whose agreements contemplate that creditors will settle debts for less than the full principal amount of debt owed may be registered only if it is:~~

~~In states in which the constitution does not permit the phrase, “as amended,” when federal statutes are incorporated into state law, the phrase should be deleted in subsection (d)(2).~~

SECTION 5. APPLICATION FOR REGISTRATION: FORM, FEE, AND ACCOMPANYING DOCUMENTS.

(a) An application for registration as a provider must be in a form prescribed by the administrator.

(b) Subject to adjustment of dollar amounts pursuant to Section 32(f), an application for registration as a provider must be accompanied by:

(1) the fee established by the administrator;

(2) the bond required by Section 13;

(3) identification of all trust accounts required by Section 22 and an irrevocable consent authorizing the administrator to review and examine the trust accounts;

(4) evidence of insurance in the amount of \$250,000:

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

(B) issued by an insurance company authorized to do business in this state and rated at least ~~A~~ A- or equivalent by a nationally recognized rating organization approved by the administrator;

(C) with a deductible not exceeding \$5,000;

(D) payable ~~for the benefit of~~ to the applicant, ~~and~~ this state, ~~and individuals who are~~ for the benefit of the residents of this state, as their interests may appear; and

(E) not subject to cancellation by the applicant or the insurer until 60 days after written notice has been given to the administrator;

(5) proof of compliance with [insert the citation to the statute specifying the prerequisites for an entity to do business in this state]; and

~~{(6) if the applicant is organized as a not-for-profit entity or exempt from taxation has obtained tax-exempt status under the Internal Revenue Code, 26 U.S.C. Section 501[, as amended], evidence of not-for-profit status, tax-exempt status, or both, as applicable that status}.~~

Legislative Note: *In states that do not empower administrative agencies to set fees, replace subsection (b)(1) with the desired fee.*

In subsection (b)(5) if the state has no statute specifying the prerequisites for an entity to do business in this state, substitute the following for subsection (b)(5):

(5) a record consenting to the jurisdiction of this state containing:

(A) the name, business address, and other contact information of its registered agent in this state for purposes of service of process; or

(B) the appointment of the [administrator or other state official] as agent of the provider for purposes of service of process.

~~*If the state wishes to permit only tax exempt entities to provide debt management services, the first bracketed language in paragraph (6) should be deleted so that paragraph (6) states:*~~

~~(6) evidence of tax-exempt status applicable to the applicant under Internal Revenue Code, 26 U.S.C. Section 501[, as amended].~~

~~If the state wishes to permit only not for profit entities to provide debt management services, but does not wish to require that the entities also be exempt from taxation, substitute “organized as a not for profit entity” and omit the last part of paragraph (6), so that paragraph (6) would read, “if the applicant is organized as a not for profit entity, evidence of not for profit status.”~~

~~If the state wishes to permit for-profit entities to provide all kinds of debt management services, the brackets at the beginning of paragraph (6), should be deleted, so that paragraph (6) states:~~

~~(6) if the applicant is organized as a not for profit entity or is exempt from taxation under the Internal Revenue Code, 26 U.S.C. Section 501[, as amended], evidence of not for profit status, tax-exempt status, or both, as applicable.~~

~~If the state wishes to permit for-profit entities to provide debt settlement services but not credit counseling services:~~

~~(1) select the appropriate bracketed language and omit the other, so that paragraph (6) states: “(6) if the applicant’s agreements contemplate that creditors will reduce finance charges or fees for late payment, default, or delinquency, evidence of [not for profit] [and] [tax-exempt status applicable to the applicant under Internal Revenue Code, 26 U.S.C. Section 501[, as amended]]”; and~~

~~(2) add a new paragraph: “(7) if the applicant’s agreements contemplate that creditors will settle debts for less than the full principal amount of debt owed and the applicant is~~

~~(A) organized as a not for profit entity, evidence of not for profit status;~~

~~(B) exempt from taxation, evidence of not for profit and tax-exempt status applicable to the applicant under Internal Revenue Code, 26 U.S.C. Section 501[, as amended].”~~

~~If the state wishes to permit for-profit entities to provide credit counseling services but not debt settlement services:~~

~~(1) select the appropriate bracketed language and omit the other, so that paragraph (6) states: “(6) if the applicant’s agreements contemplate that creditors will settle debts for less than the full principal amount of debt owed, evidence of [not for profit status] [and] [tax-exempt status applicable to the applicant under Internal Revenue Code, 26 U.S.C. Section 501[, as amended]]”; and~~

~~(2) add a new paragraph: “(7) if the applicant’s agreements contemplate that creditors will reduce finance charges or fees for late payment, default, or delinquency and the applicant is~~

~~(A) organized as a not for profit entity, evidence of not for profit status;~~

~~(B) exempt from taxation, evidence of not for profit and tax-exempt status applicable to the applicant under Internal Revenue Code, 26 U.S.C. Section 501[, as amended], as applicable.”~~

In states in which the constitution does not permit the phrase, "as amended," when federal statutes are incorporated into state law, the phrase should be deleted in subsection (b)(6).

SECTION 6. APPLICATION FOR REGISTRATION: REQUIRED

INFORMATION. An application for registration must be signed under [oath] [penalty of false statement] and include:

- (1) the applicant's name, principal business address and telephone number, and all other business addresses in this state, electronic-mail addresses, and Internet website addresses;
- (2) all names under which the applicant conducts business;
- (3) the address of each location in this state at which the applicant will provide debt-management services or a statement that the applicant will have no such location;
- (4) the name and home address of each officer and director of the applicant and each person that owns at least 10 percent of the applicant;
- (5) identification of every jurisdiction in which, during the five years immediately preceding the application:
 - (A) the applicant or any of its officers or directors has been licensed or registered to provide debt-management services; or
 - (B) individuals have resided when they received debt-management services from the applicant;
- (6) a statement describing, to the extent it is known or should be known by the applicant, any material civil or criminal judgment or litigation and any material administrative or enforcement action by a governmental agency in any jurisdiction against the applicant, any of its officers, directors, owners, or agents, or any person who is authorized to have access to the trust account required by Section 22;

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

(8) evidence of accreditation by an independent accrediting organization approved by the administrator;

(9) evidence that, within 12 months after initial employment, each of the applicant's counselors becomes certified as a certified counselor or certified debt specialist;

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

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

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

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

(14) at the applicant's expense, the results of a criminal-records check, including fingerprints, conducted within the immediately preceding 12 months, covering every officer of the applicant and every employee or agent of the applicant who is authorized to have access to the trust account required by Section 22;

(15) the names and addresses of all employers of each director during the 10 years immediately preceding the application;

(16) a description of any ownership interest of at least 10 percent by a director, owner, or

employee of the applicant in:

(A) any affiliate of the applicant; or

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

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

(18) the identity of each director who is an affiliate, as defined in Section 2(2)(A) or (B)(i), (ii), (iv), (v), (vi), or (vii), of the applicant; and

(19) any other information that the administrator reasonably requires to perform the administrator's duties under Section 9.

Legislative Note: In the introductory language to this section, the state must determine whether to require the application to be made "under oath" or "under penalty of false statement." Similar choices are necessary in Sections 11 and 12.

SECTION 7. APPLICATION FOR REGISTRATION: OBLIGATION TO

UPDATE INFORMATION. An applicant or registered provider shall notify the administrator within 10 days after a change in the information specified in Section 5(b)(4) or (6) or Section 6(1), (3), (6), (12), or (13).

SECTION 8. APPLICATION FOR REGISTRATION: PUBLIC INFORMATION.

Except for the information required by Section 6 (7), (14), and (17) and the addresses required by Section 6(4), the administrator shall make the information in an application for registration as a provider available to the public.

SECTION 9. CERTIFICATE OF REGISTRATION: ISSUANCE OR DENIAL.

(a) Except as otherwise provided in subsections (c) and (d), the administrator shall issue a certificate of registration as a provider to a person that complies with Sections 5 and 6.

(b) If an applicant has otherwise complied with Sections 5 and 6, including a timely effort to obtain the information required by Section 6(14) but the information has not been received, the administrator may issue a temporary certificate of registration. The temporary certificate shall expire no later than 180 days after issuance.

(c) The administrator may deny registration if:

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

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

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

(4) the administrator finds that the financial responsibility, experience, character, or general fitness of the applicant or its owners, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this [act].

(d) The administrator shall deny registration if, with respect to an applicant that is organized as a not-for-profit entity or has obtained tax-exempt status under the Internal Revenue Code, 26 U.S.C. Section 501 [, as amended], the applicant's board of directors is not independent of the applicant's employees and agents.

(e) Subject to adjustment of the dollar amount pursuant to Section 32(f), a board of directors is not independent for purposes of subsection (d) if more than one-fourth of its

members:

(1) are affiliates of the applicant, as defined in Section 2(2)(A) or (B)(i), (ii), (iv), (v), (vi), or (vii); or

(2) after the date 10 years before first becoming a director of the applicant, were employed by or directors of a person that received from the applicant more than \$25,000 in either the current year or the preceding year.

Legislative Note: ~~If the state wishes to permit only not for profit entities to provide debt management services, in subsection (c)(2) all the bracketed language should be deleted. If the state wishes to permit for profit entities to provide credit counseling services, debt settlement services, or both, the first set of brackets should be deleted.~~

In states in which the constitution does not permit the phrase, "as amended," when federal statutes are incorporated into state law, the phrase should be deleted in subsection ~~(c)(2)(d)~~.

SECTION 10. CERTIFICATE OF REGISTRATION: TIMING.

(a) The administrator shall approve or deny an initial registration as a provider within 120 days after an application is filed. In connection with a request pursuant to Section 6(19) for additional information, the administrator may extend the 120-day period for not more than 60 days. Within seven days after denying an application, the administrator, in a record, shall inform the applicant of the reasons for the denial.

(b) If the administrator denies an application for registration as a provider or does not act on an application within the time prescribed in subsection (a), the applicant may appeal and request a hearing pursuant to [insert the citation to the appropriate section of the administrative procedure act or other statute governing administrative procedure].

(c) Subject to Sections 11(d) and 34, a registration as a provider is valid for one year.

SECTION 11. RENEWAL OF REGISTRATION.

(a) A provider must obtain a renewal of its registration annually.

(b) An application for renewal of registration as a provider must be in a form prescribed by the administrator, signed under [oath] [penalty of false statement], and:

(1) be filed no fewer than 30 and no more than 60 days before the registration expires;

(2) be accompanied by the fee established by the administrator and the bond required by Section 13;

(3) contain the matter required for initial registration as a provider by Section 6(8) and (9) and a financial statement, audited by an accountant licensed to conduct audits, for the applicant's fiscal year immediately preceding the application;

(4) disclose any changes in the information contained in the applicant's application for registration or its immediately previous application for renewal, as applicable. If an application is otherwise complete and the applicant has made a timely effort to obtain the information required by Section 6(14) but the information has not been received, the administrator may issue a temporary renewal of registration. The temporary renewal shall expire no later than 180 days after issuance;

(5) supply evidence of insurance in an amount equal to the larger of \$250,000 or the highest daily balance in the trust account required by Section 22 during the six-month period immediately preceding the application:

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

(B) issued by an insurance company authorized to do business in this state and rated at least A- or equivalent by a nationally recognized rating organization approved by the administrator;

(C) with a deductible not exceeding \$5,000;

(D) payable ~~for the benefit of~~ to the applicant, and this state, ~~and~~
~~individuals who are~~ for the benefit of the residents of this state, as their interests may
appear; and

(E) not subject to cancellation by the applicant or the insurer until 60 days
after written notice has been given to the administrator;

(6) disclose the total amount of money received by the applicant pursuant to
plans during the preceding 12 months from or on behalf of individuals who reside in this state
and the total amount of money distributed to creditors of those individuals during that period;

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

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

(c) Except for the information required by Section 6(7), (14), and (17) and the addresses
required by Section 6(4), the administrator shall make the information in an application for
renewal of registration as a provider available to the public.

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

(e) If the administrator denies an application for renewal of registration as a provider, the
applicant, within 30 days after receiving notice of the denial, may appeal and request a hearing
pursuant to [insert the citation to the appropriate section of the Administrative Procedure Act or

other statute governing administrative procedure]. Subject to Section 34, while the appeal is pending the applicant shall continue to provide debt-management services to individuals with whom it has agreements. If the denial is affirmed, subject to the administrator's order and Section 34, the applicant shall continue to provide debt-management services to individuals with whom it has agreements until, with the approval of the administrator, it transfers the agreements to another registered provider or returns to the individuals all unexpended money that is under the applicant's control.

Legislative Note: *In the introduction to subsection (b), the state must determine whether to require the application to be made "under oath" or "under penalty of false statement."*

In states that do not empower administrative agencies to set fees, replace the first part of paragraph (b)(2) with the desired fee.

SECTION 12. REGISTRATION IN ANOTHER STATE. If a provider holds a license or certificate of registration in another state authorizing it to provide debt-management services, the provider may submit a copy of that license or certificate and the application for it instead of an application in the form prescribed by Section 5(a), 6, or 11(b). The administrator shall accept the application and the license or certificate from the other state as an application for registration as a provider or for renewal of registration as a provider, as appropriate, in this state if:

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

(2) the applicant provides the information required by Section 6(1), (3), (10), (12), and (13); and

(3) the applicant, under [oath] [penalty of false statement], certifies that the information contained in the application is current or, to the extent it is not current, supplements the

application to make the information current.

Legislative Note: In paragraph (3) the state must determine whether to require the certification to be made “under oath” or “under penalty of false statement.”

SECTION 13. BOND REQUIRED.

(a) Except as otherwise provided in Section 14, a provider that is required to be registered under this [act] shall file a surety bond with the administrator, which must:

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

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

(b) Subject to adjustment of the dollar amount pursuant to Section 32(f), a surety bond filed pursuant to subsection (a) must:

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

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

(3) have payment conditioned upon noncompliance of the provider or its agent with this [act].

(c) If the principal amount of a surety bond is reduced by payment of a claim or a judgment, the provider shall immediately notify the administrator and, within 30 days after notice by the administrator, file a new or additional surety bond in an amount set by the

administrator. The amount of the new or additional bond must be at least the amount of the bond immediately before payment of the claim or judgment. If for any reason a surety terminates a bond, the provider shall immediately file a new surety bond in the amount of \$50,000 or other amount determined pursuant to subsection (b).

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

(1) the administrator assesses expenses under Section 32(b)(1), issues a final order under Section 33(a)(2), or recovers a final judgment under Section 33(a)(4) or (5) or (d); or

(2) an individual recovers a final judgment pursuant to Section 35(a), (b), or (c)(1), (2), or (4).

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

(1) to satisfaction of a final order or judgment under Section 33(a)(2), (4), or (5) or (d);

(2) to final judgments recovered by individuals pursuant to Section 35(a), (b), or (c) (1), (2), or (4), pro rata;

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

(4) if a final order or judgment is issued under Section 33(a), to the expenses charged pursuant to Section 32(b)(1).

SECTION 14. BOND REQUIRED: SUBSTITUTE.

(a) Instead of the surety bond required by Section 13, with the approval of the administrator and in the amount required by Section 13(b), a provider may deliver ~~to the administrator, in the amount required by Section 13(b), and, except as otherwise provided in paragraph (2)(A), payable or available to this state and to individuals who reside in this state when they agree to receive debt management services from the provider, as their interests may appear, if the provider or its agent does not comply with this [act]:-~~

~~(1) a certificate of insurance:-~~

~~(A) issued by an insurance company authorized to do business in this state and rated at least A or equivalent by a nationally recognized rating organization approved by the administrator; and~~

~~(B) with no deductible, or if the provider supplies a bond in the amount of \$5,000, a deductible not exceeding \$5,000; or~~

~~(2) with the approval of the administrator:-~~

~~(A)(1) an irrevocable letter of credit, issued or confirmed by a bank approved by the administrator, payable upon presentation of a certificate by the administrator stating that the provider or its agent has not complied with this [act]; or~~

~~(B)(2) bonds or other obligations of the United States or guaranteed by the United States or bonds or other obligations of this state or a political subdivision of this state, to be~~

~~(A) deposited and maintained with a bank approved by the administrator for this purpose; and~~

~~(B) delivered by the bank to the administrator upon presentation of a certificate by the administrator stating that the provider or its agent has not complied with this (act).~~

(b) If a provider furnishes a substitute pursuant to subsection (a), the provisions of Section 13(a), (c), (d), and (e) apply to the substitute.

SECTION 15. REQUIREMENT OF GOOD FAITH. A provider shall act in good faith in all matters under this [act].

SECTION 16. CUSTOMER SERVICE. A provider that is required to be registered under this [act] shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a certified counselor, certified debt specialist, or customer-service representative, as appropriate, during ordinary business hours.

SECTION 17. PREREQUISITES FOR PROVIDING DEBT-MANAGEMENT SERVICES.

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

- (1) free of additional charge if the individual enters into an agreement;
- (2) for a charge if the individual does not enter into an agreement; and
- (3) for a charge if the individual enters into an agreement, using the following

terminology, as applicable, and format:

Set-up fee	_____
	<i>dollar amount of fee</i>
Monthly service fee	_____
	<i>dollar amount of fee or method of determining amount</i>
Settlement fee	_____
	<i>dollar amount of fee or method of determining amount</i>

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

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

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

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

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

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

(D) all other creditors.

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

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

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

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

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

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

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

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

IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

Name and business address of provider

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

IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

Name and business address of provider

(g) If an agreement contemplates that creditors will settle debts for less than the full principal amount of debt owed, a provider may comply with subsection (d) by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

(2) Nonpayment of your debts under our program may

- hurt your credit rating or credit scores;
- lead your creditors to increase finance and other charges; and
- lead your creditors to undertake activity, including lawsuits, to collect the debts.

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

Name and business address of provider

SECTION 18. COMMUNICATION BY ELECTRONIC OR OTHER MEANS.

(a) In this section:

(1) “Federal act” means the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended].

(2) “Consumer” means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.

(b) A provider may satisfy the requirements of Section 17, 19, or 27 by means of the

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

(c) The disclosures and materials required by Sections 17, 19, and 27 shall be presented in a form that is capable of being accurately reproduced for later reference.

(d) With respect to disclosure by means of an Internet website, the disclosure of the information required by Section 17(d) must appear on one or more screens that:

(1) contain no other information; and

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

(e) At the time of providing the materials and agreement required by Sections 17(c) and (d), 19, and 27, a provider shall inform the individual that upon electronic, telephonic, or written request, it will send the individual a written copy of the materials, and shall comply with a request as provided in subsection (f).

(f) If a provider is requested, before the expiration of 90 days after an agreement is completed or terminated, to send a written copy of the materials required by Section 17(c) and (d), 19, or 27, the provider shall send them at no charge within three business days after the request is received, but the provider need not comply with a request more than once per calendar month or if it reasonably believes the request is made for purposes of harassment. If a request is made more than 90 days after an agreement is completed or terminated, the provider shall send within a reasonable time a written copy of the materials requested.

(g) A provider that maintains an Internet website shall disclose on the home page of its website or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals its contents:

- (1) its name and all names under which it does business;
- (2) its principal business address, telephone number, and electronic-mail address,

if any; and

- (3) the names of its principal officers.

(h) Subject to subsection (i), if a consumer who has consented to electronic communication in the manner provided by Section 101 of the federal act withdraws consent as provided in the federal act, a provider may terminate its agreement with the consumer.

(i) If a provider wishes to terminate an agreement with a consumer pursuant to subsection (h), it shall notify the consumer that it will terminate the agreement unless the consumer, within 30 days after receiving the notification, consents to electronic communication in the manner provided in Section 101(c) of the federal act. If the consumer consents, the provider may terminate the agreement only as permitted by Section 19(a)(6)(G).

Legislative Note: In states in which the constitution does not permit the phrase “as amended,” the phrase should be deleted in subsection (a).

SECTION 19. FORM AND CONTENTS OF AGREEMENT.

(a) An agreement must:

- (1) be in a record;
- (2) be dated and signed by the provider and the individual;
- (3) include the name of the individual and the address where the individual

resides;

- (4) include the name, business address, and telephone number of the provider;
- (5) be delivered to the individual immediately upon formation of the agreement;

and

- (6) disclose:

(A) the services to be provided;

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

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

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

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

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

~~(E)(iii)~~ (iii) each creditor that the provider believes will not participate in the plan and to which the provider will not direct payment;

~~(E)~~ (E) if a plan contemplates the settlement of the individual's debt for less than the principal amount of the debt, an estimate of:

(i) the duration of the plan based on all enrolled debts;

(ii) the length of time before the individual may reasonably expect a settlement offer and;

(iii) the amount of savings needed to accrue before the individual may reasonably expect a settlement offer, expressed as both a dollar amount and percentage, for each enrolled debt;

(F) how the provider will comply with its obligations under Section 27(a);

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

(H) that the individual may ~~cancel the agreement as provided in Section 20~~ terminate the agreement at any time by giving written or electronic notice, and that if notice of termination is given, the individual will receive all unexpended money that the provider or its designee has received from or on behalf of the individual for payment of a creditor and, except to the extent they have been earned, the provider's fees;

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

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

(b) For purposes of subsection (a)(5), delivery of an electronic record occurs when it is made available in a format in which the individual may retrieve, save, and print it and the individual is notified that it is available.

(c) If the administrator supplies the provider with any information required under subsection (a)(6)(J), the provider may comply with that requirement only by disclosing the information supplied by the administrator.

(d) An agreement must provide that:

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

~~(A) the provider will refund all unexpended money that the provider or its agent has received from or on behalf of the individual for the reduction or satisfaction of the individual's debt;~~

~~(B) with respect to an agreement that contemplates that creditors will settle debts for less than the principal amount of debt, the provider will refund 65 percent of any portion of the set-up fee that has not been credited against the settlement fee; and~~

~~(C) all powers of attorney granted by the individual to the provider are revoked and ineffective;~~

~~(2)(1) the individual authorizes any bank in which the provider or its agent has established a trust account to disclose to the administrator any financial records relating to the trust account; and~~

~~(3)(2) the provider will notify the individual within five days after learning of a creditor's final decision to reject or withdraw from a plan and that this notice will include:~~

~~(A) the identity of the creditor; and~~

~~(B) the right of the individual to modify or terminate the agreement.~~

(e) An agreement may confer on a provider a power of attorney to settle the individual's debt for no more than 50 percent of the principal amount of the debt. An agreement may not confer a power of attorney to settle a debt for more than 50 percent of that amount, but may confer a power of attorney to negotiate with creditors of the individual on behalf of the individual. An agreement must provide that the provider will obtain the assent of the individual after a creditor has assented to a settlement for more than 50 percent of the principal amount of the debt.

(f) An agreement may not:

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

(2) except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C.

Section 2, [as amended,] [or [insert citation to the Uniform Arbitration Act or other statute authorizing predispute arbitration agreements]] contain a provision that modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are generally available to the individual under law other than this [act];

(3) contain a provision that restricts the individual's remedies under this [act] or law other than this [act]; or

(4) contain a provision that:

(A) limits or releases the liability of any person for not performing the agreement or for violating this [act]; or

(B) indemnifies any person for liability arising under the agreement or this [act].

(g) ~~All rights and obligations specified in subsection (d) and Section 20 exist even if not provided in the agreement.~~ A provision in an agreement which violates subsection ~~(d)~~, (e), or (f) is void.

Legislative Note: *In states in which the constitution does not permit use of the phrase, "as amended," when federal statutes are incorporated into state law, delete that phrase in subsection (f)(2)*

If the state has no statute authorizing predispute arbitration agreements, delete the second bracketed language, "or [insert . . . agreements," in subsection (f)(2).

SECTION 20. CANCELLATION OF AGREEMENT; WAIVER TERMINATION
OF AGREEMENT.

(a) An individual may terminate an agreement at any time, without penalty or obligation, by giving the provider notice in a record.

(b) A provider may terminate an agreement if an individual fails for 60 days to make a payment or deposit required by the agreement or if other good cause exists.

(c) If an agreement is terminated:

(1) the provider shall, not later than seven business days after the termination, pay the individual all money that the provider or its designee has received from or on behalf of the individual, other than:

(A) an amount properly disbursed to a creditor; and

(B) fees earned pursuant to Section 23; and

(2) any power of attorney granted by the individual to the provider is revoked.

~~(a) An individual may cancel an agreement before midnight of the third business day after the individual assents to it, unless the agreement does not comply with subsection (b) or Section 19 or 28, in which event the individual may cancel the agreement within 30 days after the individual assents to it. To exercise the right to cancel, the individual must give notice in a record to the provider. Notice by mail is given when mailed.~~

~~(b) An agreement must be accompanied by a form that contains in bold face type, surrounded by bold black lines:~~

Notice of Right to Cancel

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

~~**To cancel this agreement during this period, send an e-mail to**~~

~~_____ or mail or deliver a signed, dated copy of this
-E-mail address of provider~~

~~**notice, or any other written notice to** _____
Name of provider~~

~~**at** _____ **before midnight on** _____.
Address of provider Date~~

~~If you cancel this agreement within the 3-day period, we will refund all money you already have paid us.~~

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

~~I cancel this agreement,~~

Print your name

Signature

Date

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

SECTION 21. REQUIRED LANGUAGE. Unless the administrator, by rule, provides otherwise, the disclosures and documents required by this [act] must be in English. If a provider communicates with an individual primarily in a language other than English, the provider must furnish a translation into the other language of the disclosures and documents required by this [act].

SECTION 22. TRUST ACCOUNT AND INDEPENDENTLY ADMINISTERED ACCOUNT.

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

(b) A provider whose agreement contemplates the settlement of an individual's debt for less than the principal amount of the debt may request or require the individual to place funds in an account to be used to pay a creditor or the provider's fees, or both, if:

(1) the funds are held in an insured account at a bank;

(2) the individual owns the funds held in the account and is paid accrued interest on the account, if any;

(3) the entity administering the account is not the provider or an affiliate of the provider, unless the affiliate is one described in Section 2(2)(B)(iv);

(4) the entity administering the account does not give or accept any money or other compensation in exchange for a referral of business involving debt-management services;
and

(5) the individual may terminate the agreement at any time without penalty and must receive all funds in the account, other than funds earned by the provider in compliance with this section;

(c) A provider whose agreement contemplates the reduction of finance charges or fees for late payment, default, or delinquency may request or require an individual to make payments to be used for both distribution to creditors and payment of the provider's fees, if the provider complies with subsection (a).

~~(b)~~(d) Money held in trust by a provider is not property of the provider or its designee.

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

~~(e)~~(e) A provider shall:

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

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

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

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

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

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

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

~~(f)~~(h) If a provider has established a trust account pursuant to subsection (a), the provider shall reconcile the trust account at least once a month. The reconciliation must compare the cash

balance in the trust account with the sum of the balances in each individual's account. If the provider or its designee has more than one trust account, each trust account must be individually reconciled.

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

~~(h)~~(j) If an individual terminates an agreement or it becomes reasonably apparent to a provider that a plan has failed, the provider shall promptly refund to the individual all money paid by or on behalf of the individual which has not been paid to creditors, less fees that are payable to the provider under Section 23.

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

SECTION 23. FEES AND OTHER CHARGES.

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

(b) A provider may not impose charges or receive payment for debt-management services until the provider and the individual have signed an agreement that complies with Sections 19 and 28.

(c) If an individual assents to an agreement, a provider may not impose a fee or other charge for educational, ~~or counseling, or similar~~ services, ~~or the like~~, except as otherwise provided in this ~~subsection~~ section and Section 28(d). The administrator may authorize a provider to charge a fee based on the nature and extent of the ~~educational or counseling~~ services furnished by the provider.

(d) Subject to adjustment of dollar amounts pursuant to Section 32(f), the following rules apply:

(1) Except to the extent permitted by Section 22, a provider may not request or receive any compensation from or on behalf of an individual unless:

(A) the provider has secured the assent of the individual and at least one creditor of the individual to a concession; and

(B) the individual has made a payment toward satisfying the debt as part of a plan.

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

(A) a fee not exceeding \$50 for consultation, obtaining a credit report, setting up an account, and ~~the like~~ similar services; and

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

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

~~(A) subject to Section 19(d), a fee for consultation, obtaining a credit report, setting up an account, and the like, in an amount not exceeding the lesser of \$400 and~~

four percent of the debt in the plan at the inception of the plan; and

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

(3) Except as otherwise provided in subsection (c), if an agreement contemplates that creditors will settle an individual's debts for less than the principal amount of the debts:

(A) compensation for services in connection with settling each debt may not exceed, with respect to each debt, 30 percent of the excess of the principal amount of the debt over the amount paid the creditor pursuant to the settlement; and

(B) if a debt is to be settled by installment payments, the provider may receive compensation either when the last installment of the settlement is paid or in installments, provided that if made in installments:

(i) each installment is made simultaneously with the individual's installment payments to the creditor; and

(ii) any installment of the compensation may not be a greater percentage of the provider's total compensation for settlement of the debt than the simultaneous payment to the creditor is of the entire settlement amount for the debt.

~~(3)(4) A provider may not impose or receive fees under both paragraphs (1)(2) and (2)(3).~~

~~(4)(5) Except as otherwise provided in Section 28(d), if If an individual does not assent to an agreement, a provider may receive for educational and counseling services it provides to the individual a fee not exceeding \$100 or, with the approval of the administrator, a larger fee. The administrator may approve a fee larger than \$100 if the nature and extent of the educational and counseling services warrant the larger fee.~~

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

~~(f) Except as otherwise provided in subsections (c) and (d), if an agreement contemplates that creditors will settle an individual's debts for less than the principal amount of the debt, compensation for services in connection with settling a debt may not exceed, with respect to each debt:~~

~~(1) 30 percent of the excess of the principal amount of the debt over the amount paid the creditor pursuant to the agreement, less~~

~~(2) to the extent it has not been credited against an earlier settlement fee:~~

~~(A) the fee charged pursuant to subsection (d)(2)(A); and~~

~~(B) the aggregate of fees charged pursuant to subsection (d)(2)(B).~~

~~(g)~~(f) Subject to adjustment of the dollar amount pursuant to Section 32(f), if a payment to a provider by an individual under this [act] is dishonored, a provider may impose a reasonable charge on the individual, not to exceed the lesser of \$25 and the amount permitted by law other than this [act].

SECTION 24. VOLUNTARY CONTRIBUTIONS. A provider may not solicit a voluntary contribution from an individual or an affiliate of the individual for any service provided to the individual. A provider may accept voluntary contributions from an individual but, until 30 days after completion or termination of a plan, the aggregate amount of money received from or on behalf of the individual may not exceed the total amount the provider may charge the individual under Section 23.

SECTION 25. VOIDABLE AGREEMENTS.

(a) If a provider imposes a fee or other charge or receives money or other payments not authorized by Section 23 or 24, the individual may void the agreement and recover as provided in Section 35.

(b) If a provider is not registered as required by this [act] when an individual assents to an agreement, the agreement is voidable by the individual.

(c) If an individual voids an agreement under subsection (b), the provider does not have a claim against the individual for breach of contract or for restitution.

SECTION 26. RETENTION OF RECORDS ~~TERMINATION OF AGREEMENTS.~~ A provider shall maintain records for each individual for whom it provides debt-management services for five years after the final payment made by the individual and produce a copy of them to the individual within a reasonable time after a request for them. The provider may use electronic or other means of storage of the records.

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

~~(b) If a provider or an individual terminates an agreement, the provider shall immediately return to the individual:~~

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

~~(2) 65 percent of any portion of the set-up fee received pursuant to Section 23(d)(2) which has not been credited against settlement fees.~~

SECTION 27. PERIODIC REPORTS ~~AND RETENTION OF RECORDS.~~

(a) A provider shall provide the accounting required by subsection (b):

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

(2) before cancellation or termination of any agreement:

(A) at least once each month; and

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

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

(1) the amount of money in an account containing money paid by or on behalf of the individual for fees, distribution to a creditor, or both, as of the date one month before the date of the accounting;

(2) the amount of money received from the individual paid into the account since the last report;

~~(2)~~(3) the amounts and dates of disbursement made on the individual's behalf, or by the individual upon the direction of the provider, since the last report, to each creditor listed in the plan;

~~(3)~~(4) the amounts deducted, as fees or otherwise, from the amount ~~received from the individual~~ paid into the account since the last report;

~~(4)~~ the amount held in reserve; and

(5) if, since the last report, a creditor has agreed to accept as payment in full an amount less than the principal amount of the debt owed by the individual:

(A) the total amount and terms of the settlement;

(B) the amount of the debt when the individual assented to the plan;

(C) the amount of the debt when the creditor agreed to the settlement; and

(D) the calculation of a settlement fee; and

(6) the amount of money in the account as of the date of the current accounting.

(c) If a provider whose agreement contemplates that a creditor will settle a debt for less than the principal amount of the debt has delegated performance of its duties under this section to another person, the provider may provide the information required by subsection (b)(5) in a record separate from the record containing the other required information.

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

SECTION 28. PROHIBITED ACTS AND PRACTICES.

(a) A provider may not, directly or indirectly:

(1) include a secured debt in a plan, except as authorized by law other than this [act];

~~(1)~~(2) misappropriate or misapply money held in trust;

~~(2)~~(3) settle a debt on behalf of an individual for more than 50 percent of the principal amount of the debt owed a creditor, unless the individual assents to the settlement after the creditor has assented;

~~(3)~~(4) take a power of attorney that authorizes it to settle a debt, unless the power of attorney expressly limits the provider's authority to settle debts for not more than 50 percent of the principal amount of the debt owed a creditor;

~~(4)~~(5) exercise or attempt to exercise a power of attorney after an individual has terminated an agreement;

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

(A) a return of money to the individual; or

(B) before termination of an agreement, properly authorized by the

agreement and this [act], and for:

(i) payment to one or more creditors pursuant to an agreement; or

(ii) payment of a fee;

~~(6)~~(7) offer a gift or bonus, premium, reward, or other compensation to an individual for executing an agreement;

~~(7)~~(8) offer, pay, or give a gift or bonus, premium, reward, or other compensation to a lead generator or other person for referring a prospective customer, if the person making the referral;

(A) has a financial interest in the outcome of debt-management services provided to the customer, unless neither the provider nor the person making the referral communicates to the prospective customer the identity of the source of the referral; or

(B) compensates its employees on the basis of a formula that incorporates the number of individuals the employee refers to the provider;

~~(8)~~(9) receive a bonus, commission, or other benefit for referring an individual to a person;

~~(9)~~(10) structure a plan in a manner that would result in a negative amortization of any of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or waive the finance charge upon payment of the principal amount of the debt;

~~(10)~~(11) compensate its employees on the basis of a formula that incorporates the number of individuals the employee induces to enter into agreements;

~~(11)~~(12) settle a debt or lead an individual to believe that a payment to a creditor

is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification by the creditor that the payment is in full settlement of the debt or is part of a settlement plan, the terms of which are included in the certification, which, if completed according to its terms, will satisfy the debt;

~~(12)~~(13) make a representation that:

(A) the provider will furnish money to pay bills or prevent attachments;

(B) payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or

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

~~(13)~~(14) misrepresent that it is authorized or competent to furnish legal advice or perform legal services;

~~(14)~~(15) represent in its agreements, disclosures required by this [act], advertisements, or Internet web site that it is:

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

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

~~(15)~~(16) take a confession of judgment or power of attorney to confess judgment against an individual; or

~~(16)~~(17) employ an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information.

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

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

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

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

(B) a post-dated check or demand draft;

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

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

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

(A) the administrator, upon proper demand;

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

(C) the extent necessary to administer the plan;

(6) except as otherwise provided in Section ~~23(f)~~23(d)(3), provide the individual less than the full benefit of a compromise of a debt arranged by the provider;

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

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

(c) This [act] does not authorize any person to engage in the practice of law.

(d) A provider may not receive a gift or bonus, premium, reward, or other compensation, directly or indirectly, for advising, arranging, or assisting an individual in connection with obtaining, an extension of credit or other service from a lender or service provider, except for educational or counseling services required in connection with a government-sponsored program or authorized under Section 23(d)(5).

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

- (1) owns more than 10 percent of the person; or
- (2) is an employee or affiliate of the person.

SECTION 29. NOTICE OF LITIGATION. No later than 30 days after a provider has been served with notice of a civil action for violation of this [act] by or on behalf of an individual who resides in this state at either the time of an agreement or the time the notice is served, the provider shall notify the administrator in a record that it has been sued.

SECTION 30. ADVERTISING.

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

(b) If the agreements of a provider contemplate that creditors will settle for less than the full principal amount of debt and the provider advertises debt-management services, it shall disclose, in an easily comprehensible manner, the information specified in Section 17(d)(3) and (4).

SECTION 31. LIABILITY OF PROVIDER FOR THE CONDUCT OF OTHER PERSONS-ANOTHER PERSON; UNLAWFUL CONDUCT BY ANOTHER PERSON.

(a) If a provider delegates any of its duties or obligations under an agreement or this [act] to another person, including an independent contractor, the provider is liable for conduct of the person which, if done by the provider, would violate the agreement or this [act].

(b) A lead generator or other person that provides services to or for a provider may not engage in an unfair, unconscionable, or deceptive act or practice, including the knowing omission of any material information, in its interaction with an individual who it has reason to believe is or may become a customer of the provider.

SECTION 32. POWERS OF ADMINISTRATOR.

(a) The administrator may act on its own initiative or in response to complaints and may receive complaints, take action to obtain voluntary compliance with this [act], [refer cases to the [attorney general]], and seek or provide remedies as provided in this [act].

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

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

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

(3) seek a court order authorizing seizure from a bank at which the person maintains ~~a trust~~ an account ~~required~~ contemplated by Section 22, any or all money, books, records, accounts, and other property of the provider that is in the control of the bank and relates to individuals who reside in this state.

(c) The administrator may adopt rules to implement the provisions of this [act] in accordance with [insert the appropriate section of the Administrative Procedure Act or other statute governing administrative procedure].

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

(e) The administrator, by rule, shall establish reasonable fees to be paid by providers for the expense of administering this [act].

(f) The administrator, by rule, shall adopt dollar amounts instead of those specified in Sections 2, 5, 9, 13, 23, 33, and 35 to reflect inflation, as measured by the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers or, if that index is not available, another index adopted by rule by the administrator. The administrator shall adopt a base year and adjust the dollar amounts, effective on July 1 of each year, if the change in the index from the base year, as of December 31 of the preceding year, is at least 10 percent. The

dollar amount must be rounded to the nearest \$100, except that the amounts in Section 23 must be rounded to the nearest dollar.

(g) The administrator shall notify registered providers of any change in dollar amounts made pursuant to subsection (f) and make that information available to the public.

Legislative Note: *If the administrator is the attorney general, the bracketed language in subsection (a) (“refer cases to the [attorney general]”) should be deleted. If the administrator is not the attorney general, those brackets and the brackets around “attorney general” should be deleted. If the state wishes the prosecution to be handled by some other official, the name of that official should be substituted for “attorney general.”*

In states that do not empower administrative agencies to set fees, replace subsection (e) with the desired fees or fee structure.

The dollar amounts that appear in this Act were selected in August 2005. The state may wish to adjust those amounts to reflect changes in the index specified in subsection (f) between that date and the date of enactment. Subsection (f) specifies the sections in which dollar amounts appear.

SECTION 33. ADMINISTRATIVE REMEDIES.

(a) The administrator may enforce this [act] and rules adopted under this [act] by taking one or more of the following actions:

(1) ordering a provider, a lead generator, a person administering an account pursuant to Section 22(b), or a director, employee, or other agent of a provider to cease and desist from any violations;

(2) ordering a provider, a lead generator, a person administering an account pursuant to Section 22(b), or a person that has caused a violation to correct the violation, including making restitution of money or property to a person aggrieved by a violation;

(3) subject to adjustment of the dollar amount pursuant to Section 32(f), imposing on a provider or ~~a~~other person that has violated or caused a violation a civil penalty not exceeding \$10,000 for each violation;

(4) prosecuting a civil action to:

(A) enforce an order;

(B) obtain restitution or an injunction or other equitable relief, or both; or

(5) intervening in an action brought under Section 35.

(b) Subject to adjustment of the dollar amount pursuant to Section 32(f), if a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under subsection (a)(1) or (2), the administrator may impose a civil penalty not exceeding \$20,000 for each violation.

(c) The administrator may maintain an action to enforce this [act] in any [county].

(d) The administrator may recover the reasonable costs of enforcing the [act] under subsections (a) through (c), including attorney's fees based on the hours reasonably expended and the hourly rates for attorneys of comparable experience in the community.

(e) In determining the amount of a civil penalty to impose under subsection (a) or (b), the administrator shall consider the seriousness of the violation, the good faith of the violator, any previous violations by the violator, the deleterious effect of the violation on the public, the net worth of the violator, and any other factor the administrator considers relevant to the determination of the civil penalty.

SECTION 34. SUSPENSION, REVOCATION, OR NONRENEWAL OF REGISTRATION.

(a) In this section, "insolvent" means:

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

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

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

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

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

(2) the provider has committed a material violation of this [act] or a rule or order of the administrator under this [act];

(3) the provider is insolvent;

(4) the provider, ~~or~~ an employee or affiliate of the provider, a lead generator for the provider, a person administering an account for the provider pursuant to Section 22(b), or a person to which the provider has delegated its obligations under an agreement or this [act] has refused to permit the administrator to make an examination authorized by this [act], failed to comply with Section 32(b)(2) within 15 days after request, or made a material misrepresentation or omission in complying with Section 32(b)(2); or

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

(c) If a provider does not comply with Section ~~22(f)~~22(h) or if the administrator otherwise finds that the public health or safety or general welfare requires emergency action, the administrator may order a summary suspension of the provider's registration, effective on the date specified in the order.

(d) If the administrator suspends, revokes, or denies renewal of the registration of a provider, the administrator may seek a court order authorizing seizure of any or all of the money

in a trust account required by Section 22, books, records, accounts, and other property of the provider which are located in this state.

(e) If the administrator suspends or revokes a provider's registration, the provider may appeal and request a hearing pursuant to [insert the citation to the appropriate section of the administrative procedure act or other statute governing administrative procedure].

Legislative Note: *In states in which the constitution does not permit the phrase, "as amended," when federal statutes are incorporated into state law, the phrase should be deleted in subsection (a)(3).*

SECTION 35. PRIVATE ENFORCEMENT.

(a) If an individual voids an agreement pursuant to Section 25(b), the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except amounts paid to creditors, in addition to the recovery under subsection (c)(3) and (4).

(b) If an individual voids an agreement pursuant to Section 25(a), the individual may recover in a civil action three times the total amount of the fees, charges, money, and payments made by the individual to the provider, in addition to the recovery under subsection (c)(4).

(c) Subject to subsection (d), an individual with respect to whom a provider or other person violates this [act] may recover in a civil action from the provider, the person, and any person that caused the violation:

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

(2) except as otherwise provided in subsection (d) and subject to adjustment of the dollar amount pursuant to Section 32(f), with respect to a violation of Section 17, 19, 20, 21, 22, 23, 24, 27, or 28(a), (b), or (d), the greater of the amount recoverable under paragraph (1) or

\$5,000;

(3) punitive damages; and

(4) reasonable attorney's fees and costs.

(d) In a class action, except for a violation of Section 28(a)(5), the minimum damages provided in subsection (c)(2) do not apply.

~~(e) In addition to the remedy available under subsection (c), if a provider violates an individual's rights under Section 20, the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except for amounts paid to creditors.~~

~~(f)~~(e) A provider is not liable under this section for a violation of this [act] if the provider proves that the violation was not intentional and resulted from a good-faith error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. An error of legal judgment with respect to a provider's obligations under this [act] is not a good-faith error. If, in connection with a violation, the provider has received more money than authorized by an agreement or this [act], the defense provided by this subsection is not available unless the provider refunds the excess within two business days of learning of the violation.

~~(g)~~(f) The administrator shall assist an individual in enforcing a judgment against the surety bond or other security provided under Section 13 or 14.

SECTION 36. VIOLATION OF [UNFAIR OR DECEPTIVE PRACTICES]

STATUTE. If an act or practice of a provider violates both this [act] and [insert a reference to the statute dealing with deceptive acts and practices in consumer transactions], an individual may not recover under both for the same act or practice.

Legislative Note: The caption to this section should reflect the title of the applicable statute, be it Consumer Protection Act, Deceptive Trade Practices Act, or other.

SECTION 37. STATUTE OF LIMITATIONS.

(a) An action or proceeding brought pursuant to Section 33(a), (b), or (c) must be commenced within four years after the conduct that is the basis of the administrator's complaint.

(b) An action brought pursuant to Section 35 must be commenced within two years after the latest of:

- (1) the individual's last transmission of money to a provider;
- (2) the individual's last transmission of money to a creditor at the direction of the provider;
- (3) the provider's last disbursement to a creditor of the individual;
- (4) the provider's last accounting to the individual pursuant to Section 27(a);
- (5) the date on which the individual discovered or reasonably should have discovered the facts giving rise to the individual's claim; or
- (6) termination of actions or proceedings by the administrator with respect to a violation of the [act].

(c) The period prescribed in subsection (b)(5) is tolled during any period during which the provider or, if different, the defendant has materially and willfully misrepresented information required by this [act] to be disclosed to the individual, if the information so misrepresented is material to the establishment of the liability of the defendant under this [act].

SECTION 38. UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and construing this ~~Uniform Act~~ uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

SECTION 39. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT. This [act] modifies, limits, and supersedes the federal

Electronic Signatures in Global and National Commerce Act, (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that act, (15 U.S.C. Section 7001(c)), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, (15 U.S.C. Section 7003(b)).

SECTION 40. TRANSITIONAL PROVISIONS; APPLICATION TO EXISTING TRANSACTIONS. Transactions entered into before this [act] takes effect and the rights, duties, and interests resulting from them may be completed, terminated, or enforced as required or permitted by a law amended, repealed, or modified by this [act] as though the amendment, repeal, or modification had not occurred.

[SECTION 41. SEVERABILITY. If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] that can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.]

SECTION 42. REPEAL. The following laws are repealed:

Legislative Note: Insert the citation to any existing legislation regulating consumer credit counseling, debt settlement, debt adjustment, debt prorating, or the like.

SECTION 43. EFFECTIVE DATE. This [act] takes effect 12 months after enactment.

Legislative Note: The effective date should be set in such a way that the administrator has an adequate opportunity to prepare to enforce the Act. It may be desirable to have the Act become effective in a staggered manner, delaying the effective date for registration. To implement this alternative, substitute the following language: "Sections 1 through 3 and 15 through 43 of this [act] take effect [six months after enactment]. Sections 4 through 14 of this [act] take effect on [insert date]."