

SENATE BILL No. 1288

April 27, 2010, Introduced by Senators RICHARDVILLE, NOFS, THOMAS, SANBORN and WHITMER and referred to the Committee on Banking and Financial Institutions.

A bill to enact the uniform debt-management services act; to regulate the business of debt management; to require registration and establish fees; to provide for the powers and duties of certain state officers and entities; to provide remedies; and to repeal acts and parts of acts.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 1. This act shall be known and may be cited as the
2 "uniform debt-management services act".

3 Sec. 2. As used in this act:

4 (a) "Administrator" means the commissioner of the office of
5 financial and insurance regulation.

6 (b) "Affiliate" means any of the following:

7 (i) With respect to an individual, any of the following:

8 (A) The spouse of the individual.

1 (B) A sibling of the individual or the spouse of a sibling.

2 (C) An individual or the spouse of an individual who is a
3 lineal ancestor or lineal descendant of the individual or the
4 individual's spouse.

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

9 (E) Any other individual occupying the residence of the
10 individual.

11 (ii) With respect to an entity, any of the following:

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

14 (B) An officer of, or an individual performing similar
15 functions with respect to, the entity.

16 (C) A director of, or an individual performing similar
17 functions with respect to, the entity.

18 (D) Subject to adjustment of the dollar amount under section
19 32(6), a person that receives or received more than \$25,000.00
20 from the entity in either the current year or the preceding year
21 or a person that owns more than 10% of the entity.

22 (E) An individual who is employed by or is a director of a
23 person described in sub-subparagraph (D).

24 (F) An officer or director of, or an individual performing
25 similar functions with respect to, a person described in sub-
26 subparagraph (A).

27 (G) The spouse of, or an individual occupying the residence

1 of, an individual described in sub-subparagraphs (A) through (E).

2 (H) An individual who has the relationship specified in
3 subparagraph (i) (D) to an individual or the spouse of an
4 individual described in sub-subparagraphs (A) through (F).

5 (c) "Agreement" means an agreement between a provider and an
6 individual for the performance of debt-management services.

7 (d) "Bank" means a financial institution, including, but not
8 limited to, a commercial bank, savings bank, savings and loan
9 association, credit union, or trust company, engaged in the
10 business of banking, chartered under federal or state law, and
11 regulated by a federal or state banking regulatory authority.

12 (e) "Business address" means the physical location of a
13 business, including the name and number of a street.

14 (f) "Certified counselor" means an individual certified by a
15 training program or certifying organization, approved by the
16 administrator, that authenticates the competence of individuals
17 providing education and assistance to other individuals in
18 connection with debt-management services in which an agreement
19 contemplates that creditors will reduce finance charges or fees
20 for late payment, default, or delinquency.

21 (g) "Certified debt specialist" means an individual
22 certified by a training program or certifying organization,
23 approved by the administrator, that authenticates the competence
24 of individuals providing education and assistance to other
25 individuals in connection with debt-management services in which
26 an agreement contemplates that creditors will settle debts for
27 less than the full principal amount of debt owed.

1 (h) "Concessions" means assent to repayment of a debt on
2 terms more favorable to an individual than the terms of the
3 contract between the individual and a creditor.

4 (i) "Day" means calendar day.

5 (j) "Debt-management services" means services as an
6 intermediary between an individual and 1 or more creditors of the
7 individual for the purpose of obtaining concessions. The term
8 does not include any of the following:

9 (i) Legal services provided in an attorney-client
10 relationship by an attorney licensed or otherwise authorized to
11 practice law in this state.

12 (ii) Accounting services provided in an accountant-client
13 relationship by a certified public accountant licensed under
14 article 7 of the occupational code, 1980 PA 299, MCL 339.720 to
15 339.736.

16 (iii) Financial-planning services provided in a financial
17 planner-client relationship by a member of a financial-planning
18 profession whose members the administrator determines by rule
19 meet all of the following:

20 (A) Are subject to a disciplinary mechanism.

21 (B) Are subject to a code of professional responsibility.

22 (C) Are subject to a continuing-education requirement.

23 (k) "Entity" means a person other than an individual.

24 (l) "Good faith" means honesty in fact and the observance of
25 reasonable standards of fair dealing.

26 (m) "Outstanding amount of the debt" means the amount of a
27 debt at the time of settlement of that debt.

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

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

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

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

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

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

23 (t) "Sign" means, with present intent to authenticate or
24 adopt a record, to do either of the following:

25 (i) Execute or adopt a tangible symbol.

26 (ii) Attach to or logically associate with the record an
27 electronic sound, symbol, or process.

1 (u) "State" means a state of the United States, the District
2 of Columbia, Puerto Rico, the United States Virgin Islands, or
3 any territory or insular possession subject to the jurisdiction
4 of the United States.

5 (v) "Trust account" means an account held by a provider that
6 meets all of the following:

7 (i) Is established in a bank whose deposits or member
8 accounts are insured by an agency of the United States
9 government.

10 (ii) Is separate from other accounts of the provider or its
11 designee.

12 (iii) Is designated as a trust account or other account
13 designated to indicate that the money in the account is not the
14 money of the provider or its designee.

15 (iv) Is used to hold money of 1 or more individuals for
16 disbursement to creditors of the individuals.

17 Sec. 3. (1) This act does not apply to an agreement with an
18 individual who the provider has no reason to know resides in this
19 state at the time of the agreement.

20 (2) This act does not apply to a provider to the extent that
21 the provider satisfies either of the following:

22 (a) Provides or agrees to provide debt-management,
23 educational, or counseling services to an individual who the
24 provider has no reason to know resides in this state at the time
25 the provider agrees to provide the services.

26 (b) Receives no compensation for debt-management services
27 from or on behalf of the individuals to whom it provides the

1 services or from their creditors.

2 (3) This act does not apply to any of the following persons
3 or their employees when the person or the employee is engaged in
4 the regular course of the person's business or profession:

5 (a) A judicial officer, a person acting under an order of a
6 court or an administrative agency, or an assignee for the benefit
7 of creditors.

8 (b) A bank or an agent of a bank.

9 (c) An affiliate of a bank described in section 2(b)(ii)(A),
10 if that affiliate is regulated by federal or state banking
11 regulatory authority.

12 (d) A title insurer, escrow company, or other person that
13 provides bill-paying services if the provision of debt-management
14 services is incidental to the bill-paying services.

15 Sec. 4. (1) Except as otherwise provided in subsection (2),
16 a provider may not provide debt-management services to an
17 individual who it reasonably should know resides in this state at
18 the time it agrees to provide the services, unless the provider
19 is registered under this act.

20 (2) If a provider is registered under this act, subsection
21 (1) does not apply to an employee or agent of the provider.

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

24 Sec. 5. (1) An application for registration as a provider
25 must be in a form prescribed by the administrator.

26 (2) Subject to adjustment of dollar amounts under section
27 32(6), an application for registration as a provider must be

1 accompanied by all of the following:

2 (a) The fee established by the administrator.

3 (b) The bond required in section 13.

4 (c) Identification of all trust accounts required under
5 section 22 and an irrevocable consent authorizing the
6 administrator to review and examine the trust accounts.

7 (d) Evidence of insurance that meets all of the following:

8 (i) Is in the amount of at least \$250,000.00.

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

12 (iii) Is issued by an insurance company authorized to do
13 business in this state and rated at least A or the equivalent by
14 a nationally recognized rating organization approved by the
15 administrator.

16 (iv) Has a deductible that does not exceed \$5,000.00.

17 (v) Is payable for the benefit of the applicant, this state,
18 and individuals who are residents of this state, as their
19 interests may appear.

20 (vi) Is not subject to cancellation by the applicant or the
21 insurer until 60 days after written notice has been given to the
22 administrator.

23 (e) A record consenting to the jurisdiction of this state
24 that contains 1 of the following:

25 (i) The name, business address, and other contact information
26 of its registered agent in this state for purposes of service of
27 process.

1 (ii) The appointment of the administrator as agent of the
2 provider for purposes of service of process.

3 (f) If the applicant is exempt from taxation under section
4 501 of the internal revenue code, 26 USC 501, evidence of that
5 status.

6 Sec. 6. An application for registration must be signed under
7 oath and include all of the following:

8 (a) The applicant's name, principal business address and
9 telephone number, and all other business addresses in this state,
10 electronic mail addresses, and internet website addresses.

11 (b) All names under which the applicant conducts business.

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

15 (d) The name and home address of each officer and director
16 of the applicant and each person that owns at least 10% of the
17 applicant.

18 (e) Identification of every jurisdiction in which any of the
19 following were met at any time within the 5 years immediately
20 preceding the application:

21 (i) The applicant or any of its officers or directors were
22 licensed or registered to provide debt-management services.

23 (ii) Individuals resided when they received debt-management
24 services from the applicant.

25 (f) A statement describing, to the extent it is known or
26 should be known by the applicant, any material civil or criminal
27 judgment or litigation and any material administrative or

1 enforcement action by a governmental agency in any jurisdiction
2 against the applicant, any of its officers, directors, owners, or
3 agents, or any person who is authorized to have access to the
4 trust account required under section 22.

5 (g) The applicant's financial statements for each of the 2
6 calendar years immediately preceding the application or, if it
7 has not been in operation for the 2 calendar years preceding the
8 application, for the period of its existence. The financial
9 statements must meet 1 of the following:

10 (i) Unless subparagraph (ii) applies, are audited or reviewed
11 by an independent licensed, registered, or certified accountant.

12 (ii) If the applicant is organized as a not-for-profit
13 entity, has obtained tax-exempt status under section 501 of the
14 internal revenue code, 26 USC 501, or holds, accesses, or directs
15 the funds of any individuals in the conduct of its business, are
16 audited by an independent licensed, registered, or certified
17 accountant.

18 (h) Evidence of accreditation by an independent accrediting
19 organization approved by the administrator.

20 (i) Evidence that, within 12 months after initial
21 employment, each of the applicant's counselors becomes certified
22 as a certified counselor or certified debt specialist.

23 (j) A description of the 3 most commonly used educational
24 programs that the applicant provides or intends to provide to
25 individuals who reside in this state and a copy of any materials
26 used or to be used in those programs.

27 (k) A description of the applicant's financial analysis and

1 initial budget plan, including, but not limited to, any form or
2 electronic model, used to evaluate the financial condition of
3 individuals.

4 (l) A copy of each form of agreement that the applicant will
5 use with individuals who reside in this state.

6 (m) The schedule of fees and charges that the applicant will
7 use with individuals who reside in this state.

8 (n) At the applicant's expense, the results of a criminal-
9 records check, including fingerprints, conducted within the
10 immediately preceding 12 months, covering every officer of the
11 applicant and every employee or agent of the applicant who is
12 authorized to have access to the trust account required under
13 section 22.

14 (o) The names and addresses of all employers of each
15 director during the 10 years immediately preceding the
16 application.

17 (p) A description of any ownership interest of at least 10%
18 by a director, owner, or employee of the applicant in any of the
19 following:

20 (i) Any affiliate of the applicant.

21 (ii) Any entity that provides products or services to the
22 applicant or any individual relating to the applicant's debt-
23 management services.

24 (q) If the applicant is organized as a not-for-profit entity
25 or has obtained tax-exempt status under section 501 of the
26 internal revenue code, 26 USC 501, a statement of the amount of
27 compensation of the applicant's 5 most highly compensated

1 employees for each of the 3 years immediately preceding the
2 application or, if it has not been in operation for the 3 years
3 preceding the application, for the period of its existence.

4 (r) The identity of each director who is an affiliate of the
5 applicant described in section 2(b)(i) or (ii)(A), (B), (D), (E),
6 (F), (G), or (H).

7 (s) Any other information that the administrator reasonably
8 requires to perform the administrator's duties under section 9.

9 Sec. 7. An applicant or registered provider shall notify the
10 administrator within 10 days after a change in the information
11 specified in section 5(2)(d) or (f) or 6(a), (c), (f), (l), or
12 (m).

13 Sec. 8. Except for the information required under section
14 6(g), (n), and (q) and the addresses required under section 6(d),
15 the administrator shall make the information in an application
16 for registration as a provider available to the public.

17 Sec. 9. (1) Except as otherwise provided in subsections (3)
18 and (4), the administrator shall issue a certificate of
19 registration as a provider to a person that complies with
20 sections 5 and 6.

21 (2) If an applicant has otherwise complied with sections 5
22 and 6, including a timely effort to obtain the information
23 required under section 6(n), but the information has not been
24 received, the administrator may issue a temporary certificate of
25 registration. The temporary certificate shall expire no later
26 than 180 days after issuance.

27 (3) The administrator may deny registration if any of the

1 following are met:

2 (a) The application contains information that is materially
3 erroneous or incomplete.

4 (b) An officer, director, or owner of the applicant has been
5 convicted of a crime, or suffered a civil judgment, involving
6 dishonesty or a violation of state or federal securities laws.

7 (c) The applicant or any of its officers, directors, or
8 owners has defaulted in the payment of money collected for
9 others.

10 (d) The administrator finds that the financial
11 responsibility, experience, character, or general fitness of the
12 applicant or its owners, directors, employees, or agents does not
13 warrant belief that the business will be operated in compliance
14 with this act.

15 (4) With respect to an applicant that is organized as a not-
16 for-profit entity or has obtained tax-exempt status under section
17 501 of the internal revenue code, 26 USC 501, the administrator
18 shall deny registration if the applicant's board of directors is
19 not independent of the applicant's employees and agents.

20 (5) Subject to adjustment of the dollar amount under section
21 32(6), a board of directors is not independent for purposes of
22 subsection (4) if more than 1/4 of its members meet any of the
23 following:

24 (a) Are affiliates described in section 2(b)(i) or (ii)(A),
25 (B), (D), (E), (F), (G), or (H) of the applicant.

26 (b) After the date 10 years before first becoming a director
27 of the applicant, were employed by or directors of a person that

1 received from the applicant more than \$25,000.00 in either the
2 current year or the preceding year.

3 Sec. 10. (1) The administrator shall approve or deny an
4 initial registration as a provider within 120 days after an
5 application is filed. In connection with a request under section
6 6(s) for additional information, the administrator may extend the
7 120-day period for not more than 60 days. Within 7 days after
8 denying an application, the administrator, in a record, shall
9 inform the applicant of the reasons for the denial.

10 (2) If the administrator denies an application for
11 registration as a provider or does not act on an application
12 within the time prescribed in subsection (1), the applicant may
13 appeal and request a hearing pursuant to the administrative
14 procedures act of 1969, 1969 PA 306, MCL 24.201 to 24.328.

15 (3) Subject to sections 11(4) and 34, a registration as a
16 provider is valid for 1 year.

17 Sec. 11. (1) A provider must obtain a renewal of its
18 registration annually.

19 (2) An application for renewal of registration as a provider
20 must be in a form prescribed by the administrator, be signed
21 under oath, and meet all of the following:

22 (a) Be filed no fewer than 30 and no more than 60 days
23 before the registration expires.

24 (b) Be accompanied by the fee established by the
25 administrator and the bond required under section 13.

26 (c) Contain the matter required for initial registration as
27 a provider under section 6(h) and (i) and a financial statement

1 for the applicant's fiscal year immediately preceding the
2 application. If the provider is organized as a not-for-profit
3 entity, has obtained tax-exempt status under section 501 of the
4 internal revenue code, 26 USC 501, or holds, accesses, or directs
5 the funds of any individuals in the conduct of its business, the
6 financial statement must be audited by an independent licensed,
7 registered, or certified accountant.

8 (d) Disclose any changes in the information contained in the
9 applicant's application for registration or its immediately
10 previous application for renewal, as applicable. If an
11 application is otherwise complete and the applicant has made a
12 timely effort to obtain the information required under section
13 6(n) but the information has not been received, the administrator
14 may issue a temporary renewal of registration. The temporary
15 renewal shall expire no later than 180 days after issuance.

16 (e) Supply evidence of insurance that meets all of the
17 following:

18 (i) Is in an amount at least equal to the larger of
19 \$250,000.00 or the highest daily balance in the trust account
20 required under section 22 during the 6-month period immediately
21 preceding the application.

22 (ii) Insures against risks of dishonesty, fraud, theft, and
23 other misconduct on the part of the applicant or a director,
24 employee, or agent of the applicant.

25 (iii) Is issued by an insurance company authorized to do
26 business in this state and rated at least A or the equivalent by
27 a nationally recognized rating organization approved by the

1 administrator.

2 (iv) Has a deductible that does not exceed \$5,000.00.

3 (v) Is payable for the benefit of the applicant, this state,
4 and individuals who are residents of this state, as their
5 interests may appear.

6 (vi) Is not subject to cancellation by the applicant or the
7 insurer until 60 days after written notice has been given to the
8 administrator.

9 (f) Disclose the total amount of money received by the
10 applicant pursuant to plans during the preceding 12 months from
11 or on behalf of individuals who reside in this state and the
12 total amount of money distributed to creditors of those
13 individuals during that period.

14 (g) Disclose, to the best of the applicant's knowledge, the
15 gross amount of money accumulated during the preceding 12 months
16 pursuant to plans by or on behalf of individuals who reside in
17 this state and with whom the applicant has agreements.

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

21 (3) Except for the information required under section 6(g),
22 (n), and (q) and the addresses required under section 6(d), the
23 administrator shall make the information in an application for
24 renewal of registration as a provider available to the public.

25 (4) If a registered provider files a timely and complete
26 application for renewal of registration, the registration remains
27 effective until the administrator, in a record, notifies the

1 applicant of a denial and states the reasons for the denial.

2 (5) If the administrator denies an application for renewal
3 of registration as a provider, the applicant, within 30 days
4 after receiving notice of the denial, may appeal and request a
5 hearing pursuant to the administrative procedures act of 1969,
6 1969 PA 306, MCL 24.201 to 24.328. Subject to section 34, while
7 the appeal is pending, the applicant shall continue to provide
8 debt-management services to individuals with whom it has
9 agreements. If the denial is affirmed, subject to the
10 administrator's order and section 34, the applicant shall
11 continue to provide debt-management services to individuals with
12 whom it has agreements until, with the approval of the
13 administrator, it transfers the agreements to another registered
14 provider or returns to the individuals all unexpended money that
15 is under the applicant's control.

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

26 (a) The application in the other state contains information
27 substantially similar to or more comprehensive than that required

1 in an application submitted in this state.

2 (b) The applicant provides the information required under
3 section 6(a), (c), (j), (l), and (m).

4 (c) The applicant certifies under oath that the information
5 contained in the application is current or, to the extent it is
6 not current, supplements the application to make the information
7 current.

8 Sec. 13. (1) Except as otherwise provided in section 14, a
9 provider that is required to register under this act shall file a
10 surety bond with the administrator that meets both of the
11 following:

12 (a) Is in effect during the period of registration and for 2
13 years after the provider ceases providing debt-management
14 services to individuals in this state.

15 (b) Runs to this state for the benefit of this state and of
16 individuals who reside in this state when they agree to receive
17 debt-management services from the provider, as their interests
18 may appear.

19 (2) Subject to adjustment of the dollar amount under section
20 32(6), a surety bond filed under subsection (1) must meet all of
21 the following:

22 (a) Be in the amount of at least \$50,000.00, or another
23 larger or smaller amount that the administrator determines is
24 warranted by the financial condition and business experience of
25 the provider, the history of the provider in performing debt-
26 management services, the risk to individuals, and any other
27 factor the administrator considers appropriate.

1 (b) Be issued by a bonding, surety, or insurance company
2 authorized to do business in this state and rated at least A by a
3 nationally recognized rating organization.

4 (c) Have payment conditioned on noncompliance of the
5 provider or its agent with this act.

6 (3) If the principal amount of a surety bond required under
7 this section is reduced by payment of a claim or a judgment, the
8 provider shall immediately notify the administrator and, within
9 30 days after notice by the administrator, file a new or
10 additional surety bond in an amount set by the administrator. The
11 amount of the new or additional bond must be at least the amount
12 of the bond immediately before payment of the claim or judgment.
13 If for any reason a surety terminates a bond, the provider shall
14 immediately file a new surety bond in the amount of at least
15 \$50,000.00, or another amount determined under subsection (2).

16 (4) The administrator or an individual may obtain
17 satisfaction out of the surety bond procured under this section
18 if either of the following occurs:

19 (a) The administrator assesses expenses under section
20 32(2)(a), issues a final order under section 33(1)(b), or
21 recovers a final judgment under section 33(1)(d) or (e) or
22 section 33(4).

23 (b) An individual recovers a final judgment under section
24 35(1), (2), or (3)(a), (b), or (d).

25 (5) If claims against a surety bond required under this
26 section exceed or are reasonably expected to exceed the amount of
27 the bond, the administrator, on the initiative of the

1 administrator or on petition of the surety, shall, unless the
2 proceeds are adequate to pay all costs, judgments, and claims,
3 distribute the proceeds in the following order:

4 (a) To satisfaction of a final order or judgment under
5 section 33(1)(b), (d), or (e) or (4).

6 (b) To final judgments recovered by individuals under
7 section 35(1), (2), or (3)(a), (b) or (d), pro rata.

8 (c) To claims of individuals established to the satisfaction
9 of the administrator, pro rata.

10 (d) If a final order or judgment is issued under section
11 33(1), to the expenses charged under section 32(2)(a).

12 Sec. 14. (1) Instead of a surety bond required under section
13 13, a provider may deliver to the administrator, in the amount
14 required under section 13(2), and, except as otherwise provided
15 in subdivision (b)(i), payable or available to this state and to
16 individuals who reside in this state when they agree to receive
17 debt-management services from the provider, as their interests
18 may appear, if the provider or its agent does not comply with
19 this act, 1 of the following:

20 (a) A certificate of insurance that meets both of the
21 following:

22 (i) Is issued by an insurance company authorized to do
23 business in this state and rated at least A or the equivalent by
24 a nationally recognized rating organization approved by the
25 administrator.

26 (ii) Has no deductible or, if the provider supplies a bond in
27 the amount of \$5,000.00, a deductible that does not exceed

1 \$5,000.00.

2 (b) With the approval of the administrator, 1 of the
3 following:

4 (i) An irrevocable letter of credit, issued or confirmed by a
5 bank approved by the administrator, payable upon presentation of
6 a certificate by the administrator stating that the provider or
7 its agent has not complied with this act.

8 (ii) Bonds or other obligations of the United States or
9 guaranteed by the United States or bonds or other obligations of
10 this state or a political subdivision of this state, to be
11 deposited and maintained in a bank approved by the administrator
12 for this purpose.

13 (2) If a provider furnishes a substitute under subsection
14 (1) for a surety bond required under section 13, section 13(1),
15 (3), (4), and (5) apply to the substitute.

16 Sec. 15. A provider shall act in good faith in all matters
17 under this act.

18 Sec. 16. A provider that is required to register under this
19 act shall maintain a toll-free communication system, staffed at a
20 level that reasonably permits an individual to speak to a
21 certified counselor, certified debt specialist, or customer-
22 service representative, as appropriate, during ordinary business
23 hours.

24 Sec. 17. (1) Before providing debt-management services, a
25 registered provider shall give the individual an itemized list of
26 goods and services and the charges for each. The list must be
27 clear and conspicuous, be in a record the individual may keep

1 whether or not the individual assents to an agreement, and
2 describe all of the following:

3 (a) The goods and services the provider offers free of
4 additional charge if the individual enters into an agreement.

5 (b) The goods and services the provider offers for a charge
6 if the individual does not enter into an agreement.

7 (c) The goods and services the provider offers for a charge
8 if the individual enters into an agreement, using the following
9 terminology, as applicable, and format:

10	Set-up fee	_____
11		dollar amount of fee
12	Monthly service fee	_____
13		dollar amount of fee
14		or method of determining amount
15	Settlement fee	_____
16		dollar amount of fee
17		or method of determining amount
18	Goods and services in addition to those provided in connection	
19	with a plan:	
20	_____	_____
21	(item)	dollar amount
22		or method of determining amount
23	_____	_____
24	(item)	dollar amount
25		or method of determining amount

26 (2) A provider may not furnish debt-management services
27 unless the provider meets all of the following, through the
28 services of a certified counselor or certified debt specialist:

29 (a) Provides the individual with reasonable education about
30 the management of personal finance.

31 (b) Has prepared a financial analysis.

1 (c) Has prepared a plan for the individual.

2 (d) Has made a determination, based on the provider's
3 analysis of the information provided by the individual and
4 otherwise available to it, that the plan is suitable for the
5 individual and the individual will be able to meet the payment
6 obligations under the plan.

7 (e) If the individual is to make regular, periodic payments
8 to a creditor or a provider, believes that each creditor of the
9 individual listed as a participating creditor in the plan will
10 accept payment of the individual's debts as provided in the plan.

11 (3) Before an individual assents to an agreement to engage
12 in a plan, a provider shall do all of the following:

13 (a) Provide the individual with a copy of the analysis and
14 plan required under subsection (2) in a record that identifies
15 the provider and that the individual may keep whether or not the
16 individual assents to the agreement.

17 (b) Inform the individual of the availability, at the
18 individual's option, of assistance by a toll-free communication
19 system or in person to discuss the financial analysis and plan
20 required under subsection (2).

21 (c) If the plan contemplates that creditors will reduce
22 finance charges or fees for late payment, default, or
23 delinquency, or if the applicant holds, accesses, or directs the
24 funds of any individuals in the conduct of its business, provide
25 the individual with a list of all of the following with respect
26 to all creditors identified by the individual or otherwise known
27 by the provider to be creditors of the individual:

1 (i) Creditors that the provider expects to participate in the
2 plan and grant concessions.

3 (ii) Creditors that the provider expects to participate in
4 the plan but not grant concessions.

5 (iii) Creditors that the provider expects not to participate
6 in the plan.

7 (iv) Any other creditors.

8 (4) Before an individual assents to an agreement, the
9 provider shall inform the individual, in a separate record that
10 the individual may keep whether or not the individual assents to
11 the agreement, of all of the following:

12 (a) The name and business address of the provider.

13 (b) That plans are not suitable for all individuals and that
14 the individual may ask the provider about other ways, including
15 bankruptcy, to deal with indebtedness.

16 (c) That establishment of a plan may adversely affect the
17 individual's credit rating or credit scores.

18 (d) That nonpayment of debt may lead creditors to increase
19 finance and other charges or undertake collection activity,
20 including litigation.

21 (e) Unless it is not true, that the provider may receive
22 compensation from the creditors of the individual.

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

27 (5) If a provider may receive payments from an individual's

1 creditors and the plan contemplates that the individual's
2 creditors will reduce finance charges or fees for late payment,
3 default, or delinquency, the provider may comply with subsection
4 (4) by providing the following disclosure, surrounded by black
5 lines:

6 "IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

10 (2) Using a debt-management plan may make it harder for
11 you to obtain credit.

12 (3) We may receive compensation for our services from
13 your creditors.

14 _____
15 Name and business address of provider".

16 (6) If a provider will not receive payments from an
17 individual's creditors and the plan contemplates that the
18 individual's creditors will reduce finance charges or fees for
19 late payment, default, or delinquency, a provider may comply with
20 subsection (4) by providing the following disclosure, surrounded
21 by black lines:

22 "IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

26 (2) Using a debt-management plan may make it harder for
27 you to obtain credit.

1 _____
2 Name and business address of provider".

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

7 "IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

11 (2) Nonpayment of your debts under our program may
12 X hurt your credit rating or credit scores;
13 X lead your creditors to increase finance and other
14 charges; and
15 X lead your creditors to undertake activity, including
16 lawsuits, to collect the debts.

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

20 _____
21 Name and business address of provider".

22 Sec. 18. (1) A provider may satisfy the requirements of
23 section 17, 19, or 27 by means of the internet or other
24 electronic means if the provider obtains a consumer's consent in
25 the manner provided in section 101(c)(1) of the federal act, 15
26 USC 7001.

27 (2) The disclosures and materials required under sections
28 17, 19, and 27 shall be presented in a form that is capable of

1 being accurately reproduced for later reference.

2 (3) With respect to disclosure by means of an internet
3 website, the disclosure of the information required under section
4 17(4) must appear on 1 or more screens that meet both of the
5 following:

6 (a) The screen or screens contain no other information.

7 (b) The individual must see the screen or screens before
8 proceeding to assent to formation of an agreement.

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

15 (5) If a provider is requested, before the expiration of 90
16 days after an agreement is completed or terminated, to send a
17 written copy of the materials required under section 17(3) and
18 (4), 19, or 27, the provider shall send it at no charge within 3
19 business days after the request, but the provider need not comply
20 with a request more than once per calendar month or if it
21 reasonably believes that the request is made for purposes of
22 harassment. If a request is made more than 90 days after an
23 agreement is completed or terminated, the provider shall send
24 within a reasonable time a written copy of the materials
25 requested.

26 (6) A provider that maintains an internet website shall
27 disclose all of the following on the home page of its website or

1 on a page that is clearly and conspicuously connected to the home
2 page by a link that clearly reveals its contents:

3 (a) Its name and all names under which it does business.

4 (b) Its principal business address, telephone number, and
5 electronic mail address, if any.

6 (c) The names of its principal officers.

7 (7) Subject to subsection (8), if a consumer who has
8 consented to electronic communication in the manner provided
9 under section 101 of the federal act withdraws consent as
10 provided in the federal act, a provider may terminate its
11 agreement with the consumer.

12 (8) If a provider wishes to terminate an agreement with a
13 consumer under subsection (7), it shall notify the consumer that
14 it will terminate the agreement unless the consumer, within 30
15 days after receiving the notification, consents to electronic
16 communication in the manner provided in section 101(c) of the
17 federal act, 15 USC 7001. If the consumer consents, the provider
18 may terminate the agreement only as permitted under section
19 19(1)(f)(vii).

20 (9) As used in this section:

21 (a) "Consumer" means an individual who seeks or obtains
22 goods or services that are used primarily for personal, family,
23 or household purposes.

24 (b) "Federal act" means the federal electronic signatures in
25 global and national commerce act, 15 USC 7001 to 7031.

26 Sec. 19. (1) An agreement must meet all of the following:

27 (a) Be in a record.

1 (b) Be dated and signed by the provider and the individual.

2 (c) Include the name of the individual and the address where
3 the individual resides.

4 (d) Include the name, business address, and telephone number
5 of the provider.

6 (e) Be delivered to the individual immediately upon
7 formation of the agreement.

8 (f) Disclose all of the following:

9 (i) The services to be provided.

10 (ii) The amount, or method of determining the amount, of all
11 fees, individually itemized, to be paid by the individual.

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

16 (iv) If a plan provides for regular periodic payments to
17 creditors, all of the following:

18 (A) Each creditor of the individual to which payment will be
19 made, the amount owed to each creditor, and any concessions the
20 provider reasonably believes each creditor will offer.

21 (B) The schedule of expected payments to each creditor,
22 including the amount of each payment and the date on which it
23 will be made.

24 (C) Each creditor that the provider believes will not
25 participate in the plan and to which the provider will not direct
26 payment.

27 (v) How the provider will comply with its obligations under

1 section 27(1).

2 (vi) That the provider may terminate the agreement for good
3 cause, upon return of unexpended money of the individual.

4 (vii) That the individual may cancel the agreement as
5 provided in section 20.

6 (viii) That the individual may contact the administrator with
7 any questions or complaints regarding the provider.

8 (ix) The address, telephone number, and internet address or
9 website of the administrator.

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

14 (3) If the administrator supplies the provider with any
15 information required under subsection (1)(f)(ix), the provider may
16 comply with that requirement only by disclosing the information
17 supplied by the administrator.

18 (4) An agreement must provide all of the following:

19 (a) That the individual has a right to terminate the
20 agreement at any time, without penalty or obligation, by giving
21 the provider written or electronic notice and that all of the
22 following apply if that notice is given:

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

27 (ii) With respect to an agreement that contemplates that

1 creditors will settle debts for less than the principal amount of
2 debt, the provider will refund 65% of any portion of the set-up
3 fee that has not been credited against the settlement fee.

4 (iii) All powers of attorney granted by the individual to the
5 provider are revoked and ineffective.

6 (b) That the individual authorizes any bank in which the
7 provider or its agent has established a trust account to disclose
8 to the administrator any financial records relating to the trust
9 account.

10 (c) That the provider will notify the individual within 5
11 days after learning of a creditor's final decision to reject or
12 withdraw from a plan and that this notice will include both of
13 the following:

14 (i) The identity of the creditor.

15 (ii) The right of the individual to modify or terminate the
16 agreement.

17 (5) An agreement may confer on a provider a power of
18 attorney to settle the individual's debt for no more than 50% of
19 the outstanding amount of the debt. An agreement may not confer a
20 power of attorney to settle a debt for more than 50% of that
21 amount, but may confer a power of attorney to negotiate with
22 creditors of the individual on behalf of the individual. An
23 agreement must provide that the provider will obtain the assent
24 of the individual after a creditor has assented to a settlement
25 for more than 50% of the outstanding amount of the debt.

26 (6) An agreement may not do any of the following:

27 (a) Provide for application of the law of any jurisdiction

1 other than the United States and this state.

2 (b) Except as permitted under section 2 of the federal
3 arbitration act, 9 USC 2, contain a provision that modifies or
4 limits otherwise available forums or procedural rights, including
5 the right to trial by jury, that are generally available to the
6 individual under law other than this act.

7 (c) Contain a provision that restricts the individual's
8 remedies under this act or law other than this act.

9 (d) Contain a provision that does either of the following:

10 (i) Limits or releases the liability of any person for not
11 performing the agreement or for violating this act.

12 (ii) Indemnifies any person for liability arising under the
13 agreement or this act.

14 (7) All rights and obligations described in subsection (4)
15 and section 20 exist even if not provided in the agreement. A
16 provision in an agreement that violates subsection (4), (5), or
17 (6) is void.

18 Sec. 20. (1) An individual may cancel an agreement before
19 midnight of the third business day after the individual assents
20 to it, unless the agreement does not comply with subsection (2)
21 or section 19 or 28, in which event the individual may cancel the
22 agreement within 30 days after the individual assents to it. To
23 exercise the right to cancel, the individual must give notice in
24 a record to the provider. Notice by mail is given when mailed.

25 (2) An agreement must be accompanied by a form that contains
26 the following notice in boldfaced type, surrounded by bold black
27 lines:

1 "Notice of Right to Cancel

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

6 To cancel this agreement during this period, send an
7 e-mail to _____ or mail or deliver a
8 E-mail address of provider
9 signed, dated copy of this notice, or any other written notice
10 to _____ at _____
11 Name of provider Address of provider
12 before midnight on _____.
13 Date

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

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

18 I cancel this agreement,
19 _____
20 Print your name
21 _____
22 Signature
23 _____
24 Date".

25 (3) If a personal financial emergency necessitates the
26 disbursement of an individual's money to 1 or more of the
27 individual's creditors before the expiration of 3 days after an
28 agreement is signed, an individual may waive the right to cancel
29 described in this section. To waive the right, the individual
30 must send or deliver a signed, dated statement in the
31 individual's own words describing the circumstances that

1 necessitate a waiver. The waiver must explicitly waive the right
2 to cancel. A waiver by means of a standard-form record is void.

3 Sec. 21. Unless the administrator provides otherwise by
4 rule, the disclosures and documents required by this act must be
5 in English. If a provider communicates with an individual
6 primarily in a language other than English, the provider must
7 furnish a translation into the other language of the disclosures
8 and documents required by this act.

9 Sec. 22. (1) All money paid to a provider by or on behalf of
10 an individual for distribution to creditors pursuant to a plan is
11 held in trust by the provider. Within 2 business days after
12 receipt, the provider shall deposit the money in a trust account
13 established for the benefit of individuals to whom the provider
14 is furnishing debt-management services.

15 (2) Money held in trust by a provider under this section is
16 not property of the provider or its designee. The money is not
17 available to creditors of the provider or designee, except an
18 individual from whom or on whose behalf the provider received
19 money, to the extent that the money has not been disbursed to
20 creditors of the individual.

21 (3) A provider shall do all of the following:

22 (a) Maintain separate records of account for each individual
23 to whom the provider is furnishing debt-management services.

24 (b) Disburse money paid by or on behalf of the individual to
25 creditors of the individual as disclosed in the agreement, except
26 that both of the following apply:

27 (i) The provider may delay payment to the extent that a

1 payment by the individual is not final.

2 (ii) If a plan provides for regular periodic payments to
3 creditors, the disbursement must comply with the due dates
4 established by each creditor.

5 (c) Promptly correct any payments that are not made or that
6 are misdirected as a result of an error by the provider or other
7 person in control of a trust account established under subsection
8 (1) and reimburse the individual for any costs or fees imposed by
9 a creditor as a result of the failure to pay or misdirection.

10 (4) A provider may not commingle money in a trust account
11 established under subsection (1) for the benefit of individuals
12 to whom the provider is furnishing debt-management services with
13 money of other persons.

14 (5) A trust account established under subsection (1) must at
15 all times have a cash balance equal to the sum of the balances of
16 each individual's account.

17 (6) If a provider has established a trust account under
18 subsection (1), the provider shall reconcile the trust account at
19 least once a month. The reconciliation must compare the cash
20 balance in the trust account with the sum of the balances in each
21 individual's account. If the provider or its designee has more
22 than 1 trust account, each trust account must be individually
23 reconciled.

24 (7) if a provider discovers, or has a reasonable suspicion
25 of, embezzlement or other unlawful appropriation of money held in
26 trust under this section, the provider immediately shall notify
27 the administrator by a method approved by the administrator.

1 Unless the administrator by rule provides otherwise, within 5
2 days after notifying the administrator, the provider shall give
3 notice to the administrator describing the remedial action taken
4 or to be taken.

5 (8) If an individual terminates an agreement or it becomes
6 reasonably apparent to a provider that a plan has failed, the
7 provider shall promptly refund to the individual all money paid
8 by or on behalf of the individual that has not been paid to
9 creditors, less fees that are payable to the provider under
10 section 23.

11 (9) Before relocating a trust account established under
12 subsection (1) from 1 bank to another, a provider shall inform
13 the administrator of the name, business address, and telephone
14 number of the new bank. As soon as practicable, the provider
15 shall inform the administrator of the account number of the trust
16 account at the new bank.

17 Sec. 23. (1) A provider may not impose directly or
18 indirectly a fee or other charge on an individual or receive
19 money from or on behalf of an individual for debt-management
20 services except as permitted in this section.

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

24 (3) If an individual assents to an agreement, a provider may
25 not impose a fee or other charge for educational or counseling
26 services or the like, except as otherwise provided in this
27 subsection and section 28(4). The administrator may authorize a

1 provider to charge a fee based on the nature and extent of the
2 educational or counseling services furnished by the provider.

3 (4) Subject to adjustment of dollar amounts under section
4 32(6), the following rules apply:

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

9 (i) A fee that does not exceed \$50.00 for consultation,
10 obtaining a credit report, setting up an account, and the like.

11 (ii) A monthly service fee that does not exceed \$10.00 times
12 the number of creditors remaining in a plan at the time the fee
13 is assessed, but is not more than \$50.00 in any month.

14 (b) If an individual assents to an agreement that
15 contemplates that creditors will settle debts for less than the
16 principal amount of the debt, a provider may charge the following
17 fees:

18 (i) Subject to section 19(4), a fee for consultation,
19 obtaining a credit report, setting up an account, and the like,
20 in an amount that does not exceed \$400.00 or 4% of the debt in
21 the plan at the inception of the plan, whichever is less.

22 (ii) A monthly service fee that does not exceed \$10.00 times
23 the number of creditors remaining in a plan at the time the fee
24 is assessed, but is not more than \$50.00 in any month.

25 (iii) Fees permitted under subsection (6).

26 (c) A provider may not impose or receive fees under both
27 subdivisions (a) and (b).

1 (d) Except as otherwise provided in section 28(4), if an
2 individual does not assent to an agreement, a provider may
3 receive for educational and counseling services it provides to
4 the individual a fee that does exceed \$100.00 or, with the
5 approval of the administrator, a larger fee. The administrator
6 may approve a fee larger than \$100.00 if the nature and extent of
7 the educational and counseling services warrant the larger fee.

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

12 (6) Except as otherwise provided in subsections (3) and (4),
13 and subject to subsection (7), if an agreement contemplates that
14 creditors will settle an individual's debts for less than the
15 principal amount of the debt, compensation for services in
16 connection with settling a debt shall be clearly disclosed in the
17 agreement and may not exceed 1 of the following fee limits, as
18 applicable:

19 (a) If the agreement provides for a fee based on a
20 percentage of the principal amount of the debt, the total
21 aggregate amount of fees charged to any individual under this
22 act, including fees charged under subsection (4) (b) (i) and (ii),
23 may not exceed 17% of the principal amount of debt included in
24 the agreement at the inception of the agreement. The provider
25 shall assess a fee described in this subdivision in equal monthly
26 payments over at least 1/2 the length of the plan, as estimated
27 at the plan's inception, unless the payment of fees is

1 voluntarily accelerated by the individual in a separate record
2 and at least 1/2 of the overall amount of outstanding debt
3 covered by the agreement has been settled.

4 (b) If the agreement provides for a fee based on a
5 percentage of the amount saved by the individual, the amount of
6 any settlement fee charged to any individual under this act for a
7 debt may not exceed 30% of the amount by which the outstanding
8 amount of the debt exceeds the amount actually paid to the
9 creditor, as calculated at the time of settlement. A settlement
10 fee described in this subdivision is billable only when the debt
11 is settled, and the total aggregate amount of fees charged to any
12 individual under this act, including fees charged under
13 subsection (4) (b) (i) and (ii), may not exceed 20% of the principal
14 amount of the debt included in the agreement at the inception of
15 the agreement.

16 (7) A provider may not impose or receive fees described in
17 subsection (6) (a) and (b).

18 (8) Subject to adjustment of the dollar amount under section
19 32(6), if a payment to a provider by an individual under this act
20 is dishonored, the provider may impose a reasonable charge on the
21 individual that does not exceed \$25.00 or the amount permitted by
22 law other than this act, whichever is less.

23 Sec. 24. A provider may not solicit a voluntary contribution
24 from an individual or an affiliate of the individual for any
25 service provided to the individual. A provider may accept
26 voluntary contributions from an individual but, until 30 days
27 after completion or termination of a plan, the aggregate amount

1 of money received from or on behalf of the individual may not
2 exceed the total amount the provider may charge the individual
3 under section 23.

4 Sec. 25. (1) If a provider imposes a fee or other charge or
5 receives money or other payments not authorized under section 23
6 or 24, the individual may void the agreement and recover as
7 provided in section 35.

8 (2) If a provider is not registered as required by this act
9 when an individual assents to an agreement, the agreement is
10 voidable by the individual.

11 (3) If an individual voids an agreement under subsection
12 (2), the provider does not have a claim against the individual
13 for breach of contract or for restitution.

14 Sec. 26. (1) If an individual who has entered into an
15 agreement fails for 60 days to make payments required by the
16 agreement, a provider may terminate the agreement.

17 (2) If a provider or an individual terminates an agreement,
18 the provider shall immediately return all of the following to the
19 individual:

20 (a) Any money of the individual held in trust for the
21 benefit of the individual.

22 (b) Sixty-five percent of any portion of the set-up fee
23 received under section 23(4)(b) that has not been credited
24 against settlement fees.

25 Sec. 27. (1) A provider shall provide the accounting
26 required under subsection (2) at each of the following times:

27 (a) Upon cancellation or termination of an agreement.

1 (b) Before cancellation or termination of an agreement.

2 (c) At least once each month.

3 (d) Within 5 business days after a request by an individual.

4 However, the provider is not required to comply with more than 1
5 request in any calendar month.

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

9 (a) The amount of money received from the individual since
10 the last report.

11 (b) The amounts and dates of disbursement made on the
12 individual's behalf, or by the individual upon the direction of
13 the provider, since the last report to each creditor listed in
14 the plan.

15 (c) The amounts deducted from the amount received from the
16 individual.

17 (d) The amount held in reserve.

18 (e) If, since the last report, a creditor has agreed to
19 accept as payment in full an amount less than the principal
20 amount of the debt owed by the individual, all of the following:

21 (i) The total amount and terms of the settlement.

22 (ii) The amount of the debt when the individual assented to
23 the plan.

24 (iii) The amount of the debt when the creditor agreed to the
25 settlement.

26 (iv) The calculation of a settlement fee.

27 (3) A provider shall maintain records for each individual

1 for whom it provides debt-management services for 5 years after
2 the final payment made by the individual and produce a copy of
3 them to the individual within a reasonable time after a request
4 for them. The provider may use electronic or other means of
5 storage of the records.

6 Sec. 28. (1) A provider may not, directly or indirectly, do
7 any of the following:

8 (a) Misappropriate or misapply money held in trust.

9 (b) Settle a debt on behalf of an individual for more than
10 50% of the outstanding amount of the debt owed a creditor, unless
11 the individual assents to the settlement after the creditor has
12 assented.

13 (c) Take a power of attorney that authorizes it to settle a
14 debt, unless the power of attorney expressly limits the
15 provider's authority to settle debts for not more than 50% of the
16 outstanding amount of the debt owed a creditor.

17 (d) Exercise or attempt to exercise a power of attorney
18 after an individual has terminated an agreement.

19 (e) Initiate a transfer from an individual's account at a
20 bank or with another person unless the transfer is 1 of the
21 following:

22 (i) A return of money to the individual.

23 (ii) Before termination of an agreement, properly authorized
24 by the agreement and this act, and for 1 of the following:

25 (A) Payment to 1 or more creditors pursuant to an agreement.

26 (B) Payment of a fee.

27 (f) Offer a gift or bonus, premium, reward, or other

1 compensation to an individual for executing an agreement.

2 (g) Offer, pay, or give a gift or bonus, premium, reward, or
3 other compensation to a person for referring a prospective
4 customer, if the person making the referral has a financial
5 interest in the outcome of debt-management services provided to
6 the customer, unless neither the provider nor the person making
7 the referral communicates to the prospective customer the
8 identity of the source of the referral.

9 (h) Receive a bonus, commission, or other benefit for
10 referring an individual to a person.

11 (i) Structure a plan in a manner that would result in a
12 negative amortization of any of an individual's debts, unless a
13 creditor that is owed a negatively amortizing debt agrees to
14 refund or waive the finance charge upon payment of the principal
15 amount of the debt.

16 (j) Compensate its employees on the basis of a formula that
17 incorporates the number of individuals the employee induces to
18 enter into agreements.

19 (k) Settle a debt or lead an individual to believe that a
20 payment to a creditor is in settlement of a debt to the creditor
21 unless, at the time of settlement, the individual receives a
22 certification by the creditor that the payment is 1 of the
23 following:

24 (i) In full settlement of the debt.

25 (ii) Part of a payment plan that will result in full
26 settlement of the debt on completion. A certification of a
27 payment described in this subparagraph shall include the terms of

- 1 the payment plan.
- 2 (l) Make any of the following representations:
- 3 (i) That the provider will furnish money to pay bills or
4 prevent attachments.
- 5 (ii) That payment of a certain amount will permit
6 satisfaction of a certain amount or range of indebtedness.
- 7 (iii) That participation in a plan will or may prevent
8 litigation, garnishment, attachment, repossession, foreclosure,
9 eviction, or loss of employment.
- 10 (m) Misrepresent that it is authorized or competent to
11 furnish legal advice or perform legal services.
- 12 (n) Represent in its agreements, disclosures required by
13 this act, or advertisements or on its internet web site that it
14 is either of the following:
- 15 (i) A not-for-profit entity unless it is organized and
16 properly operating as a not-for-profit entity under the law of
17 the state in which it was formed.
- 18 (ii) A tax-exempt entity unless it has received certification
19 of tax-exempt status from the internal revenue service and is
20 properly operating as a not-for-profit entity under the law of
21 the state in which it was formed.
- 22 (o) Take a confession of judgment or power of attorney to
23 confess judgment against an individual.
- 24 (p) Employ an unfair, unconscionable, or deceptive act or
25 practice, including, but not limited to, a knowing omission of
26 any material information.
- 27 (2) If a provider furnishes debt-management services to an

1 individual, the provider may not, directly or indirectly, do any
2 of the following:

3 (a) Purchase a debt or obligation of the individual.

4 (b) Receive any of the following from or on behalf of the
5 individual:

6 (i) A promissory note or other negotiable instrument other
7 than a check or a demand draft.

8 (ii) A postdated check or demand draft.

9 (c) Lend money or provide credit to the individual, except
10 as a deferral of a settlement fee at no additional expense to the
11 individual.

12 (d) Obtain a mortgage or other security interest from any
13 person in connection with the services provided to the
14 individual.

15 (e) Except as permitted by federal law, disclose the
16 identity or identifying information of the individual or the
17 identity of the individual's creditors, except to any of the
18 following:

19 (i) The administrator, upon proper demand.

20 (ii) A creditor of the individual, to the extent necessary to
21 secure the cooperation of the creditor in a plan.

22 (iii) To the extent necessary to administer the plan.

23 (f) Except as otherwise provided in section 23(6), provide
24 the individual less than the full benefit of a compromise of a
25 debt arranged by the provider.

26 (g) Charge the individual for or provide credit or other
27 insurance, coupons for goods or services, membership in a club,

1 access to computers or the internet, or any other matter not
2 directly related to debt-management services or educational
3 services concerning personal finance.

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

7 (3) This act does not authorize any person to engage in the
8 practice of law.

9 (4) A provider may not receive a gift or bonus, premium,
10 reward, or other compensation, directly or indirectly, for
11 advising, arranging, or assisting an individual in connection
12 with obtaining an extension of credit or other services unrelated
13 to debt-management services under this act from a lender or
14 service provider, except for educational or counseling services
15 required in connection with a government-sponsored program.

16 (5) Unless a person supplies goods, services, or facilities
17 generally and supplies them to the provider at a cost that is not
18 higher than the cost the person generally charges to others, a
19 provider may not purchase goods, services, or facilities from the
20 person if an employee or a person that the provider should
21 reasonably know is an affiliate of the provider meets either of
22 the following:

23 (a) Owns more than 10% of the person.

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

25 Sec. 29. Within 30 days after a provider has been served
26 with notice of a civil action for violation of this act by or on
27 behalf of an individual who resides in this state at either the

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

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

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

15 Sec. 31. If a provider delegates any of its duties or
16 obligations under an agreement or this act to an independent
17 contractor or other person, the provider is liable for conduct of
18 the person that would violate the agreement or this act if done
19 by the provider.

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

25 (2) The administrator may investigate and examine, in this
26 state or elsewhere, by subpoena or otherwise, the activities,
27 books, accounts, and records of a person that provides or offers

1 to provide debt-management services, or a person to which a
2 provider has delegated its obligations under an agreement or this
3 act, to determine compliance with this act. The administrator and
4 the employees of the office of financial and insurance regulation
5 shall not disclose information that identifies individuals who
6 have agreements with the provider to the public. In connection
7 with an investigation of a person under this subsection, the
8 administrator may do any of the following:

9 (a) Charge the person the reasonable expenses necessarily
10 incurred to conduct the examination.

11 (b) Require or permit a person to file a statement under
12 oath as to all the facts and circumstances of a matter to be
13 investigated.

14 (c) Seek a court order authorizing seizure, from a bank at
15 which the person maintains a trust account required under section
16 22, of any or all money, books, records, accounts, and other
17 property of the provider that are in the control of the bank and
18 relate to individuals who reside in this state.

19 (3) The administrator may promulgate rules to implement the
20 provisions of this act under the administrative procedures act of
21 1969, 1969 PA 306, MCL 24.201 to 24.328.

22 (4) The administrator may enter into cooperative
23 arrangements with any other federal or state agency that has
24 authority over providers and may exchange with any of those
25 agencies information about a provider, including information
26 obtained during an examination of the provider.

27 (5) The administrator by rule shall establish reasonable

1 fees to be paid by providers for the expense of administering
2 this act.

3 (6) The administrator by rule shall adopt dollar amounts
4 instead of those specified in sections 2, 5, 9, 13, 23, 33, and
5 35 to reflect inflation, as measured by the United States bureau
6 of labor statistics consumer price index for all urban consumers
7 or, if that index is not available, another index adopted by rule
8 by the administrator. The administrator shall adopt a base year
9 and adjust the dollar amounts, effective on July 1 of each year,
10 if the change in the index from the base year, as of December 31
11 of the preceding year, is at least 10%. The administrator must
12 round dollar amounts adopted under this subsection to the nearest
13 \$100.00, except that the administrator must round amounts in
14 section 23 to the nearest dollar.

15 (7) The administrator shall notify registered providers of
16 any change in dollar amounts made under subsection (6) and make
17 that information available to the public.

18 Sec. 33. (1) The administrator may enforce this act and
19 rules adopted under this act by taking 1 or more of the following
20 actions:

21 (a) Ordering a provider or a director, employee, or other
22 agent of a provider to cease and desist from any violations.

23 (b) Ordering a provider or a person that has caused a
24 violation to correct the violation, including, but not limited
25 to, making restitution of money or property to a person aggrieved
26 by a violation.

27 (c) Subject to adjustment of the dollar amount under section

1 32(6), imposing on a provider or a person that has caused a
2 violation an administrative fine of not more than \$10,000.00 for
3 each violation.

4 (d) Prosecuting a civil action to do 1 or more of the
5 following:

6 (i) Enforce an order of the administrator.

7 (ii) Obtain restitution or an injunction or other equitable
8 relief.

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

10 (2) Subject to adjustment of the dollar amount under section
11 32(6), if a person violates or knowingly authorizes, directs, or
12 aids in the violation of a final order issued under subsection
13 (1)(a) or (b), the administrator may impose an administrative
14 fine of not more than \$20,000.00 for each violation.

15 (3) The administrator may maintain an action to enforce this
16 act in any state court in this state.

17 (4) The administrator may recover the reasonable costs of
18 enforcing the act under subsections (1) to (3), including
19 attorney fees based on the hours reasonably expended and the
20 hourly rates for attorneys of comparable experience in the
21 community.

22 (5) In determining the amount of an administrative fine
23 under subsection (1) or (2), the administrator shall consider the
24 seriousness of the violation, the good faith of the violator, any
25 previous violations by the violator, the deleterious effect of
26 the violation on the public, and any other factor the
27 administrator considers relevant to the determination of the

1 administrative fine.

2 Sec. 34. (1) The administrator may suspend, revoke, or deny
3 renewal of a provider's registration if any of the following are
4 met:

5 (a) A fact or condition exists that, if it had existed when
6 the registrant applied for registration as a provider, would have
7 been a reason for denying registration.

8 (b) The provider has committed a material violation of this
9 act or a rule or order of the administrator under this act.

10 (c) The provider is insolvent. As used in this subdivision,
11 "insolvent" means any of the following:

12 (i) Has generally ceased to pay debts in the ordinary course
13 of business other than as a result of a good-faith dispute.

14 (ii) Is unable to pay debts as they become due.

15 (iii) Is insolvent within the meaning of the federal
16 bankruptcy code, 11 USC 101 to 1330.

17 (d) The provider or an employee or affiliate of the provider
18 refuses to permit the administrator to make an examination
19 authorized under this act, failed to comply with section 32(2)(b)
20 within 15 days after a request, or made a material
21 misrepresentation or omission in complying with section 32(2)(b).

22 (e) The provider does not respond within a reasonable time
23 and in an appropriate manner to communications from the
24 administrator.

25 (2) If a provider does not comply with section 22(6) or if
26 the administrator otherwise finds that the public health or
27 safety or general welfare requires emergency action, the

1 administrator may order a summary suspension of the provider's
2 registration, effective on the date specified in the order.

3 (3) If the administrator suspends, revokes, or denies
4 renewal of the registration of a provider, the administrator may
5 seek a court order authorizing seizure of any or all of the money
6 in a trust account required under section 22, books, records,
7 accounts, and other property of the provider that are located in
8 this state.

9 (4) If the administrator suspends or revokes a provider's
10 registration, the provider may appeal and request a hearing under
11 the administrative procedures act of 1969, 1969 PA 306, MCL
12 24.201 to 24.328.

13 Sec. 35. (1) If an individual voids an agreement under
14 section 25(2), the individual may recover in a civil action all
15 money paid or deposited by or on behalf of the individual
16 pursuant to the agreement, except amounts paid to creditors, in
17 addition to the recovery under subsection (3)(c) and (d).

18 (2) If an individual voids an agreement under section 25(1),
19 the individual may recover in a civil action 3 times the total
20 amount of the fees, charges, money, and payments made by the
21 individual to the provider, in addition to the recovery under
22 subsection (3)(d).

23 (3) Subject to subsection (4), an individual with respect to
24 whom a provider violates this act may recover any of the
25 following in a civil action from the provider, or any other
26 person that is not an employee of the provider, that caused the
27 violation:

1 (a) Compensatory damages for injury, including noneconomic
2 injury, caused by the violation.

3 (b) Except as otherwise provided in subsection (4) and
4 subject to adjustment of the dollar amount under section 32(6),
5 with respect to a violation of section 17, 19, 20, 21, 22, 23,
6 24, 27, or 28(1), (2), or (4), the amount recoverable under
7 subdivision (a), or \$5,000.00, whichever is greater.

8 (c) Punitive damages.

9 (d) Reasonable attorney fees and costs.

10 (4) In a class action, except for a violation of section
11 28(1)(e), the minimum damages provided in subsection (3)(b) do
12 not apply.

13 (5) In addition to the remedy available under subsection
14 (3), if a provider violates an individual's rights under section
15 20, the individual may recover in a civil action all money paid
16 or deposited by or on behalf of the individual pursuant to the
17 agreement, except for amounts paid to creditors.

18 (6) A provider is not liable under this section for a
19 violation of this act if the provider proves that the violation
20 was not intentional and resulted from a good-faith error
21 notwithstanding the maintenance of procedures reasonably adapted
22 to avoid the error. An error of legal judgment with respect to a
23 provider's obligations under this act is not a good-faith error.
24 If, in connection with a violation, the provider has received
25 more money than authorized by an agreement or this act, the
26 defense provided by this subsection is not available unless the
27 provider refunds the excess within 2 business days of learning of

1 the violation.

2 (7) The administrator shall assist an individual in
3 enforcing a judgment against the surety bond or other security
4 provided under section 13 or 14.

5 Sec. 36. If an act or practice of a provider violates both
6 this act and the Michigan consumer protection act, 1976 PA 331,
7 MCL 445.901 to 445.922, an individual may not recover under both
8 for the same act or practice.

9 Sec. 37. (1) An action or proceeding brought under section
10 33(1), (2), or (3) must be commenced within 4 years after the
11 conduct that is the basis of the administrator's complaint.

12 (2) An action brought under section 35 must be commenced
13 within 2 years after the latest of the following:

14 (a) The individual's last transmission of money to a
15 provider.

16 (b) The individual's last transmission of money to a
17 creditor at the direction of the provider.

18 (c) The provider's last disbursement to a creditor of the
19 individual.

20 (d) The provider's last accounting to the individual under
21 section 27(1).

22 (e) Subject to subsection (3), the date on which the
23 individual discovered or reasonably should have discovered the
24 facts giving rise to the individual's claim.

25 (f) Termination of actions or proceedings by the
26 administrator with respect to a violation of the act.

27 (3) The period prescribed in subsection (2)(e) is tolled

1 during any period during which the provider or, if different, the
2 defendant has materially and willfully misrepresented information
3 required by this act to be disclosed to the individual, if the
4 information so misrepresented is material to the establishment of
5 the liability of the defendant under this act.

6 Sec. 38. In applying and construing this uniform act,
7 consideration must be given to the need to promote uniformity of
8 the law with respect to its subject matter among states that
9 enact it.

10 Sec. 39. This act modifies, limits, and supersedes the
11 federal electronic signatures in global and national commerce
12 act, 15 USC 7001 to 7031, but does not modify, limit, or
13 supersede section 101(c) of that act, 15 USC 7001, or authorize
14 electronic delivery of any of the notices described in section
15 103(b) of that act, 15 USC 7003.

16 Sec. 40. Transactions entered into before this act takes
17 effect and the rights, duties, and interests resulting from them
18 may be completed, terminated, or enforced as required or
19 permitted under the debt management act, 1975 PA 148, former MCL
20 451.411 to 451.437, as though the repeal of that act had not
21 occurred.

22 Enacting section 1. This act takes effect 12 months after
23 the date it is enacted into law.

24 Enacting section 2. The debt management act, 1975 PA 148,
25 MCL 451.411 to 451.437, is repealed.