

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

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

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

11 (2) With respect to an entity, means:

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

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

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

19 (D) Subject to adjustment of the dollar amount
20 pursuant to section -32(f), a person that
21 receives or received more than \$25,000 from the
22 entity in either the current year or the



1 preceding year or a person that owns more than
2 ten per cent of, or an individual who is employed
3 by or is a director of, a person that receives or
4 received more than \$25,000 from the entity in
5 either the current year or the preceding year;

6 (E) An officer or director of, or an individual
7 performing similar functions with respect to, a
8 person described in subparagraph (A);

9 (F) The spouse of, or an individual occupying the
10 residence of, an individual described in
11 subparagraphs (A) through (E); or

12 (G) An individual who has the relationship specified
13 in paragraph (1)(D) to an individual or the
14 spouse of an individual described in
15 subparagraphs (A) through (E).

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

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



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

3 "Certified counselor" means an individual certified by a
4 training program or certifying organization, approved by the
5 administrator, that authenticates the competence of individuals
6 providing education and assistance to other individuals in
7 connection with debt-management services.

8 "Concessions" means assent to repayment of a debt on terms
9 more favorable to an individual than the terms of the contract
10 between the individual and a creditor.

11 "Day" means calendar day.

12 "Debt-management services" means services as an
13 intermediary between an individual and one or more creditors of
14 the individual for the purpose of obtaining concessions, but
15 does not include:

- 16 (1) Legal services provided in an attorney-client
17 relationship by an attorney licensed or otherwise
18 authorized to practice law in this State;
- 19 (2) Accounting services provided in an accountant-client
20 relationship by a certified public accountant licensed
21 to provide accounting services in this State; or



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

- 5 (A) Licensed by this State;
- 6 (B) Subject to a disciplinary mechanism;
- 7 (C) Subject to a code of professional responsibility;
- 8 and
- 9 (D) Subject to a continuing-education requirement.

10 "Entity" means a person other than an individual.

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

13 "Person" means an individual, corporation, business trust,
14 estate, trust, partnership, limited liability company,
15 association, joint venture, or any other legal or commercial
16 entity. The term does not include a public corporation,
17 government, or governmental subdivision, agency, or
18 instrumentality.

19 "Plan" means a program or strategy in which a provider
20 furnishes debt-management services to an individual and which
21 includes a schedule of payments to be made by or on behalf of
22 the individual and used to pay debts owed by the individual.



1 "Principal amount of the debt" means the amount of a debt
2 at the time of an agreement.

3 "Provider" means a person that provides, offers to provide,
4 or agrees to provide debt-management services directly or
5 through others.

6 "Record" means information that is inscribed on a tangible
7 medium or that is stored in an electronic or other medium and is
8 retrievable in perceivable form.

9 "Settlement fee" means a charge imposed on or paid by an
10 individual in connection with a creditor's assent to accept in
11 full satisfaction of a debt an amount less than the principal
12 amount of the debt.

13 "Sign" means, with present intent to authenticate or adopt
14 a record:

- 15 (1) To execute or adopt a tangible symbol; or
16 (2) To attach to or logically associate with the record an
17 electronic sound, symbol, or process.

18 "State" means a state of the United States, the District of
19 Columbia, Puerto Rico, the United States Virgin Islands, or any
20 territory or insular possession subject to the jurisdiction of
21 the United States.



1 "Trust account" means an account held by a provider that
2 is:

- 3 (1) Established in an insured bank;
- 4 (2) Separate from other accounts of the provider or its
5 designee;
- 6 (3) Designated as a trust account or other account
7 designated to indicate that the money in the account
8 is not the money of the provider or its designee; and
- 9 (4) Used to hold money of one or more individuals for
10 disbursement to creditors of the individuals.

11 § -3 **Exempt agreements and persons.** (a) This chapter
12 does not apply to an agreement with an individual who the
13 provider has no reason to know resides in this State at the time
14 of the agreement.

15 (b) This chapter does not apply to a provider to the
16 extent that the provider:

- 17 (1) Provides or agrees to provide debt-management,
18 educational, or counseling services to an individual
19 who the provider has no reason to know resides in this
20 State at the time the provider agrees to provide the
21 services; or



1 (2) Receives no compensation for debt-management services
2 from or on behalf of the individuals to whom it
3 provides the services or from their creditors.

4 (c) This chapter does not apply to the following persons
5 or their employees when the person or the employee is engaged in
6 the regular course of the person's business or profession:

7 (1) A judicial officer, a person acting under an order of
8 a court or an administrative agency, or an assignee
9 for the benefit of creditors;

10 (2) A bank;

11 (3) An affiliate, as defined in paragraph (2)(A) of the
12 definition of affiliate in section -2, of a bank if
13 the affiliate is regulated by a federal or state
14 banking regulatory authority; or

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

19 § -4 **Registration required.** (a) Except as otherwise
20 provided in subsection (b), a provider may not provide debt-
21 management services to an individual who it reasonably should



1 know resides in this State at the time it agrees to provide the
2 services, unless the provider is registered under this chapter.

3 (b) If a provider is registered under this chapter,
4 subsection (a) does not apply to an employee or agent of the
5 provider.

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

8 § -5 **Application for registration: form, fee, and**
9 **accompanying documents.** (a) An application for registration as
10 a provider must be in a form prescribed by the administrator.

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

- 14 (1) The fee established by the administrator by rules
15 adopted pursuant to chapter 91;
- 16 (2) The bond required by section -13;
- 17 (3) Identification of all trust accounts required by
18 section -22 and an irrevocable consent authorizing
19 the administrator to review and examine the trust
20 accounts;
- 21 (4) Evidence of insurance in the amount of \$250,000:



- 1 (A) Against the risks of dishonesty, fraud, theft,
2 and other misconduct on the part of the applicant
3 or a director, employee, or agent of the
4 applicant;
- 5 (B) Issued by an insurance company authorized to do
6 business in this State and rated at least A by a
7 nationally recognized rating organization;
- 8 (C) With no deductible;
- 9 (D) Payable to the applicant, the individuals who
10 have agreements with the applicant, and this
11 State, as their interests may appear; and
- 12 (E) Not subject to cancellation by the applicant
13 without the approval of the administrator;
- 14 (5) A record consenting to the jurisdiction of this State
15 containing:
 - 16 (A) The name, business address, and other contact
17 information of its registered agent in this state
18 for purposes of service of process; or
 - 19 (B) The appointment of the administrator as agent of
20 the provider for purposes of service of process;
21 and



1 (6) If the applicant is organized as a not-for-profit
2 entity or is exempt from taxation, evidence of not-
3 for-profit and tax-exempt status applicable to the
4 applicant under the Internal Revenue Code, 26 U.S.C.
5 section 501.

6 § -6 **Application for registration: required information.**

7 An application for registration must be signed under penalty of
8 unsworn falsification to authorities and include:

- 9 (1) The applicant's name, principal business address and
10 telephone number, and all other business addresses in
11 this State, electronic-mail addresses, and Internet
12 website addresses;
- 13 (2) All names under which the applicant conducts business;
- 14 (3) The address of each location in this State at which
15 the applicant will provide debt-management services or
16 a statement that the applicant will have no such
17 location;
- 18 (4) The name and home address of each officer and director
19 of the applicant and each person that owns at least
20 ten per cent of the applicant;
- 21 (5) Identification of every jurisdiction in which, during
22 the five years immediately preceding the application:



- 1 (A) The applicant or any of its officers or directors
2 has been licensed or registered to provide debt-
3 management services; or
4 (B) Individuals have resided when they received debt-
5 management services from the applicant;
6 (6) A statement describing, to the extent it is known or
7 should be known by the applicant, any material civil
8 or criminal judgment or litigation and any material
9 administrative or enforcement action by a governmental
10 agency in any jurisdiction against the applicant, any
11 of its officers, directors, owners, or agents, or any
12 person who is authorized to have access to the trust
13 account required by section -22;
14 (7) The applicant's financial statements, audited by an
15 accountant licensed to conduct audits, for each of the
16 two years immediately preceding the application or, if
17 it has not been in operation for the two years
18 preceding the application, for the period of its
19 existence;
20 (8) Evidence of accreditation by an independent
21 accrediting organization approved by the
22 administrator;



- 1 (9) Evidence that, within twelve months after initial
2 employment, each of the applicant's counselors becomes
3 certified as a certified counselor;
- 4 (10) A description of the three most commonly used
5 educational programs that the applicant provides or
6 intends to provide to individuals who reside in this
7 State and a copy of any materials used or to be used
8 in those programs;
- 9 (11) A description of the applicant's financial analysis
10 and initial budget plan, including any form or
11 electronic model, used to evaluate the financial
12 condition of individuals;
- 13 (12) A copy of each form of agreement that the applicant
14 will use with individuals who reside in this State;
- 15 (13) The schedule of fees and charges that the applicant
16 will use with individuals who reside in this State;
- 17 (14) At the applicant's expense, the results of a criminal-
18 records check, including fingerprints, conducted
19 within the immediately preceding twelve months,
20 covering every officer of the applicant and every
21 employee or agent of the applicant who is authorized



- 1 to have access to the trust account required by
2 section -22;
- 3 (15) The names and addresses of all employers of each
4 director during the ten years immediately preceding
5 the application;
- 6 (16) A description of any ownership interest of at least
7 ten per cent by a director, owner, or employee of the
8 applicant in:
- 9 (A) Any affiliate of the applicant; or
10 (B) Any entity that provides products or services to
11 the applicant or any individual relating to the
12 applicant's debt-management services;
- 13 (17) A statement of the amount of compensation of the
14 applicant's five most highly compensated employees for
15 each of the three years immediately preceding the
16 application or, if it has not been in operation for
17 the three years preceding the application, for the
18 period of its existence;
- 19 (18) The identity of each director who is an affiliate, as
20 defined in paragraph (1) or (2) (A), (B), (D), (E), (F)
21 or (G) of the definition of "affiliate" in section
22 -2, of the applicant; and



1 (19) Any other information that the administrator
2 reasonably requires to perform the administrator's
3 duties under section -9.

4 § -7 **Application for registration: obligation to update**
5 **information.** An applicant or registered provider shall notify
6 the administrator within ten days after a change in the
7 information specified in section -5(b)(4) or (6) or
8 section -6(1), (3), (6), (12), or (13).

9 § -8 **Application for registration: public information.**
10 Except for the information required by section -6(7), (14),
11 and (17) and the addresses required by section -6(4), the
12 administrator shall make the information in an application for
13 registration as a provider available to the public.

14 § -9 **Certificiate of registration: issuance or denial.**

15 (a) Except as otherwise provided in subsections (b) and (c),
16 the administrator shall issue a certificate of registration as a
17 provider to a person that complies with sections -5 and
18 -6.

19 (b) The administrator may deny registration if:

20 (1) The application contains information that is
21 materially erroneous or incomplete;



- 1 (2) An officer, director, or owner of the applicant has
2 been convicted of a crime, or suffered a civil
3 judgment, involving dishonesty or the violation of
4 state or federal securities laws;
- 5 (3) The applicant or any of its officers, directors, or
6 owners has defaulted in the payment of money collected
7 for others; or
- 8 (4) The administrator finds that the financial
9 responsibility, experience, character, or general
10 fitness of the applicant or its owners, directors,
11 employees, or agents does not warrant belief that the
12 business will be operated in compliance with this
13 chapter.
- 14 (c) The administrator shall deny registration if:
- 15 (1) The application is not accompanied by the fee
16 established by the administrator; or
- 17 (2) With respect to an applicant that is organized as a
18 not-for-profit entity or has obtained tax-exempt
19 status under the Internal Revenue Code, 26 U.S.C.
20 section 501, the applicant's board of directors is not
21 independent of the applicant's employees and agents.



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

5 (1) Are affiliates of the applicant, as defined in
6 paragraph (1) or (2)(A), (B), (D), (E), (F), or (G) of
7 the definition in section -2; or

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

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



1 (b) If the administrator denies an application for
2 registration as a provider or does not act on an application
3 within the time prescribed in subsection (a), the applicant may
4 appeal and request a hearing pursuant to chapter 91.

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

7 § -11 **Renewal of registration.** (a) A provider must
8 obtain a renewal of its registration annually.

9 (b) An application for renewal of registration as a
10 provider must be in a form prescribed by the administrator,
11 signed under penalty of unsworn falsification to authorities,
12 and:

- 13 (1) Be filed no fewer than thirty and no more than sixty
14 days before the registration expires;
- 15 (2) Be accompanied by the fee established by the
16 administrator and the bond required by section -13;
- 17 (3) Contain the matter required for initial registration
18 as a provider by section -6(8) and (9) and a
19 financial statement, audited by an accountant licensed
20 to conduct audits, for the applicant's fiscal year
21 immediately preceding the application;



- 1 (4) Disclose any changes in the information contained in
- 2 the applicant's application for registration or its
- 3 immediately previous application for renewal, as
- 4 applicable;
- 5 (5) Supply evidence of insurance in an amount equal to the
- 6 larger of \$250,000 or the highest daily balance in the
- 7 trust account required by section -22 during the
- 8 six-month period immediately preceding the
- 9 application:
- 10 (A) Against risks of dishonesty, fraud, theft, and
- 11 other misconduct on the part of the applicant or
- 12 a director, employee, or agent of the applicant;
- 13 (B) Issued by an insurance company authorized to do
- 14 business in this State and rated at least A by a
- 15 nationally recognized rating organization;
- 16 (C) With no deductible;
- 17 (D) Payable to the applicant, the individuals who
- 18 have agreements with the applicant, and this
- 19 State, as their interests may appear; and
- 20 (E) Not subject to cancellation by the applicant
- 21 without the approval of the administrator;



1 (6) Disclose the total amount of money received by the
2 applicant pursuant to plans during the preceding
3 twelve months from or on behalf of individuals who
4 reside in this State and the total amount of money
5 distributed to creditors of those individuals during
6 that period;

7 (7) Disclose, to the best of the applicant's knowledge,
8 the gross amount of money accumulated during the
9 preceding twelve months pursuant to plans by or on
10 behalf of individuals who reside in this State and
11 with whom the applicant has agreements; and

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

15 (c) Except for the information required by section
16 -6(7), (14), and (17) and the addresses required by section
17 -6(4), the administrator shall make the information in an
18 application for renewal of registration as a provider available
19 to the public.

20 (d) If a registered provider files a timely and complete
21 application for renewal of registration, the registration



1 remains effective until the administrator, in a record, notifies
2 the applicant of a denial and states the reasons for the denial.

3 (e) If the administrator denies an application for renewal
4 of registration as a provider, the applicant, within thirty days
5 after receiving notice of the denial, may appeal and request a
6 hearing pursuant to section 91-9. Subject to section -34,
7 while the appeal is pending the applicant shall continue to
8 provide 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 § -12 **Registration in another state.** If a provider
17 holds a license or certificate of registration in another state
18 authorizing it to provide debt-management services, the provider
19 may submit a copy of that license or certificate and the
20 application for it instead of an application in the form
21 prescribed by section -5(a), -6, or -11(b). The
22 administrator shall accept the application and the license or



1 certificate from the other state as an application for
2 registration as a provider or for renewal of registration as a
3 provider, as appropriate, in this State if:

- 4 (1) The application in the other state contains
5 information substantially similar to or more
6 comprehensive than that required in an application
7 submitted in this State;
- 8 (2) The applicant provides the information required by
9 section -6(1), (3), (10), (12), and (13); and
- 10 (3) The applicant, under penalty of unsworn falsification
11 to authorities, certifies that the information
12 contained in the application is current or, to the
13 extent it is not current, supplements the application
14 to make the information current.

15 § -13 **Bond required.** (a) Except as otherwise provided
16 in section -14, a provider that is required to be registered
17 under this chapter shall file a surety bond with the
18 administrator, which must:

- 19 (1) Be in effect during the period of registration and for
20 two years after the provider ceases providing debt-
21 management services to individuals in this State; and



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

5 (b) Subject to adjustment of the dollar amount pursuant to
6 section -32(f), a surety bond filed pursuant to subsection

7 (a) must:

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

15 (2) Be issued by a bonding, surety, or insurance company
16 authorized to do business in this State and rated at
17 least A by a nationally recognized rating
18 organization; and

19 (3) Have payment conditioned upon noncompliance of the
20 provider or its agent with this chapter.

21 (c) If the principal amount of a surety bond is reduced by
22 payment of a claim or a judgment, the provider shall immediately



1 notify the administrator and, within thirty days after notice by
2 the administrator, file a new or additional surety bond in an
3 amount set by the administrator. The amount of the new or
4 additional bond must be at least the amount of the bond
5 immediately before payment of the claim or judgment. If for any
6 reason a surety terminates a bond, the provider shall
7 immediately file a new surety bond in the amount of \$50,000 or
8 other amount determined pursuant to subsection (b).

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

12 (1) The administrator assesses expenses under section
13 -32(b)(1), issues a final order under section
14 -33(a)(2), or recovers a final judgment under
15 section -33(a)(4) or (5) or (d); or

16 (2) An individual recovers a final judgment pursuant to
17 section -35(a), (b), or (c)(1), (2), or (4).

18 (e) If claims against a surety bond exceed or are
19 reasonably expected to exceed the amount of the bond, the
20 administrator, on the initiative of the administrator or on
21 petition of the surety, shall, unless the proceeds are adequate



1 to pay all costs, judgments, and claims, distribute the proceeds
2 in the following order:

3 (1) To satisfaction of a final order or judgment under
4 section -33(a)(2), (4), or (5) or (d);

5 (2) To final judgments recovered by individuals pursuant
6 to section -35(a), (b), or (c)(1), (2) or (4), pro
7 rata;

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

10 (4) If a final order or judgment is issued under section
11 -33(a), to the expenses charged pursuant to section
12 -32(b)(1).

13 § -14 **Bond required: substitute.** (a) Instead of the
14 surety bond required by section -13, a provider may deliver
15 to the administrator, in the amount required by section
16 -13(b), and, except as otherwise provided in paragraph
17 (2)(A), payable or available to this State and to individuals
18 who reside in this State when they agree to receive debt-
19 management services from the provider, as their interests may
20 appear, if the provider or its agent does not comply with this
21 chapter:



1 (1) A certificate of insurance issued by an insurance
2 company authorized to do business in this state and
3 rated at least A by a nationally recognized rating
4 organization, with no deductible; or

5 (2) With the approval of the administrator:

6 (A) An irrevocable letter of credit, issued or
7 confirmed by a bank approved by the
8 administrator, payable upon presentation of a
9 certificate by the administrator stating that the
10 provider or its agent has not complied with this
11 chapter; or

12 (B) Bonds or other obligations of the United States
13 or guaranteed by the United States or bonds or
14 other obligations of this State or a political
15 subdivision of this State, to be deposited and
16 maintained with a bank approved by the
17 administrator for this purpose.

18 (b) If a provider furnishes a substitute pursuant to
19 subsection (a), the provisions of section -13(a), (c), (d),
20 and (e) apply to the substitute.

21 § -15 **Requirement of good faith.** A provider shall act
22 in good faith in all matters under this chapter.



1 *dollar amount of fee*

2 Monthly service fee _____

3 *dollar amount of fee or method of determining amount*

4 Settlement fee _____

5 *dollar amount ___ fee or method of determining amount*

6 Goods and services in addition to those provided in

7 connection with a plan: _____

8 (item) *dollar amount or method of*

9 *determining amount* _____

10 (item) *dollar amount or method*

11 *of determining amount.*

12 (b) A provider may not furnish debt-management services

13 unless the provider, through the services of a certified

14 counselor:

- 15 (1) Provides the individual with reasonable education
- 16 about the management of personal finance;
- 17 (2) Has prepared a financial analysis; and
- 18 (3) If the individual is to make regular, periodic
- 19 payments:
- 20 (A) Has prepared a plan for the individual;
- 21 (B) Has made a determination, based on the provider's
- 22 analysis of the information provided by the



1 individual and otherwise available to it, that
2 the plan is suitable for the individual and the
3 individual will be able to meet the payment
4 obligations under the plan; and

5 (C) Believes that each creditor of the individual
6 listed as a participating creditor in the plan
7 will accept payment of the individual's debts as
8 provided in the plan.

9 (c) Before an individual assents to an agreement to engage
10 in a plan, a provider shall:

11 (1) Provide the individual with a copy of the analysis and
12 plan required by subsection (b) in a record that
13 identifies the provider and that the individual may
14 keep whether or not the individual assents to the
15 agreement;

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

21 (3) With respect to all creditors identified by the
22 individual or otherwise known by the provider to be



1 creditors of the individual, provide the individual
2 with a list of:

3 (A) Creditors that the provider expects to
4 participate in the plan and grant concessions;

5 (B) Creditors that the provider expects to
6 participate in the plan but not grant
7 concessions;

8 (C) Creditors that the provider expects not to
9 participate in the plan; and

10 (D) All other creditors.

11 (d) Before an individual assents to an agreement to engage
12 in a plan, the provider shall inform the individual, in a record
13 that contains nothing else, that is given separately, and that
14 the individual may keep whether or not the individual assents to
15 the agreement:

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

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

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



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

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

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

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

17 IMPORTANT INFORMATION FOR YOU TO CONSIDER

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



1 (2) Using a debt-management plan may hurt your credit
2 rating or credit scores.

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

5 _____

6 *Name and business address of provider*

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

13 IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

18 (2) Using a debt-management plan may hurt your credit
19 rating or credit scores.

20 _____

21 *Name and business address of provider*



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

5 IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

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

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

17 _____
 18 *Name and business address of provider*

19 § -18 **Communication by electronic or other means.** (a)

20 In this section:



1 (1) "Federal act" means the Electronic Signatures in
2 Global and National Commerce Act, 15 U.S.C. section
3 7001 et seq.

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

7 (b) A provider may satisfy the requirements of section
8 -17, -19, or -27 by means of the Internet or other
9 electronic means if the provider obtains a consumer's consent in
10 the manner provided by section 101(c)(1) of the federal act.

11 (c) The disclosures and materials required by sections
12 -17, -19, and -27 shall be presented in a form that is
13 capable of being accurately reproduced for later reference.

14 (d) With respect to disclosure by means of an internet
15 website, the disclosure of the information required by section
16 -17(d) must appear on one or more screens that:

- 17 (1) Contain no other information; and
- 18 (2) The individual must see before proceeding to assent to
19 formation of a plan.

20 (e) At the time of providing the materials and agreement
21 required by sections -17(c) and (d), -19, and -27, a
22 provider shall inform the individual that upon electronic,



1 telephonic, or written request, it will send the individual a
2 written copy of the materials, and shall comply with a request
3 as provided in subsection (f).

4 (f) If a provider is requested, before the expiration of
5 ninety days after a plan is completed or terminated, to send a
6 written copy of the materials required by section -17(c) and
7 (d), -19, or -27, the provider shall send them at no
8 charge within three business days after the request, but the
9 provider need not comply with a request more than once per
10 calendar month or if it reasonably believes the request is made
11 for purposes of harassment. If a request is made more than
12 ninety days after a plan is completed or terminated, the
13 provider shall send within a reasonable time a written copy of
14 the materials requested.

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

- 19 (1) Its name and all names under which it does business;
20 (2) Its principal business address, telephone number, and
21 electronic-mail address, if any; and
22 (3) The names of its principal officers.



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

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

14 § -19 Form and contents of agreement. (a) An agreement
15 must:

- 16 (1) Be in a record;
- 17 (2) Be dated and signed by the provider and the
18 individual;
- 19 (3) Include the name of the individual and the address
20 where the individual resides;
- 21 (4) Include the name, business address, and telephone
22 number of the provider;



- 1 (5) Be delivered to the individual immediately upon
- 2 formation of the agreement; and
- 3 (6) Disclose:
- 4 (A) The services to be provided;
- 5 (B) The amount, or method of determining the amount,
- 6 of all fees, individually itemized, to be paid by
- 7 the individual;
- 8 (C) The schedule of payments to be made by or on
- 9 behalf of the individual, including the amount of
- 10 each payment, the date on which each payment is
- 11 due, and an estimate of the date of the final
- 12 payment;
- 13 (D) If a plan provides for regular periodic payments
- 14 to creditors:
- 15 (i) Each creditor of the individual to which
- 16 payment will be made, the amount owed to
- 17 each creditor, and any concessions the
- 18 provider reasonably believes each creditor
- 19 will offer; and
- 20 (ii) The schedule of expected payments to each
- 21 creditor, including the amount of each



1 payment and the date on which it will be
2 made;

3 (E) Each creditor that the provider believes will not
4 participate in the plan and to which the provider
5 will not direct payment;

6 (F) How the provider will comply with its obligations
7 under section -27(a);

8 (G) That the provider may terminate the agreement for
9 good cause, upon return of unexpended money of
10 the individual;

11 (H) That the individual may cancel the agreement as
12 provided in section -20;

13 (I) That the individual may contact the administrator
14 with any questions or complaints regarding the
15 provider; and

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

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



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

5 (d) An agreement must provide that:

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

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

14 (B) With respect to an agreement that contemplates
15 that creditors will settle debts for less than
16 the principal amount of debt, the provider will
17 refund sixty-five per cent of any portion of the
18 set-up fee that has not been credited against the
19 settlement fee; and

20 (C) All powers of attorney granted by the individual
21 to the provider are revoked and ineffective;



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

5 (3) The provider will notify the individual within five
6 days after learning of a creditor's decision to reject
7 or withdraw from a plan and that this notice will
8 include:

9 (A) The identity of the creditor; and

10 (B) The right of the individual to modify or
11 terminate the agreement.

12 (e) An agreement may confer on a provider a power of
13 attorney to settle the individual's debt for no more than fifty
14 per cent of the principal amount of the debt. An agreement may
15 not confer a power of attorney to settle a debt for more than
16 fifty per cent of that amount, but may confer a power of
17 attorney to negotiate with creditors of the individual on behalf
18 of the individual. An agreement must provide that the provider
19 will obtain the assent of the individual after a creditor has
20 assented to a settlement for more than fifty per cent of the
21 principal amount of the debt.

22 (f) An agreement may not:



- 1 (1) Provide for application of the law of any jurisdiction
2 other than the United States and this State;
- 3 (2) Except as permitted by section 2 of the Federal
4 Arbitration Act, 9 U.S.C. section 2, or chapter 658A,
5 contain a provision that modifies or limits otherwise
6 available forums or procedural rights, including the
7 right to trial by jury, that are generally available
8 to the individual under law other than this chapter;
- 9 (3) Contain a provision that restricts the individual's
10 remedies under this chapter or law other than this
11 chapter; or
- 12 (4) Contain a provision that:
- 13 (A) Limits or releases the liability of any person
14 for not performing the agreement or for violating
15 this chapter; or
- 16 (B) Indemnifies any person for liability arising
17 under the agreement or this chapter.
- 18 (g) All rights and obligations specified in subsection (d)
19 and section -20 exist even if not provided in the agreement.
20 A provision in an agreement which violates subsection (d), (e),
21 or (f) is void.



1 § -20 Cancellation of agreement; waiver. (a) An
 2 individual may cancel an agreement before midnight of the third
 3 business day after the individual assents to it, unless the
 4 agreement does not comply with subsection (b) or section -19
 5 or -28, in which event the individual may cancel the
 6 agreement within thirty days after the individual assents to it.
 7 To exercise the right to cancel, the individual must give notice
 8 in a record to the provider. Notice by mail is given when
 9 mailed.

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

12 **Notice of Right to Cancel**

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

17 To cancel this agreement during this period, send an
 18 e-mail to

19 _____ or mail or deliver a signed,

20 *E-mail address of provider*

21 dated copy of this notice, or any other written notice to

22 _____ at _____



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

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

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

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

21 (c) A provider shall:



- 1 (1) Maintain separate records of account for each
- 2 individual to whom the provider is furnishing debt-
- 3 management services;
- 4 (2) Disburse money paid by or on behalf of the individual
- 5 to creditors of the individual as disclosed in the
- 6 agreement, except that:
- 7 (A) The provider may delay payment to the extent that
- 8 a payment by the individual is not final; and
- 9 (B) If a plan provides for regular periodic payments
- 10 to creditors, the disbursement must comply with
- 11 the due dates established by each creditor; and
- 12 (3) Promptly correct any payments that are not made or
- 13 that are misdirected as a result of an error by the
- 14 provider or other person in control of the trust
- 15 account and reimburse the individual for any costs or
- 16 fees imposed by a creditor as a result of the failure
- 17 to pay or misdirection.
- 18 (d) A provider may not commingle money in a trust account
- 19 established for the benefit of individuals to whom the provider
- 20 is furnishing debt-management services with money of other
- 21 persons.



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

3 (f) If a provider has established a trust account pursuant
4 to subsection (a), the provider shall reconcile the trust
5 account at least once a month. The reconciliation must compare
6 the cash balance in the trust account with the sum of the
7 balances in each individual's account. If the provider or its
8 designee has more than one trust account, each trust account
9 must be individually reconciled.

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

17 (h) If an individual terminates an agreement or it becomes
18 reasonably apparent to a provider that a plan has failed, the
19 provider shall promptly refund to the individual all money paid
20 by or on behalf of the individual which has not been paid to
21 creditors, less fees that are payable to the provider under
22 section -23.



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

6 § -23 Fees and other charges. (a) A provider may not
7 impose directly or indirectly a fee or other charge on an
8 individual or receive money from or on behalf of an individual
9 for debt-management services except as permitted by this
10 section.

11 (b) A provider may not impose charges or receive payment
12 for debt-management services until the provider and the
13 individual have signed an agreement that complies with sections
14 -19 and -28.

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



1 (d) Subject to adjustment of dollar amounts pursuant to
2 section -32(f), the following rules apply:

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

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

10 (B) A monthly service fee, not to exceed \$10 times
11 the number of creditors remaining in a plan at
12 the time the fee is assessed, but not more than
13 \$50 in any month.

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

17 (A) Subject to section -19(d), a fee for
18 consultation, obtaining a credit report, setting
19 up an account, and the like, in an amount not
20 exceeding the lesser of \$400 and four per cent of
21 the debt in the plan at the inception of the
22 plan; and



1 (B) A monthly service fee, not to exceed \$10 times
2 the number of creditors remaining in a plan at
3 the time the fee is assessed, but not more than
4 \$50 in any month.

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

7 (4) Except as otherwise provided in section -28(d), if
8 an individual does not assent to an agreement, a
9 provider may receive for educational and counseling
10 services it provides to the individual a fee not
11 exceeding \$100 or, with the approval of the
12 administrator, a larger fee. The administrator may
13 approve a fee larger than \$100 if the nature and
14 extent of the educational and counseling services
15 warrant the larger fee.

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

20 (f) Except as otherwise provided in subsections (c) and
21 (d), if a plan contemplates that creditors will settle an
22 individual's debts for less than the principal amount of the



1 debt, compensation for services in connection with settling a
2 debt may not exceed, with respect to each debt, thirty per cent
3 of the excess of the principal amount of the debt over the
4 amount paid the creditor pursuant to the plan, less, to the
5 extent it has not been credited against an earlier settlement
6 fee:

7 (1) The fee charged pursuant to subsection (d) (2) (A); and

8 (2) The aggregate of fees charged pursuant to subsection
9 (d) (2) (B).

10 (g) Subject to adjustment of the dollar amount pursuant to
11 section -32(f), if a payment to a provider by an individual
12 under this chapter is dishonored, a provider may impose a
13 reasonable charge on the individual, not to exceed the lesser of
14 \$25 and the amount permitted by law other than this chapter.

15 § -24 **Voluntary contributions.** A provider may not
16 solicit a voluntary contribution from an individual or an
17 affiliate of the individual for any service provided to the
18 individual. A provider may accept voluntary contributions from
19 an individual but, until thirty days after completion or
20 termination of a plan, the aggregate amount of money received
21 from or on behalf of the individual may not exceed the total



1 amount the provider may charge the individual under section
2 -23.

3 § -25 **Voidable agreements.** (a) If a provider imposes a
4 fee or other charge or receives money or other payments not
5 authorized by section -23 or -24, the individual may void
6 the agreement and recover as provided in section -35.

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

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

13 § -26 **Termination of agreements.** (a) If an individual
14 who has entered into an agreement fails for sixty days to make
15 payments required by the agreement, a provider may terminate the
16 agreement.

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

20 (1) Any money of the individual held in trust for the
21 benefit of the individual; and



1 (2) Sixty-five per cent of any portion of the set-up fee
2 received pursuant to section -23(d)(2) which has
3 not been credited against settlement fees.

4 § -27 **Periodic reports and retention of records.** (a) A
5 provider shall provide the accounting required by subsection

6 (b):

7 (1) Upon cancellation or termination of an agreement; and

8 (2) Before cancellation or termination of any agreement:

9 (A) At least once each month; and

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

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

16 (1) The amount of money received from the individual since
17 the last report;

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



1 (3) The amounts deducted from the amount received from the
2 individual;

3 (4) The amount held in reserve; and

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

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

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

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

12 (D) The calculation of a settlement fee.

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

19 § -28 Prohibited acts and practices. (a) A provider
20 may not, directly or indirectly:

21 (1) Misappropriate or misapply money held in trust;



- 1 (2) Settle a debt on behalf of an individual for more than
2 fifty per cent of the principal amount of the debt
3 owed a creditor, unless the individual assents to the
4 settlement after the creditor has assented;
- 5 (3) Take a power of attorney that authorizes it to settle
6 a debt, unless the power of attorney expressly limits
7 the provider's authority to settle debts for not more
8 than fifty per cent of the principal amount of the
9 debt owed a creditor;
- 10 (4) Exercise or attempt to exercise a power of attorney
11 after an individual has terminated an agreement;
- 12 (5) Initiate a transfer from an individual's account at a
13 bank or with another person unless the transfer is:
14 (A) A return of money to the individual; or
15 (B) Before termination of an agreement, properly
16 authorized by the agreement and this chapter, and
17 for:
18 (i) Payment to one or more creditors pursuant to
19 a plan; or
20 (ii) Payment of a fee;



- 1 (6) Offer a gift or bonus, premium, reward, or other
2 compensation to an individual for executing an
3 agreement;
- 4 (7) Offer, pay, or give a gift or bonus, premium, reward,
5 or other compensation to a person for referring a
6 prospective customer, if the person making the
7 referral has a financial interest in the outcome of
8 debt-management services provided to the customer,
9 unless neither the provider nor the person making the
10 referral communicates to the prospective customer the
11 identity of the source of the referral;
- 12 (8) Receive a bonus, commission, or other benefit for
13 referring an individual to a person;
- 14 (9) Structure a plan in a manner that would result in a
15 negative amortization of any of an individual's debts,
16 unless a creditor that is owed a negatively amortizing
17 debt agrees to refund or waive the finance charge upon
18 payment of the principal amount of the debt;
- 19 (10) Compensate its employees on the basis of a formula
20 that incorporates the number of individuals the
21 employee induces to enter into agreements;



1 (11) Settle a debt or lead an individual to believe that a
2 payment to a creditor is in settlement of a debt to
3 the creditor unless, at the time of settlement, the
4 individual receives a certification by the creditor
5 that the payment is in full settlement of the debt;

6 (12) Make a representation that:

7 (A) The provider will furnish money to pay bills or
8 prevent attachments;

9 (B) Payment of a certain amount will permit
10 satisfaction of a certain amount or range of
11 indebtedness; or

12 (C) Participation in a plan will or may prevent
13 litigation, garnishment, attachment,
14 repossession, foreclosure, eviction, or loss of
15 employment;

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

18 (14) Represent that it is a not-for-profit entity unless it
19 is organized and properly operating as a not-for-
20 profit under the law of the state in which it was
21 formed or that it is a tax-exempt entity unless it has



1 received certification of tax-exempt status from the
2 Internal Revenue Service;

3 (15) Take a confession of judgment or power of attorney to
4 confess judgment against an individual; or

5 (16) Employ an unfair, unconscionable, or deceptive act or
6 practice, including the knowing omission of any
7 material information.

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

10 (1) Purchase a debt or obligation of the individual;

11 (2) Receive from or on behalf of the individual:

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

14 (B) A post-dated check or demand draft;

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

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

21 (5) Except as permitted by federal law, disclose the
22 identity or identifying information of the individual



1 or the identity of the individual's creditors, except
2 to:

3 (A) The administrator, upon proper demand;

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

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

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

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

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

21 (c) This chapter does not authorize any person to engage
22 in the practice of law.



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

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

14 (1) Owns more than ten per cent of the person; or

15 (2) Is an employee or affiliate of the person.

16 § -29 **Notice of litigation.** No later than thirty days
17 after a provider has been served with notice of a civil action
18 for violation of this chapter by or on behalf of an individual
19 who resides in this State at either the time of an agreement or
20 the time the notice is served, the provider shall notify the
21 administrator in a record that it has been sued.



1 § **-30 Advertising.** A provider that advertises debt-
2 management services shall disclose, in an easily comprehensible
3 manner, the information specified in section -17(d)(3) and
4 (4).

5 § **-31 Liability for the conduct of other persons.** If a
6 provider delegates any of its duties or obligations under an
7 agreement or this chapter to another person, including an
8 independent contractor, the provider is liable for conduct of
9 the person which, if done by the provider, would violate the
10 agreement or this chapter.

11 § **-32 Powers of administrator.** (a) The administrator
12 may act on its own initiative or in response to complaints and
13 may receive complaints, take action to obtain voluntary
14 compliance with this chapter, refer cases to the attorney
15 general, and seek or provide remedies as provided in this
16 chapter.

17 (b) The administrator may investigate and examine, in this
18 State or elsewhere, by subpoena or otherwise, the activities,
19 books, accounts, and records of a person that provides or offers
20 to provide debt-management services, or a person to which a
21 provider has delegated its obligations under an agreement or
22 this chapter, to determine compliance with this chapter.



1 Information that identifies individuals who have agreements with
2 the provider shall not be disclosed to the public. In
3 connection with the investigation, the administrator may:

4 (1) Charge the person the reasonable expenses necessarily
5 incurred to conduct the examination;

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

9 (3) Seek a court order authorizing seizure from a bank at
10 which the person maintains a trust account required by
11 section -22, any or all money, books, records,
12 accounts, and other property of the provider that is
13 in the control of the bank and relates to individuals
14 who reside in this State.

15 (c) The administrator may adopt rules to implement the
16 provisions of this chapter in accordance with chapter 91.

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



1 (e) The administrator, by rule, shall establish reasonable
2 fees to be paid by providers for the expense of administering
3 this chapter.

4 (f) The administrator, by rule, shall adopt dollar amounts
5 instead of those specified in sections -2, -5, -9,
6 -13, -23, -33, and -35 to reflect inflation, as
7 measured by the United States Bureau of Labor Statistics
8 Consumer Price Index for All Urban Consumers or, if that index
9 is not available, another index adopted by rule by the
10 administrator. The administrator shall adopt a base year and
11 adjust the dollar amounts, effective on July 1 of each year, if
12 the change in the index from the base year, as of December 31 of
13 the preceding year, is at least ten per cent. The dollar amount
14 must be rounded to the nearest \$100, except that the amounts in
15 section -23 must be rounded to the nearest dollar.

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

19 § -33 **Administrative remedies.** (a) The administrator
20 may enforce this chapter and rules adopted under this chapter by
21 taking one or more of the following actions:



- 1 (1) Ordering a provider or a director, employee, or other
2 agent of a provider to cease and desist from any
3 violations;
- 4 (2) Ordering a provider or a person that has caused a
5 violation to correct the violation, including making
6 restitution of money or property to a person aggrieved
7 by a violation;
- 8 (3) Subject to adjustment of the dollar amount pursuant to
9 section -32(f), imposing on a provider or a person
10 that has caused a violation a civil penalty not
11 exceeding \$10,000 for each violation;
- 12 (4) Prosecuting a civil action to:
 - 13 (A) Enforce an order; or
 - 14 (B) Obtain restitution or an injunction or other
15 equitable relief, or both; or
- 16 (5) Intervening in an action brought under section -35.
 - 17 (b) Subject to adjustment of the dollar amount pursuant to
18 section -32(f), if a person violates or knowingly authorizes,
19 directs, or aids in the violation of a final order issued under
20 subsection (a)(1) or (2), the administrator may impose a civil
21 penalty not exceeding \$20,000 for each violation.



1 (c) The administrator may maintain an action to enforce
2 this chapter in any county.

3 (d) The administrator may recover the reasonable costs of
4 enforcing this chapter under subsections (a) through (c),
5 including attorney's fees based on the hours reasonably expended
6 and the hourly rates for attorneys of comparable experience in
7 the community.

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

15 **§ -34 Suspension, revocation, or nonrenewal of**

16 **registration.** (a) In this section, "insolvent" means:

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

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

21 (3) Being insolvent within the meaning of the federal
22 bankruptcy law, 11 U.S.C. section 101 et seq.



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

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

7 (2) The provider has committed a material violation of
8 this chapter or a rule or order of the administrator
9 under this chapter;

10 (3) The provider is insolvent;

11 (4) The provider or an employee or affiliate of the
12 provider has refused to permit the administrator to
13 make an examination authorized by this chapter, failed
14 to comply with section -32(b)(2) within fifteen
15 days after request, or made a material
16 misrepresentation or omission in complying with
17 section -32(b)(2); or

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

21 (c) If a provider does not comply with section -22(f)
22 or if the administrator otherwise finds that the public health



1 or safety or general welfare requires emergency action, the
2 administrator may order a summary suspension of the provider's
3 registration, effective on the date specified in the order.

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

10 (e) If the administrator suspends or revokes a provider's
11 registration, the provider may appeal and request a hearing
12 pursuant to chapter 91.

13 § -35 **Private enforcement.** (a) If an individual voids
14 an agreement pursuant to section -25(b), the individual may
15 recover in a civil action all money paid or deposited by or on
16 behalf of the individual pursuant to the agreement, except
17 amounts paid to creditors, in addition to the recovery under
18 subsection (c)(3) and (4).

19 (b) If an individual voids an agreement pursuant to
20 section -25(a), the individual may recover in a civil action
21 three times the total amount of the fees, charges, money, and



1 payments made by the individual to the provider, in addition to
2 the recovery under subsection (c)(4).

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

7 (1) Compensatory damages for injury, including noneconomic
8 injury, caused by the violation;

9 (2) Except as otherwise provided in subsection (d) and
10 subject to adjustment of the dollar amount pursuant to
11 section -32(f), with respect to a violation of
12 section -17, -19, -20, -21, -22,
13 -23, -24, -27, or -28(a), (b), or (d), the
14 greater of the amount recoverable under paragraph (1)
15 or \$5,000;

16 (3) Punitive damages; and

17 (4) Reasonable attorney's fees and costs.

18 (d) In a class action, except for a violation of section
19 -28(a)(5), the minimum damages provided in subsection (c)(2)
20 do not apply.

21 (e) In addition to the remedy available under subsection
22 (c), if a provider violates an individual's rights under



1 section -20, the individual may recover in a civil action all
2 money paid or deposited by or on behalf of the individual
3 pursuant to the agreement, except for amounts paid to creditors.

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

15 (g) The administrator shall assist an individual in
16 enforcing a judgment against the surety bond or other security
17 provided under section -13 or -14.

18 § -36 **Violation of unfair or deceptive practices**
19 **statute.** If an act or practice of a provider violates both this
20 chapter and chapter 481A or 481B, an individual may not recover
21 under both for the same act or practice.



1 § -37 Statute of limitations. (a) An action or
2 proceeding brought pursuant to section -33(a), (b), or (c)
3 must be commenced within four years after the conduct that is
4 the basis of the administrator's complaint.

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

- 7 (1) The individual's last transmission of money to a
8 provider;
- 9 (2) The individual's last transmission of money to a
10 creditor at the direction of the provider;
- 11 (3) The provider's last disbursement to a creditor of the
12 individual;
- 13 (4) The provider's last accounting to the individual
14 pursuant to section -27(a);
- 15 (5) The date on which the individual discovered or
16 reasonably should have discovered the facts giving
17 rise to the individual's claim; or
- 18 (6) Termination of actions or proceedings by the
19 administrator with respect to a violation of the
20 chapter.

21 (c) The period prescribed in subsection (b)(5) is tolled
22 during any period during which the provider or, if different,



1 the defendant has materially and wilfully misrepresented
2 information required by this chapter to be disclosed to the
3 individual, if the information so misrepresented is material to
4 the establishment of the liability of the defendant under this
5 chapter.

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

10 § -39 **Relation to Electronic Signatures in Global and**
11 **National Commerce Act.** This chapter modifies, limits, and
12 supersedes the federal Electronic Signatures in Global and
13 National Commerce Act (15 U.S.C. section 7001 et seq.) but does
14 not modify, limit, or supersede section 101(c) of that act (15
15 U.S.C. section 7001(c)) or authorize electronic delivery of any
16 of the notices described in section 103(b) of that act (15
17 U.S.C. section 7003(b)).

18 § -40 **Transitional provisions; application to existing**
19 **transactions.** Transactions entered into before this chapter
20 takes effect and the rights, duties, and interests resulting
21 from them may be completed, terminated, or enforced as required
22 or permitted by a law amended, repealed, or modified by this



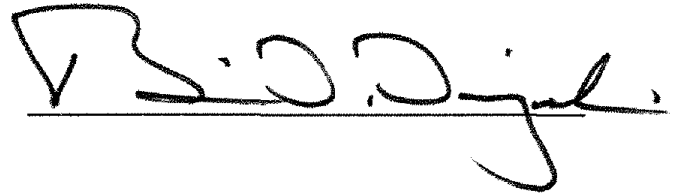
1 chapter as though the amendment, repeal, or modification had not
2 occurred."

3 SECTION 2. Chapter 446, Hawaii Revised Statutes, is
4 repealed.

5 SECTION 3. This Act shall take effect on July 1, 2008.

6

INTRODUCED BY:





Report Title:

Debt-Management Services

Description:

Enacts Uniform Debt-Management Services Act that requires registration of providers of debt-management services.

