

460 irrevocable consent authorizing the administrator to review and examine the trust accounts;

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

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

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

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

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

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

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

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

475 (ii) the appointment of the administrator as agent of the provider for purposes of
476 service of process; and

477 (f) if the applicant is organized as a not-for-profit entity or [~~is exempt from taxation]~~
478 has obtained tax exempt status under the Internal Revenue Code, 26 U.S.C. §→ [Section]

478a Sec. ←§ 501,

479 evidence of not-for-profit [~~and~~] or tax-exempt status [applicable to the applicant under the
480 Internal Revenue Code, 26 U.S.C. Section 501], or both.

481 (3) (a) The administrator may waive or reduce the insurance requirement in Subsection
482 [~~13-42-105~~](2)(d) if the provider does not:

483 (i) maintain control of a trust account or receive money paid by an individual pursuant
484 to a plan for distribution to creditors;

485 (ii) make payments to creditors on behalf of individuals;

486 (iii) collect fees by means of automatic payment from individuals; and

487 (iv) execute any powers of attorney that may be utilized by the provider to collect fees
488 from or expend funds on behalf of an individual.

489 (b) A waiver or reduction in insurance requirements allowed by the administrator under
490 Subsection (3)(a) shall balance the reduction in risk posed by a provider meeting the stated

- 894 (i) the services to be provided;
- 895 (ii) the amount, or method of determining the amount, of all fees, individually
896 itemized, to be paid by the individual;
- 897 (iii) the schedule of payments to be made by or on behalf of the individual, including
898 the amount of each payment, the date on which each payment is due, and an estimate of the
899 date of the final payment;
- 900 (iv) if a plan provides for regular periodic payments to creditors:
- 901 (A) each creditor of the individual to which payment will be made, the amount owed to
902 each creditor, and any concessions the provider reasonably believes each creditor will offer;
903 ~~[and]~~
- 904 (B) the schedule of expected payments to each creditor, including the amount of each
905 payment and the date on which it will be made;
- 906 ~~[(v)]~~ (C) each creditor that the provider believes will not participate in the plan and to
907 which the provider will not direct payment; and
- 908 (D) ~~§→ that ←§~~ the provider may terminate the agreement for good cause, upon return of
909 unexpended money of the individual;
- 910 (v) if a plan contemplates the settlement of the individual's debt for less than the
911 principal amount of the debt, an estimate of:
- 912 (A) the duration of the plan based on all enrolled debts;
- 913 (B) the length of time before the individual may reasonably expect a settlement offer;
914 and
- 915 (C) the amount of savings needed to accrue before the individual may reasonably
916 expect a settlement offer, expressed as either a dollar amount or a percentage, for each enrolled
917 debt;
- 918 (vi) how the provider will comply with its obligations under Subsection 13-42-127(1);
- 919 ~~[(vii) that the provider may terminate the agreement for good cause, upon return of~~
920 ~~unexpended money of the individual;]~~
- 921 ~~[(viii)]~~ (vii) that the individual may [cancel the agreement as provided in Section
922 13-42-120] terminate the agreement at any time by giving written or electronic notice, and that,
923 if notice of termination is given, the individual will receive all unexpended money that the
924 provider or its designee has received from or on behalf of the individual for payment of a credit

956 individual's debt for no more than 50% of the principal amount of the debt. An agreement may
 957 not confer a power of attorney to settle a debt for more than 50% of that amount, but may
 958 confer a power of attorney to negotiate with creditors of the individual on behalf of the
 959 individual. An agreement shall provide that the provider will obtain the assent of the
 960 individual after a creditor has assented to a settlement for more than 50% of the principal
 961 amount of the debt.]

962 [(6)] (5) An agreement may not:

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

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

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

971 (d) contain a provision that:

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

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

975 [(7)] (6) [All rights and obligations specified in Subsection (4) and Section 13-42-120
 976 exist even if not provided in the agreement.] A provision in an agreement which violates
 977 Subsection [(4);] ~~§~~→ (4) or ←~~§~~ (5)[;] ~~§~~→ [or-(6)] ←~~§~~ is void.

978 Section 17. Section 13-42-120 is repealed and reenacted to read:

979 **13-42-120. Termination of agreement.**

980 (1) An individual who is a party to an agreement may terminate the agreement at any
 981 time, without penalty or obligation, by giving the provider notice in a record.

982 (2) A provider may terminate an agreement if an individual who is a party to the
 983 agreement fails for 60 days to make a payment or deposit required by the agreement or if other
 984 good cause exists.

985 (3) If an agreement is terminated:

986 (a) the provider, no later than seven business days after the termination, shall pay the

1080 (ii) a monthly service fee, not to exceed \$10 times the number of accounts remaining in
1081 a plan at the time the fee is assessed, but not more than \$50 in any month.

1082 ~~[(b)]~~ (c) If an individual assents to an agreement that contemplates that creditors will
1083 settle debts for less than the principal amount of the debt, a provider may ~~[charge:]~~ not request
1084 or receive payment of any fee or consideration for the provider's service unless:

1085 ~~[(i) subject to Subsection 13-42-119(4), a fee for consultation, obtaining a credit report,~~
1086 ~~setting up an account, and the like, in an amount not exceeding the lesser of \$400 and 4% of~~
1087 ~~the debt in the plan at the inception of the plan; and]~~

1088 ~~[(ii) a monthly service fee, not to exceed \$10 times the number of accounts remaining~~
1089 ~~in a plan at the time the fee is assessed, but not more than \$50 in any month.]~~

1090 ~~[(e) A provider may not impose or receive fees under both Subsections (4)(a) and (b).]~~

1091 (i) the provider has renegotiated, settled, reduced, or otherwise altered the terms of at
1092 least one debt under an agreement executed by the individual;

1093 (ii) the individual has made at least one payment pursuant to that agreement between
1094 the individual and the creditor or debt collector; and

1095 (iii) the fee or consideration for any individual debt that is renegotiated, settled,
1096 reduced, or otherwise altered:

1097 (A) bears the same proportion to the total fee for renegotiating, settling, reducing, or
1098 altering the terms of the entire debt as the individual debt amount at the time the debt was
1099 enrolled in the service bears to the entire debt amount at the time the debt was enrolled in the
1100 service; or

1101 (B) is a percentage of the amount saved as a result of the renegotiation, settlement,
1102 reduction, or alteration, as calculated under Subsection (4)(e), which percentage may not
1103 change from one individual debt to another.

1104 (d) Except as otherwise provided in Subsection 13-42-128(4), if an individual does not
1105 assent to an agreement, a provider may receive for educational and counseling services it
1106 provides to the individual a fee not exceeding \$100 or, with the approval of the administrator, a
1107 larger fee. The administrator may approve a fee larger than \$100 if the nature and extent of the
1108 educational and counseling services warrant the larger fee.

1109 (e) For purposes of Subsection (4) ~~§~~→ [(e)] (c) ←~~§~~ (iii)(B), the amount saved is calculated
1109a as the
1110 difference between the amount owed at the time the debt is enrolled in the service and the

1204 ~~(e)~~ (f) initiate a transfer from an individual's account at a bank or with another person
 1205 unless the transfer is:

1206 (i) a return of money to the individual; or

1207 (ii) before termination of an agreement, properly authorized by the agreement and this
 1208 chapter, and for:

1209 (A) payment to one or more creditors pursuant to an agreement; or

1210 (B) payment of a fee;

1211 ~~(f)~~ (g) offer a gift or bonus, premium, reward, or other compensation to an individual
 1212 for executing an agreement;

1213 ~~(g)~~ (h) offer, pay, or give a gift or bonus, premium, reward, or other compensation to
 1214 a lead generator or other person for referring a prospective customer, if the person making the
 1215 referral:

1216 (i) has a financial interest in the outcome of debt-management services provided to the
 1217 customer, unless neither the provider nor the person making the referral communicates to the
 1218 prospective customer the identity of the source of the referral; or

1219 (ii) compensates its employees on the basis of a formula that incorporates the number
 1220 of ~~the~~ individuals the employee refers to the provider;

1221 ~~(h)~~ (i) receive a bonus, commission, or other benefit for referring an individual to a
 1222 person;

1223 ~~(i)~~ (j) structure a plan in a manner that would result in a negative amortization of any
 1224 of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to
 1225 refund or waive the finance charge ~~upon~~ on payment of the principal amount of the debt;

1226 ~~(j)~~ (k) compensate its employees on the basis of a formula that incorporates the
 1227 number of individuals the employee induces to enter into agreements;

1228 ~~(k)~~ (l) settle a debt or lead an individual to believe that a payment to a creditor is in
 1229 settlement of a debt to the creditor unless, at the time of settlement, the individual~~[-(i)]~~
 1230 receives a certification by the creditor that the payment:

1231 (i) is in full settlement of the debt; or

1232 (ii) is part of a ~~[payment]~~ settlement plan, the terms of which are included in the
 1233 certification, ~~[which upon completion will result in full settlement of]~~ that, if completed
 1234 according to its terms, will satisfy the debt;

1390 administrative fine not exceeding \$10,000 for each violation;

1391 (d) prosecuting a civil action to:

1392 (i) enforce an order; or

1393 (ii) obtain restitution or [~~an injunction or other~~] equitable relief, or both; or

1394 (e) intervening in an action brought under Section 13-42-135.

1395 (2) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), if

1396 a person violates or knowingly authorizes, directs, or aids in the violation of a final order

1397 issued under Subsection (1)(a) or (b), the administrator may impose an administrative fine not

1398 exceeding \$20,000 for each violation.

1399 (3) The administrator may maintain an action to enforce this chapter in any county.

1400 (4) The administrator may recover the reasonable costs of enforcing the chapter under

1401 Subsections (1) through (3), including [~~attorney's~~] attorney fees based on the hours reasonably

1402 expended and the hourly rates for attorneys of comparable experience in the community.

1403 (5) In determining the amount of an administrative fine to impose under Subsection (1)

1404 or (2), the administrator shall consider the seriousness of the violation, the good faith of the

1405 violator, any previous violations by the violator, the deleterious effect of the violation on the

1406 public, the net worth of the violator, and any other factor the administrator considers relevant to

1407 the determination of the administrative fine.

1408 (6) All money received through administrative fines imposed under this chapter shall

1409 be deposited in the Consumer Protection Education and Training Fund created by Section

1410 13-2-8.

1411 Section 28. Section **13-42-134** is amended to read:

1412 **13-42-134. Suspension, revocation, or nonrenewal of registration.**

1413 (1) In this section, "insolvent" means:

1414 (a) having generally ceased to pay debts in the ordinary course of business other than as
1415 a result of good-faith dispute;

1416 (b) being unable to pay debts as they become due; or

1417 (c) being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C.

1418 **§→ [Section] Sec. ←§** 101 et seq.

1419 (2) The administrator may suspend, revoke, or deny renewal of a provider's registration

1420 if:

1514 **Act.**

1515 This chapter modifies, limits, and supersedes the [~~federal~~] Electronic Signatures in
1516 Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify,
1517 limit, or supersede Section 101(c) of that act, 15 U.S.C. ~~§~~→ [Section] Sec. ←~~§~~ 7001(c), or
1517a authorize
1518 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
1519 Section 7003(b).