

1 **UNIFORM DEBT-MANAGEMENT SERVICES**

2 **ACT**

3 2006 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Lyle W. Hillyard**

6 House Sponsor: Scott L Wyatt

8 **LONG TITLE**

9 **General Description:**

10 This bill establishes the Uniform Debt-Management Services Act within the
11 Department of Commerce to be administered by the Division of Consumer Protection.

12 **Highlighted Provisions:**

13 This bill:

- 14 ▶ amends definitions applicable to the Credit Services Organizations Act;
- 15 ▶ provides definitions related to the Uniform Debt-Management Act;
- 16 ▶ provides for an exemption for certain agreements and persons;
- 17 ▶ establishes application for registration requirements and obligations;
- 18 ▶ requires the administrator to issue a certificate of registration or deny registration;
- 19 ▶ establishes criteria for the certification or denial of registration;
- 20 ▶ addresses renewal procedures and authorization in another state;
- 21 ▶ provides for rulemaking with regard to authorization in another state;
- 22 ▶ requires a provider to file a surety bond or substitute, act in good faith, and maintain
23 a toll-free customer-service communications system;
- 24 ▶ establishes prerequisites for providing debt-management services;
- 25 ▶ allows for communication by electronic or other means and establishes consumer
26 consent requirements;
- 27 ▶ sets out the form and content requirements for debt-management agreements;
- 28 ▶ provides for cancellation of an agreement within 30 days when notice is given to
29 provider;

- 30 ▶ requires disclosures and documents to be in English, unless provider primarily
31 communicates with the individual in another language;
- 32 ▶ requires providers to maintain trust accounts and determines how funds in trust
33 accounts shall be disbursed and reconciled;
- 34 ▶ allows for the imposition of fees and other charges;
- 35 ▶ prohibits the provider from soliciting voluntary contributions and provides for the
36 acceptance of other certain voluntary contributions;
- 37 ▶ permits an agreement to be voidable in certain instances;
- 38 ▶ allows for termination of agreements;
- 39 ▶ requires periodic reports and retention of records;
- 40 ▶ sets out prohibited acts and practices;
- 41 ▶ requires notification to the administrator when a provider is served with a notice of
42 civil action;
- 43 ▶ provides that the provider is liable for any delegated duty or obligation under an
44 agreement;
- 45 ▶ addresses advertising;
- 46 ▶ establishes the power and duties of the administrator and administrative remedies;
- 47 ▶ provides that monies from administrative fines be deposited into the Consumer
48 Protection Education and Training Fund;
- 49 ▶ sets out conditions under which the administrator may suspend, revoke, or deny
50 renewal of a provider's registration, and seek a court order authorizing seizure of
51 any or all money in a trust account;
- 52 ▶ provides for private enforcement to individuals against providers who violate this
53 chapter;
- 54 ▶ provides a statute of limitations;
- 55 ▶ addresses violation of Consumer Sales Practices Act;
- 56 ▶ requires uniformity of application and construction;
- 57 ▶ modifies, limits, and supersedes certain provisions of the federal Electronic

58 Signatures in Global and National Commerce Act;

59 ▶ provides a transitional provision; and

60 ▶ provides a severability clause.

61 **Monies Appropriated in this Bill:**

62 None

63 **Other Special Clauses:**

64 This bill takes effect on July 1, 2007.

65 **Utah Code Sections Affected:**

66 AMENDS:

67 **13-2-1**, as last amended by Chapters 70, 256 and 306, Laws of Utah 2005

68 **13-21-2**, as last amended by Chapter 55, Laws of Utah 2004

69 ENACTS:

70 **13-42-101**, Utah Code Annotated 1953

71 **13-42-102**, Utah Code Annotated 1953

72 **13-42-103**, Utah Code Annotated 1953

73 **13-42-104**, Utah Code Annotated 1953

74 **13-42-105**, Utah Code Annotated 1953

75 **13-42-106**, Utah Code Annotated 1953

76 **13-42-107**, Utah Code Annotated 1953

77 **13-42-108**, Utah Code Annotated 1953

78 **13-42-109**, Utah Code Annotated 1953

79 **13-42-110**, Utah Code Annotated 1953

80 **13-42-111**, Utah Code Annotated 1953

81 **13-42-112**, Utah Code Annotated 1953

82 **13-42-113**, Utah Code Annotated 1953

83 **13-42-114**, Utah Code Annotated 1953

84 **13-42-115**, Utah Code Annotated 1953

85 **13-42-116**, Utah Code Annotated 1953

- 86 **13-42-117**, Utah Code Annotated 1953
- 87 **13-42-118**, Utah Code Annotated 1953
- 88 **13-42-119**, Utah Code Annotated 1953
- 89 **13-42-120**, Utah Code Annotated 1953
- 90 **13-42-121**, Utah Code Annotated 1953
- 91 **13-42-122**, Utah Code Annotated 1953
- 92 **13-42-123**, Utah Code Annotated 1953
- 93 **13-42-124**, Utah Code Annotated 1953
- 94 **13-42-125**, Utah Code Annotated 1953
- 95 **13-42-126**, Utah Code Annotated 1953
- 96 **13-42-127**, Utah Code Annotated 1953
- 97 **13-42-128**, Utah Code Annotated 1953
- 98 **13-42-129**, Utah Code Annotated 1953
- 99 **13-42-130**, Utah Code Annotated 1953
- 100 **13-42-131**, Utah Code Annotated 1953
- 101 **13-42-132**, Utah Code Annotated 1953
- 102 **13-42-133**, Utah Code Annotated 1953
- 103 **13-42-134**, Utah Code Annotated 1953
- 104 **13-42-135**, Utah Code Annotated 1953
- 105 **13-42-136**, Utah Code Annotated 1953
- 106 **13-42-137**, Utah Code Annotated 1953
- 107 **13-42-138**, Utah Code Annotated 1953
- 108 **13-42-139**, Utah Code Annotated 1953
- 109 **13-42-140**, Utah Code Annotated 1953
- 110 **13-42-141**, Utah Code Annotated 1953

111

112 *Be it enacted by the Legislature of the state of Utah:*

113 Section 1. Section **13-2-1** is amended to read:

114 **13-2-1. Consumer protection division established -- Functions.**

115 (1) There is established within the Department of Commerce the Division of Consumer
116 Protection.

117 (2) The division shall administer and enforce the following:

118 (a) Chapter 5, Unfair Practices Act;

119 (b) Chapter 10a, Music Licensing Practices Act;

120 (c) Chapter 11, Utah Consumer Sales Practices Act;

121 (d) Chapter 15, Business Opportunity Disclosure Act;

122 (e) Chapter 20, New Motor Vehicles Warranties Act;

123 (f) Chapter 21, Credit Services Organizations Act;

124 (g) Chapter 22, Charitable Solicitations Act;

125 (h) Chapter 23, Health Spa Services Protection Act;

126 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;

127 (j) Chapter 26, Telephone Fraud Prevention Act;

128 (k) Chapter 28, Prize Notices Regulation Act;

129 (l) Chapter 32a, Pawnshop Transaction Information Act;

130 (m) Chapter 34, Utah Postsecondary Proprietary School Act; ~~and~~

131 (n) Chapter 41, Price Controls During Emergencies Act[-]; and

132 (o) Chapter 42, Uniform Debt-Management Services Act.

133 Section 2. Section **13-21-2** is amended to read:

134 **13-21-2. Definitions -- Exemptions.**

135 As used in this chapter:

136 (1) "Buyer" means an individual who is solicited to purchase or who purchases the
137 services of a credit services organization.

138 (2) "Credit reporting agency" means a person that, for a monetary fee, dues, or on a
139 cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling
140 or evaluating consumer credit information or other information on consumers for the purpose
141 of furnishing consumer reports to third persons.

142 (3) (a) "Credit services organization" means a person who, with respect to the
143 extension of credit by others, sells, provides, or performs, or represents that the person can or
144 will sell, provide, or perform, in return for the payment of money or other valuable
145 consideration any of the following services:

- 146 (i) improving a buyer's credit record, history, or rating; or
- 147 [~~(ii) obtaining an extension of credit for a buyer;~~]
- 148 [~~(iii)~~] (ii) providing advice, assistance, instruction, or instructional materials to a buyer
149 with regard to [~~either~~] Subsection (3)(a)(i) [~~or (ii);~~];
- 150 [~~(iv) debt reduction or debt management plans;~~]
- 151 [~~(v) represent itself or its employee as a debt professional or credit counselor; or~~]
- 152 [~~(vi) negotiate with a buyer's creditor.~~]

153 (b) "Credit services organization" does not include:

- 154 (i) a person authorized to make loans or extensions of credit under the laws of this state
155 or the United States who is subject to regulation and supervision by this state or the United
156 States and who derives at least 35% of the person's income from making loans and extensions
157 of credit;
- 158 (ii) a depository institution:
 - 159 (A) as defined in Section 7-1-103; or
 - 160 (B) that is regulated or supervised by the Federal Deposit Insurance Corporation and
161 the National Credit Union Association;
- 162 (iii) a person licensed as a real estate broker by this state if the person is acting within
163 the course and scope of that license;
- 164 (iv) a person licensed to practice law in this state if the person renders services within
165 the course and scope of the person's practice as an attorney;
- 166 (v) a broker-dealer registered with the Securities and Exchange Commission or the
167 Commodity Futures Trading Commission if the broker-dealer is acting within the course and
168 scope of that regulation; or
- 169 (vi) a credit reporting agency.

170 (4) "Extension of credit" means the right to defer payment of debt or to incur debt and
171 defer its payment, offered or granted primarily for personal, family, or household purposes.

172 Section 3. Section **13-42-101** is enacted to read:

173 **CHAPTER 42. UNIFORM DEBT-MANAGEMENT SERVICES ACT**

174 **13-42-101. Title.**

175 This chapter shall be known as the "Uniform Debt-Management Services Act."

176 Section 4. Section **13-42-102** is enacted to read:

177 **13-42-102. Definitions.**

178 In this chapter:

179 (1) "Administrator" means the Division of Consumer Protection.

180 (2) "Affiliate":

181 (a) with respect to an individual, means:

182 (i) the spouse of the individual;

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

184 (iii) an individual or the spouse of an individual who is a lineal ancestor or lineal

185 descendant of the individual or the individual's spouse;

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

188 of them; or

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

190 (b) with respect to an entity, means:

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

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

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

197 (iv) subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), a

198 person that receives or received more than \$25,000 from the entity in either the current year or
199 the preceding year or a person that owns more than 10% of, or an individual who is employed
200 by or is a director of, a person that receives or received more than \$25,000 from the entity in
201 either the current year or the preceding year;

202 (v) an officer or director of, or an individual performing similar functions with respect
203 to, a person described in Subsection (2)(b)(i);

204 (vi) the spouse of, or an individual occupying the residence of, an individual described
205 in Subsections (2)(b)(i) through (v); or

206 (vii) an individual who has the relationship specified in Subsection (2)(a)(iv) to an
207 individual or the spouse of an individual described in Subsections (2)(b)(i) through (v).

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

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

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

216 (6) "Certified counselor" means an individual certified by a training program or
217 certifying organization, approved by the administrator, that authenticates the competence of
218 individuals providing education and assistance to other individuals in connection with
219 debt-management services.

220 (7) "Concessions" means assent to repayment of a debt on terms more favorable to an
221 individual than the terms of the contract between the individual and a creditor.

222 (8) "Day" means calendar day.

223 (9) "Debt-management services" means services as an intermediary between an
224 individual and one or more creditors of the individual for the purpose of obtaining concessions,
225 but does not include:

226 (a) legal services provided in an attorney-client relationship by an attorney licensed or
227 otherwise authorized to practice law in this state;

228 (b) accounting services provided in an accountant-client relationship by a certified
229 public accountant licensed to provide accounting services in this state; or

230 (c) financial-planning services provided in a financial planner-client relationship by a
231 member of a financial-planning profession whose members the administrator, by rule,
232 determines are:

233 (i) licensed by this state;

234 (ii) subject to a disciplinary mechanism;

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

236 (iv) subject to a continuing education requirement.

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

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

240 (12) "Person" means an individual, corporation, business trust, estate, trust,
241 partnership, limited liability company, association, joint venture, or any other legal or
242 commercial entity. The term does not include a public corporation, government, or
243 governmental subdivision, agency, or instrumentality.

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

247 (14) "Principal amount of the debt" means the amount of a debt at the time of an
248 agreement.

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

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

253 (17) "Settlement fee" means a charge imposed on or paid by an individual in

254 connection with a creditor's assent to accept in full satisfaction of a debt an amount less than
255 the principal amount of the debt.

256 (18) "Sign" means, with present intent to authenticate or adopt a record:

257 (a) to execute or adopt a tangible symbol; or

258 (b) to attach to or logically associate with the record an electronic sound, symbol, or
259 process.

260 (19) "State" means a state of the United States, the District of Columbia, Puerto Rico,
261 the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction
262 of the United States.

263 (20) "Trust account" means an account held by a provider that is:

264 (a) established in an insured bank;

265 (b) separate from other accounts of the provider or its designee;

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

268 (d) used to hold money of one or more individuals for disbursement to creditors of the
269 individuals.

270 Section 5. Section **13-42-103** is enacted to read:

271 **13-42-103. Exempt agreements and persons.**

272 (1) This chapter does not apply to an agreement with an individual who the provider
273 has no reason to know resides in this state at the time of the agreement.

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

275 (a) provides or agrees to provide debt-management, educational, or counseling services
276 to an individual who the provider has no reason to know resides in this state at the time the
277 provider agrees to provide the services; or

278 (b) receives no compensation for debt-management services from or on behalf of the
279 individuals to whom it provides the services or from their creditors.

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

282 (a) a judicial officer, a person acting under an order of a court or an administrative
283 agency, or an assignee for the benefit of creditors;

284 (b) a bank;

285 (c) an affiliate, as defined in Subsection 13-42-102(2)(b)(i), of a bank if the affiliate is
286 regulated by a federal or state banking regulatory authority; or

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

289 Section 6. Section **13-42-104** is enacted to read:

290 **13-42-104. Registration required.**

291 (1) Except as otherwise provided in Subsection (2), a provider may not provide
292 debt-management services to an individual who it reasonably should know resides in this state
293 at the time it agrees to provide the services, unless the provider is registered under this chapter.

294 (2) If a provider is registered under this chapter, Subsection (1) does not apply to an
295 employee or agent of the provider.

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

298 Section 7. Section **13-42-105** is enacted to read:

299 **13-42-105. Application for registration -- Form, fee, and accompanying**
300 **documents.**

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

303 (2) Subject to adjustment of dollar amounts pursuant to Subsection 13-42-132(6), an
304 application for registration as a provider must be accompanied by:

305 (a) the fee established by the administrator in accordance with Section 63-38-3.2;

306 (b) the bond required by Section 13-42-113;

307 (c) identification of all trust accounts required by Section 13-42-122 and an irrevocable
308 consent authorizing the administrator to review and examine the trust accounts;

309 (d) evidence of insurance in the amount of \$250,000;

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

312 (ii) issued by an insurance company authorized to do business in this state and rated at
313 least A by a nationally recognized rating organization;

314 (iii) with no deductible;

315 (iv) payable to the applicant, the individuals who have agreements with the applicant,
316 and this state, as their interests may appear; and

317 (v) not subject to cancellation by the applicant without the approval of the
318 administrator;

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

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

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

324 (f) if the applicant is organized as a not-for-profit entity or is exempt from taxation,
325 evidence of not-for-profit and tax-exempt status applicable to the applicant under the Internal
326 Revenue Code, 26 U.S.C. Section 501.

327 Section 8. Section **13-42-106** is enacted to read:

328 **13-42-106. Application for registration -- Required information.**

329 An application for registration must be signed under penalty of perjury and include:

330 (1) the applicant's name, principal business address and telephone number, and all
331 other business addresses in this state, electronic-mail addresses, and Internet website addresses;

332 (2) all names under which the applicant conducts business;

333 (3) the address of each location in this state at which the applicant will provide
334 debt-management services or a statement that the applicant will have no such location;

335 (4) the name and home address of each officer and director of the applicant and each
336 person that owns at least 10% of the applicant;

337 (5) identification of every jurisdiction in which, during the five years immediately

338 preceding the application:

339 (a) the applicant or any of its officers or directors has been licensed or registered to
340 provide debt-management services; or

341 (b) individuals have resided when they received debt-management services from the
342 applicant;

343 (6) a statement describing, to the extent it is known or should be known by the
344 applicant, any material civil or criminal judgment or litigation and any material administrative
345 or enforcement action by a governmental agency in any jurisdiction against the applicant, any
346 of its officers, directors, owners, or agents, or any person who is authorized to have access to
347 the trust account required by Section 13-42-122;

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

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

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

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

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

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

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

364 (14) at the applicant's expense, the results of a criminal records check, including
365 fingerprints, conducted within the immediately preceding 12 months, covering every officer of

366 the applicant and every employee or agent of the applicant who is authorized to have access to
367 the trust account required by Section 13-42-122;

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

370 (16) a description of any ownership interest of at least 10% by a director, owner, or
371 employee of the applicant in:

372 (a) any affiliate of the applicant; or

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

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

379 (18) the identity of each director who is an affiliate, as defined in Subsection
380 13-42-102(2)(a) or (2)(b)(i), (ii), (iv), (v), (vi), or (vii), of the applicant; and

381 (19) any other information that the administrator reasonably requires to perform the
382 administrator's duties under Section 13-42-109.

383 Section 9. Section **13-42-107** is enacted to read:

384 **13-42-107. Application for registration -- Obligation to update information.**

385 An applicant or registered provider shall notify the administrator within ten days after a
386 change in the information specified in Subsection 13-42-105(2)(d) or (f) or Subsection
387 13-42-106(1), (3), (6), (12), or (13).

388 Section 10. Section **13-42-108** is enacted to read:

389 **13-42-108. Application for registration -- Public information.**

390 Except for the information required by Subsections 13-42-106 (7), (14), and (17) and
391 the addresses required by Subsection 13-42-106(4), the administrator shall make the
392 information in an application for registration as a provider available to the public.

393 Section 11. Section **13-42-109** is enacted to read:

394 **13-42-109. Certification of registration -- Issuance or denial.**

395 (1) Except as otherwise provided in Subsections (2) and (3), the administrator shall
396 issue a certificate of registration as a provider to a person that complies with Sections
397 13-42-105 and 13-42-106.

398 (2) The administrator may deny registration if:

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

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

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

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

408 (3) The administrator shall deny registration if:

409 (a) the application is not accompanied by the fee established by the administrator in
410 accordance with Section 63-38-3.2; or

411 (b) with respect to an applicant that is organized as a not-for-profit entity or has
412 obtained tax-exempt status under the Internal Revenue Code, 26 U.S.C. Section 501, the
413 applicant's board of directors is not independent of the applicant's employees and agents.

414 (4) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), a
415 board of directors is not independent for purposes of Subsection (3) if more than one-fourth of
416 its members:

417 (a) are affiliates of the applicant, as defined in Subsection 13-42-102(2)(a) or
418 13-42-102(2)(b)(i), (ii), (iv), (v), (vi), or (vii); or

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

422 Section 12. Section **13-42-110** is enacted to read:

423 **13-42-110. Certificate of registration -- Timing.**

424 (1) The administrator shall approve or deny an initial registration as a provider within
425 120 days after an application is filed. In connection with a request pursuant to Subsection
426 13-42-106(19) for additional information, the administrator may extend the 120-day period for
427 not more than 60 days. Within seven days after denying an application, the administrator, in a
428 record, shall inform the applicant of the reasons for the denial.

429 (2) If the administrator denies an application for registration as a provider or does not
430 act on an application within the time prescribed in Subsection (1), the applicant may appeal and
431 request a hearing pursuant to Title 63, Chapter 46b, Administrative Procedures Act.

432 (3) Subject to Subsection 13-42-111(4) and Section 13-42-134, a registration as a
433 provider is valid for one year.

434 Section 13. Section **13-42-111** is enacted to read:

435 **13-42-111. Renewal of registration.**

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

437 (2) An application for renewal of registration as a provider must be in a form
438 prescribed by the administrator, signed under penalty of perjury, and:

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

440 (b) be accompanied by the fee established by the administrator in accordance with
441 Section 63-38-3.2 and the bond required by Section 13-42-113;

442 (c) contain the matter required for initial registration as a provider by Subsections
443 13-42-106(8) and (9) and a financial statement, audited by an accountant licensed to conduct
444 audits, for the applicant's fiscal year immediately preceding the application;

445 (d) disclose any changes in the information contained in the applicant's application for
446 registration or its immediately previous application for renewal, as applicable;

447 (e) supply evidence of insurance in an amount equal to the larger of \$250,000 or the
448 highest daily balance in the trust account required by Section 13-42-122 during the six-month
449 period immediately preceding the application:

- 450 (i) against risks of dishonesty, fraud, theft, and other misconduct on the part of the
451 applicant or a director, employee, or agent of the applicant;
- 452 (ii) issued by an insurance company authorized to do business in this state and rated at
453 least A by a nationally recognized rating organization;
- 454 (iii) with no deductible;
- 455 (iv) payable to the applicant, the individuals who have agreements with the applicant,
456 and this state, as their interests may appear; and
- 457 (v) not subject to cancellation by the applicant without the approval of the
458 administrator;
- 459 (f) disclose the total amount of money received by the applicant pursuant to plans
460 during the preceding 12 months from or on behalf of individuals who reside in this state and
461 the total amount of money distributed to creditors of those individuals during that period;
- 462 (g) disclose, to the best of the applicant's knowledge, the gross amount of money
463 accumulated during the preceding 12 months pursuant to plans by or on behalf of individuals
464 who reside in this state and with whom the applicant has agreements; and
- 465 (h) provide any other information that the administrator reasonably requires to perform
466 the administrator's duties under this section.
- 467 (3) Except for the information required by Subsections 13-42-106(7), (14), and (17)
468 and the addresses required by Subsection 13-42-106(4), the administrator shall make the
469 information in an application for renewal of registration as a provider available to the public.
- 470 (4) If a registered provider files a timely and complete application for renewal of
471 registration, the registration remains effective until the administrator, in a record, notifies the
472 applicant of a denial and states the reasons for the denial.
- 473 (5) If the administrator denies an application for renewal of registration as a provider,
474 the applicant, within 30 days after receiving notice of the denial, may appeal and request a
475 hearing pursuant to Title 63, Chapter 46b, Administrative Procedures Act. Subject to Section
476 13-42-134, while the appeal is pending the applicant shall continue to provide
477 debt-management services to individuals with whom it has agreements. If the denial is

478 affirmed, subject to the administrator's order and Section 13-42-134, the applicant shall
479 continue to provide debt-management services to individuals with whom it has agreements
480 until, with the approval of the administrator, it transfers the agreements to another registered
481 provider or returns to the individuals all unexpended money that is under the applicant's
482 control.

483 Section 14. Section **13-42-112** is enacted to read:

484 **13-42-112. Registration in another state -- Rulemaking.**

485 (1) (a) Subject to rules made by the administrator, if a provider holds a license or
486 certificate of registration in another state authorizing it to provide debt-management services,
487 the provider may submit a copy of that license or certificate and the application for it instead of
488 an application in the form prescribed by Subsection 13-42-105(1), Section 13-42-106, or
489 Subsection 13-42-111(2).

490 (b) The administrator shall accept the application and the license or certificate from
491 the other state as an application for registration as a provider or for renewal of registration as a
492 provider, as appropriate, in this state if:

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

495 (ii) the applicant provides the information required by Subsections 13-42-106(1), (3),
496 (10), (12), and (13);

497 (iii) the applicant, under penalty of perjury, certifies that the information contained in
498 the application is current or, to the extent it is not current, supplements the application to make
499 the information current; and

500 (iv) the applicant files a surety bond or substitute in accordance with Section
501 13-42-113 or 13-42-114 that is solely payable or available to this state and to individuals who
502 reside in this state.

503 (2) The administrator, in accordance with Title 63, Chapter 46a, Utah Administrative
504 Rulemaking Act, shall make rules designating the states in which a provider may have a license
505 or certificate that may be submitted to the administrator in compliance with this section.

506 Section 15. Section **13-42-113** is enacted to read:

507 **13-42-113. Bond required.**

508 (1) Except as otherwise provided in Section 13-42-114, a provider that is required to be
509 registered under this chapter shall file a surety bond with the administrator, which must:

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

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

515 (2) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), a
516 surety bond filed pursuant to Subsection (1) must:

517 (a) be in the amount of \$100,000;

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

520 (c) have payment conditioned upon noncompliance of the provider or its agent with
521 this chapter.

522 (3) If the principal amount of a surety bond is reduced by payment of a claim or a
523 judgment, the provider shall immediately notify the administrator and, within 30 days after
524 notice by the administrator, file a new or additional surety bond in an amount to comply with
525 the \$100,000 requirement. If for any reason a surety terminates a bond, the provider shall
526 immediately file a new surety bond in the amount of \$100,000.

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

529 (a) the administrator assesses expenses under Subsection 13-42-132(2)(a), issues a
530 final order under Subsection 13-42-133(1)(b), or recovers a final judgment under Subsection
531 13-42-133(1)(d) or (e) or Subsection 13-42-133(4); or

532 (b) an individual recovers a final judgment pursuant to Subsection 13-42-135(1),
533 Subsection 13-42-135(2), or Subsection 13-42-135(3)(a), (b), or (d).

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

538 (a) to satisfaction of a final order or judgment under Subsection 13-42-133(1)(a), (d),
539 or (e) or Subsection 13-42-133(4);

540 (b) to final judgments recovered by individuals pursuant to Subsection 13-42-135(1),
541 Subsection 13-42-135(2), or Subsection 13-42-135(3)(a), (b) or (d), pro rata;

542 (c) to claims of individuals established to the satisfaction of the administrator, pro rata;
543 and

544 (d) if a final order or judgment is issued under Subsection 13-42-133(1), to the
545 expenses charged pursuant to Subsection 13-42-132(2)(a).

546 Section 16. Section **13-42-114** is enacted to read:

547 **13-42-114. Bond required -- Substitute.**

548 (1) Instead of the surety bond required by Section 13-42-113, a provider may deliver to
549 the administrator, in the amount required by Subsection 13-42-113(2), and, except as otherwise
550 provided in Subsection (1)(c)(i), payable or available to this state and to individuals who reside
551 in this state when they agree to receive debt-management services from the provider, as their
552 interests may appear, if the provider or its agent does not comply with this chapter:

553 (a) a certificate of insurance issued by an insurance company authorized to do business
554 in this state and rated at least A by a nationally recognized rating organization, with no
555 deductible;

556 (b) a certificate of deposit issued or confirmed by a bank approved by the
557 administrator, payable upon presentation of a certificate by the administrator stating that the
558 provider or its agent has not complied with this chapter; or

559 (c) with the approval of the administrator:

560 (i) an irrevocable letter of credit, issued or confirmed by a bank approved by the
561 administrator, payable upon presentation of a certificate by the administrator stating that the

562 provider or its agent has not complied with this chapter; or

563 (ii) bonds or other obligations of the United States or guaranteed by the United States
564 or bonds or other obligations of this state or a political subdivision of this state, to be deposited
565 and maintained with a bank approved by the administrator for this purpose.

566 (2) If a provider furnishes a substitute pursuant to Subsection (1), the provisions of
567 Subsections 13-42-113(1), (3), (4), and (5) apply to the substitute.

568 Section 17. Section **13-42-115** is enacted to read:

569 **13-42-115. Requirement of good faith.**

570 A provider shall act in good faith in all matters under this chapter.

571 Section 18. Section **13-42-116** is enacted to read:

572 **13-42-116. Customer service.**

573 A provider that is required to be registered under this chapter shall maintain a toll-free
574 communication system, staffed at a level that reasonably permits an individual to speak to a
575 certified counselor or customer service representative, as appropriate, during ordinary business
576 hours.

577 Section 19. Section **13-42-117** is enacted to read:

578 **13-42-117. Prerequisites for providing debt-management services.**

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

583 (a) free of additional charge if the individual enters into an agreement;

584 (b) for a charge if the individual does not enter into an agreement; and

585 (c) for a charge if the individual enters into an agreement, using the following
586 terminology, as applicable, and format:

587 Set-up fee _____

588 dollar amount of fee

589 Monthly service fee _____

590 dollar amount of fee or method of determining amount

591 Settlement fee

592 dollar amount of fee or method of determining amount

593 Goods and services in addition to those provided in connection with a plan:

594 _____

595 (item) dollar amount or method of determining amount

596 _____

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

598 (2) A provider may not furnish debt-management services unless the provider, through
599 the services of a certified counselor:

600 (a) provides the individual with reasonable education about the management of
601 personal finance;

602 (b) has prepared a financial analysis; and

603 (c) if the individual is to make regular, periodic payments:

604 (i) has prepared a plan for the individual;

605 (ii) has made a determination, based on the provider's analysis of the information

606 provided by the individual and otherwise available to it, that the plan is suitable for the

607 individual and the individual will be able to meet the payment obligations under the plan; and

608 (iii) believes that each creditor of the individual listed as a participating creditor in the
609 plan will accept payment of the individual's debts as provided in the plan.

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

611 (a) provide the individual with a copy of the analysis and plan required by Subsection

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

614 (b) inform the individual of the availability, at the individual's option, of assistance by

615 a toll-free communication system or in person to discuss the financial analysis and plan

616 required by Subsection (2); and

617 (c) with respect to all creditors identified by the individual or otherwise known by the

618 provider to be creditors of the individual, provide the individual with a list of:
619 (i) creditors that the provider expects to participate in the plan and grant concessions;
620 (ii) creditors that the provider expects to participate in the plan but not grant
621 concessions;
622 (iii) creditors that the provider expects not to participate in the plan; and
623 (iv) all other creditors.
624 (4) Before an individual assents to an agreement to engage in a plan, the provider shall
625 inform the individual, in a record that contains nothing else, that is given separately, and that
626 the individual may keep whether or not the individual assents to the agreement:
627 (a) of the name and business address of the provider;
628 (b) that plans are not suitable for all individuals and the individual may ask the
629 provider about other ways, including bankruptcy, to deal with indebtedness;
630 (c) that establishment of a plan may adversely affect the individual's credit rating or
631 credit scores;
632 (d) that nonpayment of debt may lead creditors to increase finance and other charges or
633 undertake collection activity, including litigation;
634 (e) unless it is not true, that the provider may receive compensation from the creditors
635 of the individual; and
636 (f) that, unless the individual is insolvent, if a creditor settles for less than the full
637 amount of the debt, the plan may result in the creation of taxable income to the individual, even
638 though the individual does not receive any money.
639 (5) If a provider may receive payments from an individual's creditors and the plan
640 contemplates that the individual's creditors will reduce finance charges or fees for late payment,
641 default, or delinquency, the provider may comply with Subsection (4) by providing the
642 following disclosure, surrounded by black lines:
643 IMPORTANT INFORMATION FOR YOU TO CONSIDER
644 (1) Debt-management plans are not right for all individuals, and you may ask us to
645 provide information about other ways, including bankruptcy, to deal with your debts.

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

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

648

Name and business address of provider

649 (6) If a provider will not receive payments from an individual's creditors and the plan
650 contemplates that the individual's creditors will reduce finance charges or fees for late payment,
651 default, or delinquency, a provider may comply with Subsection (4) by providing the following
652 disclosure, surrounded by black lines:

653 IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

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

657

Name and business address of provider

658 (7) If a plan contemplates that creditors will settle debts for less than the full principal
659 amount of debt owed, a provider may comply with Subsection (4) by providing the following
660 disclosure, surrounded by black lines:

661 IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

664 (2) Nonpayment of your debts under our program may
665 hurt your credit rating or credit scores;

666 lead your creditors to increase finance and other charges; and

667 lead your creditors to undertake activity, including lawsuits, to collect the debts.

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

670

Name and business address of provider

671

674 Section 20. Section **13-42-118** is enacted to read:

675 **13-42-118. Communication by electronic or other means.**

676 (1) In this section:

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

679 (b) "Federal act" means the Electronic Signatures in Global and National Commerce
680 Act, 15 U.S.C. Section 7001 et seq.

681 (2) A provider may satisfy the requirements of Section 13-42-117, 13-42-119, or
682 13-42-127 by means of the Internet or other electronic means if the provider obtains a
683 consumer's consent in the manner provided by Section 101(c)(1) of the federal act.

684 (3) The disclosures and materials required by Sections 13-42-117, 13-42-119, and
685 13-42-127 shall be presented in a form that is capable of being accurately reproduced for later
686 reference.

687 (4) With respect to disclosure by means of an Internet website, the disclosure of the
688 information required by Subsection 13-42-117(4) must appear on one or more screens that:

689 (a) contain no other information; and

690 (b) the individual must see before proceeding to assent to formation of a plan.

691 (5) At the time of providing the materials and agreement required by Subsections
692 13-42-117(3) and (4), Section 13-42-119, and Section 13-42-127, a provider shall inform the
693 individual that upon electronic, telephonic, or written request, it will send the individual a
694 written copy of the materials, and shall comply with a request as provided in Subsection (6).

695 (6) If a provider is requested, before the expiration of 90 days after a plan is completed
696 or terminated, to send a written copy of the materials required by Subsections 13-42-117(3) and
697 (4), Section 13-42-119, or Section 13-42-127, the provider shall send them at no charge within
698 three business days after the request, but the provider need not comply with a request more
699 than once per calendar month or if it reasonably believes the request is made for purposes of
700 harassment. If a request is made more than 90 days after a plan is completed or terminated, the
701 provider shall send within a reasonable time a written copy of the materials requested.

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

705 (a) its name and all names under which it does business;

706 (b) its principal business address, telephone number, and electronic-mail address, if
707 any; and

708 (c) the names of its principal officers.

709 (8) Subject to Subsection (9), if a consumer who has consented to electronic
710 communication in the manner provided by Section 101 of the federal act withdraws consent as
711 provided in the federal act, a provider may terminate its agreement with the consumer.

712 (9) If a provider wishes to terminate an agreement with a consumer pursuant to
713 Subsection (8), it shall notify the consumer that it will terminate the agreement unless the
714 consumer, within 30 days after receiving the notification, consents to electronic communication
715 in the manner provided in Section 101(c) of the federal act. If the consumer consents, the
716 provider may terminate the agreement only as permitted by Subsection 13-42-119(1)(f)(vii).

717 Section 21. Section **13-42-119** is enacted to read:

718 **13-42-119. Form and contents of agreement.**

719 (1) An agreement must:

720 (a) be in a record;

721 (b) be dated and signed by the provider and the individual;

722 (c) include the name of the individual and the address where the individual resides;

723 (d) include the name, business address, and telephone number of the provider;

724 (e) be delivered to the individual immediately upon formation of the agreement; and

725 (f) disclose:

726 (i) the services to be provided;

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

729 (iii) the schedule of payments to be made by or on behalf of the individual, including

730 the amount of each payment, the date on which each payment is due, and an estimate of the
731 date of the final payment;

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

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

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

738 (v) each creditor that the provider believes will not participate in the plan and to which
739 the provider will not direct payment;

740 (vi) how the provider will comply with its obligations under Subsection 13-42-127(1);

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

743 (viii) that the individual may cancel the agreement as provided in Section 13-42-120;

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

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

747 (2) For purposes of Subsection (1)(e), delivery of an electronic record occurs when it is
748 made available in a format in which the individual may retrieve, save, and print it and the
749 individual is notified that it is available.

750 (3) If the administrator supplies the provider with any information required under
751 Subsection (1)(f)(x), the provider may comply with that requirement only by disclosing the
752 information supplied by the administrator.

753 (4) An agreement must provide that:

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

756 (i) the provider will refund all unexpended money that the provider or its agent has
757 received from or on behalf of the individual for the reduction or satisfaction of the individual's

758 debt;

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

762 (iii) all powers of attorney granted by the individual to the provider are revoked and
763 ineffective;

764 (b) the individual authorizes any bank in which the provider or its agent has established
765 a trust account to disclose to the administrator any financial records relating to the trust
766 account; and

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

769 (i) the identity of the creditor; and

770 (ii) the right of the individual to modify or terminate the agreement.

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

778 (6) An agreement may not:

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

781 (b) except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. Section
782 2, or Title 78, Chapter 31a, Utah Uniform Arbitration Act, contain a provision that modifies or
783 limits otherwise available forums or procedural rights, including the right to trial by jury, that
784 are generally available to the individual under law other than this chapter;

785 (c) contain a provision that restricts the individual's remedies under this chapter or law

786 other than this chapter; or

787 (d) contain a provision that:

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

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

791 (7) All rights and obligations specified in Subsection (4) and Section 13-42-120 exist
792 even if not provided in the agreement. A provision in an agreement which violates Subsection
793 (4), (5), or (6) is void.

794 Section 22. Section **13-42-120** is enacted to read:

795 **13-42-120. Cancellation of agreement -- Waiver.**

796 (1) An individual may cancel an agreement before midnight of the third business day
797 after the individual assents to it, unless the agreement does not comply with Subsection (2) or
798 Section 13-42-119 or Section 13-42-128, in which event the individual may cancel the
799 agreement within 30 days after the individual assents to it. To exercise the right to cancel, the
800 individual must give notice in a record to the provider. Notice by mail is given when mailed.

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

803 Notice of Right to Cancel

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

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

808 _____ or mail or deliver a signed, dated copy of this

809 E-mail address of provider

810 notice, or any other written notice to _____

811 _____ Name of provider

812 at _____ before midnight on _____.

813 _____ Address of provider

_____ Date

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

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

818 I cancel this agreement,

819 _____

820 Print your name

821 _____

822 Signature

823 _____

824 Date

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

831 Section 23. Section **13-42-121** is enacted to read:

832 **13-42-121. Required language.**

833 Unless the administrator, by rule, provides otherwise, the disclosures and documents
834 required by this chapter must be in English. If a provider communicates with an individual
835 primarily in a language other than English, the provider must furnish a translation into the other
836 language of the disclosures and documents required by this chapter.

837 Section 24. Section **13-42-122** is enacted to read:

838 **13-42-122. Trust account.**

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

842 provider is furnishing debt-management services.

843 (2) Money held in trust by a provider is not property of the provider or its designee.

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

847 (3) A provider shall:

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

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

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

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

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

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

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

865 (6) If a provider has established a trust account pursuant to Subsection (1), the provider
866 shall reconcile the trust account at least once a month. The reconciliation must compare the
867 cash balance in the trust account with the sum of the balances in each individual's account. If
868 the provider or its designee has more than one trust account, each trust account must be
869 individually reconciled.

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

875 (8) If an individual terminates an agreement or it becomes reasonably apparent to a
876 provider that a plan has failed, the provider shall promptly refund to the individual all money
877 paid by or on behalf of the individual which has not been paid to creditors, less fees that are
878 payable to the provider under Section 13-42-123.

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

883 Section 25. Section **13-42-123** is enacted to read:

884 **13-42-123. Fees and other charges.**

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

888 (2) A provider may not impose charges or receive payment for debt-management
889 services until the provider and the individual have signed an agreement that complies with
890 Sections 13-42-119 and 13-42-128.

891 (3) If an individual assents to an agreement, a provider may not impose a fee or other
892 charge for educational or counseling services, or the like, except as otherwise provided in this
893 Subsection (3) and Subsection 13-42-128(4). The administrator may authorize a provider to
894 charge a fee based on the nature and extent of the educational or counseling services furnished
895 by the provider.

896 (4) Subject to adjustment of dollar amounts pursuant to Subsection 13-42-132(6), the
897 following rules apply:

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

900 (i) a fee not exceeding \$50 for consultation, obtaining a credit report, setting up an
901 account, and the like; and

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

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

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

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

911 (c) A provider may not impose or receive fees under both Subsections (4)(a) and (b).

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

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

920 (6) Except as otherwise provided in Subsections (3) and (4), if a plan contemplates that
921 creditors will settle an individual's debts for less than the principal amount of the debt,
922 compensation for services in connection with settling a debt may not exceed, with respect to
923 each debt, 30% of the excess of the principal amount of the debt over the amount paid the
924 creditor pursuant to the plan, less to the extent it has not been credited against an earlier
925 settlement fee:

926 (a) the fee charged pursuant to Subsection (4)(b)(i); and
927 (b) the aggregate of fees charged pursuant to Subsection (4)(b)(ii).
928 (7) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), if
929 a payment to a provider by an individual under this chapter is dishonored, a provider may
930 impose a reasonable charge on the individual, not to exceed the lesser of \$25 and the amount
931 permitted by law other than this chapter.

932 Section 26. Section **13-42-124** is enacted to read:

933 **13-42-124. Voluntary contributions.**

934 A provider may not solicit a voluntary contribution from an individual or an affiliate of
935 the individual for any service provided to the individual. A provider may accept voluntary
936 contributions from an individual but, until 30 days after completion or termination of a plan,
937 the aggregate amount of money received from or on behalf of the individual may not exceed
938 the total amount the provider may charge the individual under Section 13-42-123.

939 Section 27. Section **13-42-125** is enacted to read:

940 **13-42-125. Voidable agreements.**

941 (1) If a provider imposes a fee or other charge or receives money or other payments not
942 authorized by Section 13-42-123 or 13-42-124, the individual may void the agreement and
943 recover as provided in Section 13-42-135.

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

946 (3) If an individual voids an agreement under Subsection (2), the provider does not
947 have a claim against the individual for breach of contract or for restitution.

948 Section 28. Section **13-42-126** is enacted to read:

949 **13-42-126. Termination of agreements.**

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

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

954 (a) any money of the individual held in trust for the benefit of the individual; and

955 (b) 65% of any portion of the set-up fee received pursuant to Subsection

956 13-42-123(4)(b) which has not been credited against settlement fees.

957 Section 29. Section **13-42-127** is enacted to read:

958 **13-42-127. Periodic reports and retention of records.**

959 (1) A provider shall provide the accounting required by Subsection (2):

960 (a) upon cancellation or termination of an agreement; and

961 (b) before cancellation or termination of any agreement:

962 (i) at least once each month; and

963 (ii) within five business days after a request by an individual, but the provider need not

964 comply with more than one request in any calendar month.

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

967 (a) the amount of money received from the individual since the last report;

968 (b) the amounts and dates of disbursement made on the individual's behalf, or by the

969 individual upon the direction of the provider, since the last report to each creditor listed in the
970 plan;

971 (c) the amounts deducted from the amount received from the individual;

972 (d) the amount held in reserve; and

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

975 (i) the total amount and terms of the settlement;

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

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

978 (iv) the calculation of a settlement fee.

979 (3) A provider shall maintain records for each individual for whom it provides

980 debt-management services for five years after the final payment made by the individual and

981 produce a copy of them to the individual within a reasonable time after a request for them. The

982 provider may use electronic or other means of storage of the records.

983 Section 30. Section **13-42-128** is enacted to read:

984 **13-42-128. Prohibited acts and practices.**

985 (1) A provider may not, directly or indirectly:

986 (a) misappropriate or misapply money held in trust;

987 (b) settle a debt on behalf of an individual for more than 50% of the principal amount
988 of the debt owed a creditor, unless the individual assents to the settlement after the creditor has
989 assented;

990 (c) take a power of attorney that authorizes it to settle a debt, unless the power of
991 attorney expressly limits the provider's authority to settle debts for not more than 50% of the
992 principal amount of the debt owed a creditor;

993 (d) exercise or attempt to exercise a power of attorney after an individual has
994 terminated an agreement;

995 (e) initiate a transfer from an individual's account at a bank or with another person
996 unless the transfer is:

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

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

1000 (A) payment to one or more creditors pursuant to a plan; or

1001 (B) payment of a fee;

1002 (f) offer a gift or bonus, premium, reward, or other compensation to an individual for
1003 executing an agreement;

1004 (g) offer, pay, or give a gift or bonus, premium, reward, or other compensation to a
1005 person for referring a prospective customer, if the person making the referral has a financial
1006 interest in the outcome of debt-management services provided to the customer, unless neither
1007 the provider nor the person making the referral communicates to the prospective customer the
1008 identity of the source of the referral;

1009 (h) receive a bonus, commission, or other benefit for referring an individual to a

1010 person;

1011 (i) structure a plan in a manner that would result in a negative amortization of any of an
1012 individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund
1013 or waive the finance charge upon payment of the principal amount of the debt;

1014 (j) compensate its employees on the basis of a formula that incorporates the number of
1015 individuals the employee induces to enter into agreements;

1016 (k) settle a debt or lead an individual to believe that a payment to a creditor is in
1017 settlement of a debt to the creditor unless, at the time of settlement, the individual receives a
1018 certification by the creditor that the payment is in full settlement of the debt;

1019 (l) make a representation that:

1020 (i) the provider will furnish money to pay bills or prevent attachments;

1021 (ii) payment of a certain amount will permit satisfaction of a certain amount or range of
1022 indebtedness; or

1023 (iii) participation in a plan will or may prevent litigation, garnishment, attachment,
1024 repossession, foreclosure, eviction, or loss of employment;

1025 (m) misrepresent that it is authorized or competent to furnish legal advice or perform
1026 legal services;

1027 (n) represent that it is a not-for-profit entity unless it is organized and properly
1028 operating as a not-for-profit under the law of the state in which it was formed or that it is a
1029 tax-exempt entity unless it has received certification of tax-exempt status from the Internal
1030 Revenue Service;

1031 (o) take a confession of judgment or power of attorney to confess judgment against an
1032 individual;

1033 (p) employ an unfair, unconscionable, or deceptive act or practice, including the
1034 knowing omission of any material information; or

1035 (q) make or use any untrue or misleading statement:

1036 (i) to the administrator; or

1037 (ii) in the provision of services subject to this chapter.

- 1038 (2) If a provider furnishes debt-management services to an individual, the provider may
1039 not, directly or indirectly:
- 1040 (a) purchase a debt or obligation of the individual;
1041 (b) receive from or on behalf of the individual:
- 1042 (i) a promissory note or other negotiable instrument other than a check or a demand
1043 draft; or
- 1044 (ii) a post-dated check or demand draft;
- 1045 (c) lend money or provide credit to the individual, except as a deferral of a settlement
1046 fee at no additional expense to the individual;
- 1047 (d) obtain a mortgage or other security interest from any person in connection with the
1048 services provided to the individual;
- 1049 (e) except as permitted by federal law, disclose the identity or identifying information
1050 of the individual or the identity of the individual's creditors, except to:
- 1051 (i) the administrator, upon proper demand;
- 1052 (ii) a creditor of the individual, to the extent necessary to secure the cooperation of the
1053 creditor in a plan; or
- 1054 (iii) the extent necessary to administer the plan;
- 1055 (f) except as otherwise provided in Subsection 13-42-123(6), provide the individual
1056 less than the full benefit of a compromise of a debt arranged by the provider;
- 1057 (g) charge the individual for or provide credit or other insurance, coupons for goods or
1058 services, membership in a club, access to computers or the Internet, or any other matter not
1059 directly related to debt-management services or educational services concerning personal
1060 finance; or
- 1061 (h) furnish legal advice or perform legal services, unless the person furnishing that
1062 advice to or performing those services for the individual is licensed to practice law.
- 1063 (3) This chapter does not authorize any person to engage in the practice of law.
- 1064 (4) A provider may not receive a gift or bonus, premium, reward, or other
1065 compensation, directly or indirectly, for advising, arranging, or assisting an individual in

1066 connection with obtaining, an extension of credit or other service from a lender or service
1067 provider, except for educational or counseling services required in connection with a
1068 government-sponsored program.

1069 (5) Unless a person supplies goods, services, or facilities generally and supplies them
1070 to the provider at a cost no greater than the cost the person generally charges to others, a
1071 provider may not purchase goods, services, or facilities from the person if an employee or a
1072 person that the provider should reasonably know is an affiliate of the provider:

1073 (a) owns more than 10% of the person; or

1074 (b) is an employee or affiliate of the person.

1075 Section 31. Section **13-42-129** is enacted to read:

1076 **13-42-129. Notice of litigation.**

1077 No later than 30 days after a provider has been served with notice of a civil action for
1078 violation of this chapter by or on behalf of an individual who resides in this state at either the
1079 time of an agreement or the time the notice is served, the provider shall notify the administrator
1080 in a record that it has been sued.

1081 Section 32. Section **13-42-130** is enacted to read:

1082 **13-42-130. Advertising.**

1083 A provider that advertises debt-management services shall disclose, in an easily
1084 comprehensible manner, the information specified in Subsections 13-42-117(4)(c) and (d).

1085 Section 33. Section **13-42-131** is enacted to read:

1086 **13-42-131. Liability for the conduct of other persons.**

1087 If a provider delegates any of its duties or obligations under an agreement or this
1088 chapter to another person, including an independent contractor, the provider is liable for
1089 conduct of the person which, if done by the provider, would violate the agreement or this
1090 chapter.

1091 Section 34. Section **13-42-132** is enacted to read:

1092 **13-42-132. Powers of administrator.**

1093 (1) The administrator may act on its own initiative or in response to complaints and

1094 may receive complaints, take action to obtain voluntary compliance with this chapter, refer
1095 cases to the attorney general, and seek or provide remedies as provided in this chapter.

1096 (2) The administrator may investigate and examine, in this state or elsewhere, by
1097 subpoena or otherwise, the activities, books, accounts, and records of a person that provides or
1098 offers to provide debt-management services, or a person to which a provider has delegated its
1099 obligations under an agreement or this chapter, to determine compliance with this chapter.

1100 Information that identifies individuals who have agreements with the provider shall not be
1101 disclosed to the public. In connection with the investigation, the administrator may:

1102 (a) charge the person the reasonable expenses necessarily incurred to conduct the
1103 examination;

1104 (b) require or permit a person to file a statement under oath as to all the facts and
1105 circumstances of a matter to be investigated; and

1106 (c) seek a court order authorizing seizure from a bank at which the person maintains a
1107 trust account required by Section 13-42-122, any or all money, books, records, accounts, and
1108 other property of the provider that is in the control of the bank and relates to individuals who
1109 reside in this state.

1110 (3) The administrator may adopt rules to implement the provisions of this chapter in
1111 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

1112 (4) The administrator may enter into cooperative arrangements with any other federal
1113 or state agency having authority over providers and may exchange with any of those agencies
1114 information about a provider, including information obtained during an examination of the
1115 provider.

1116 (5) The administrator shall establish fees in accordance with Section 63-38-3.2 to be
1117 paid by providers for the expense of administering this chapter.

1118 (6) The administrator, by rule, shall adopt dollar amounts instead of those specified in
1119 Sections 13-42-102, 13-42-105, 13-42-109, 13-42-113, 13-42-123, 13-42-133, and 13-42-135
1120 to reflect inflation, as measured by the United States Bureau of Labor Statistics Consumer
1121 Price Index for All Urban Consumers or, if that index is not available, another index adopted

1122 by rule by the administrator. The administrator shall adopt a base year and adjust the dollar
1123 amounts, effective on July 1 of each year, if the change in the index from the base year, as of
1124 December 31 of the preceding year, is at least 10%. The dollar amount must be rounded to the
1125 nearest \$100, except that the amounts in Section 13-42-123 must be rounded to the nearest
1126 dollar.

1127 (7) The administrator shall notify registered providers of any change in dollar amounts
1128 made pursuant to Subsection (6) and make that information available to the public.

1129 Section 35. Section **13-42-133** is enacted to read:

1130 **13-42-133. Administrative remedies.**

1131 (1) The administrator may enforce this chapter and rules adopted under this chapter by
1132 taking one or more of the following actions:

1133 (a) ordering a provider or a director, employee, or other agent of a provider to cease
1134 and desist from any violations;

1135 (b) ordering a provider or a person that has caused a violation to correct the violation,
1136 including making restitution of money or property to a person aggrieved by a violation;

1137 (c) subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6),
1138 imposing on a provider or a person that has caused a violation an administrative fine not
1139 exceeding \$10,000 for each violation;

1140 (d) prosecuting a civil action to:

1141 (i) enforce an order; or

1142 (ii) obtain restitution or an injunction or other equitable relief, or both; or

1143 (e) intervening in an action brought under Section 13-42-135.

1144 (2) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), if
1145 a person violates or knowingly authorizes, directs, or aids in the violation of a final order
1146 issued under Subsection (1)(a) or (b), the administrator may impose an administrative fine not
1147 exceeding \$20,000 for each violation.

1148 (3) The administrator may maintain an action to enforce this chapter in any county.

1149 (4) The administrator may recover the reasonable costs of enforcing the chapter under

1150 Subsections (1) through (3), including attorney's fees based on the hours reasonably expended
1151 and the hourly rates for attorneys of comparable experience in the community.

1152 (5) In determining the amount of an administrative fine to impose under Subsection (1)
1153 or (2), the administrator shall consider the seriousness of the violation, the good faith of the
1154 violator, any previous violations by the violator, the deleterious effect of the violation on the
1155 public, the net worth of the violator, and any other factor the administrator considers relevant to
1156 the determination of the administrative fine.

1157 (6) All money received through administrative fines imposed under this chapter shall
1158 be deposited in the Consumer Protection Education and Training Fund created by Section
1159 13-2-8.

1160 Section 36. Section **13-42-134** is enacted to read:

1161 **13-42-134. Suspension, revocation, or nonrenewal of registration.**

1162 (1) In this section, "insolvent" means:

1163 (a) having generally ceased to pay debts in the ordinary course of business other than as
1164 a result of good-faith dispute;

1165 (b) being unable to pay debts as they become due; or

1166 (c) being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C.

1167 Section 101 et seq.

1168 (2) The administrator may suspend, revoke, or deny renewal of a provider's registration
1169 if:

1170 (a) a fact or condition exists that, if it had existed when the registrant applied for
1171 registration as a provider, would have been a reason for denying registration;

1172 (b) the provider has committed a material violation of this chapter or a rule or order of
1173 the administrator under this chapter;

1174 (c) the provider is insolvent;

1175 (d) the provider or an employee or affiliate of the provider has refused to permit the
1176 administrator to make an examination authorized by this chapter, failed to comply with

1177 Subsection 13-42-132(2)(b) within 15 days after request, or made a material misrepresentation

1178 or omission in complying with Subsection 13-42-132(2)(b); or

1179 (e) the provider has not responded within a reasonable time and in an appropriate
1180 manner to communications from the administrator.

1181 (3) If a provider does not comply with Subsection 13-42-122(6) or if the administrator
1182 otherwise finds that the public health or safety or general welfare requires emergency action,
1183 the administrator may order a summary suspension of the provider's registration, effective on
1184 the date specified in the order.

1185 (4) If the administrator suspends, revokes, or denies renewal of the registration of a
1186 provider, the administrator may seek a court order authorizing seizure of any or all of the
1187 money in a trust account required by Section 13-42-122, books, records, accounts, and other
1188 property of the provider which are located in this state.

1189 (5) If the administrator suspends or revokes a provider's registration, the provider may
1190 appeal and request a hearing pursuant to Title 63, Chapter 46b, Administrative Procedures Act.

1191 Section 37. Section **13-42-135** is enacted to read:

1192 **13-42-135. Private enforcement.**

1193 (1) If an individual voids an agreement pursuant to Subsection 13-42-125(2), the
1194 individual may recover in a civil action all money paid or deposited by or on behalf of the
1195 individual pursuant to the agreement, except amounts paid to creditors, in addition to the
1196 recovery under Subsections (3)(c) and (d).

1197 (2) If an individual voids an agreement pursuant to Subsection 13-42-125(1), the
1198 individual may recover in a civil action three times the total amount of the fees, charges,
1199 money, and payments made by the individual to the provider, in addition to the recovery under
1200 Subsection (3)(d).

1201 (3) Subject to Subsection (4), an individual with respect to whom a provider violates
1202 this chapter may recover in a civil action from the provider and any person that caused the
1203 violation:

1204 (a) compensatory damages for injury, including noneconomic injury, caused by the
1205 violation;

1206 (b) except as otherwise provided in Subsection (4) and subject to adjustment of the
1207 dollar amount pursuant to Subsection 13-42-132(6), with respect to a violation of Section
1208 13-42-117, 13-42-119, 13-42-120, 13-42-121, 13-42-122, 13-42-123, 13-42-124, or 13-42-127,
1209 or Subsection 13-42-128(1), (2), or (4), the greater of the amount recoverable under Subsection
1210 (3)(a) or \$5,000;

1211 (c) punitive damages; and

1212 (d) reasonable attorney's fees and costs.

1213 (4) In a class action, except for a violation of Subsection 13-42-128(1)(e), the
1214 minimum damages provided in Subsection (3)(b) do not apply.

1215 (5) In addition to the remedy available under Subsection (3), if a provider violates an
1216 individual's rights under Section 13-42-120, the individual may recover in a civil action all
1217 money paid or deposited by or on behalf of the individual pursuant to the agreement, except for
1218 amounts paid to creditors.

1219 (6) A provider is not liable under this section for a violation of this chapter if the
1220 provider proves that the violation was not intentional and resulted from a good-faith error
1221 notwithstanding the maintenance of procedures reasonably adapted to avoid the error. An error
1222 of legal judgment with respect to a provider's obligations under this chapter is not a good-faith
1223 error. If, in connection with a violation, the provider has received more money than authorized
1224 by an agreement or this chapter, the defense provided by this Subsection (6) is not available
1225 unless the provider refunds the excess within two business days of learning of the violation.

1226 (7) The administrator shall assist an individual in enforcing a judgment against the
1227 surety bond or other security provided under Section 13-42-113 or 13-42-114.

1228 Section 38. Section **13-42-136** is enacted to read:

1229 **13-42-136. Violation of Consumer Sales Practices Act.**

1230 If an act or practice of a provider violates both this chapter and Chapter 11, Utah
1231 Consumer Sales Practices Act, an individual may not recover under both for the same act or
1232 practice.

1233 Section 39. Section **13-42-137** is enacted to read:

1234 **13-42-137. Statute of limitations.**

1235 (1) An action or proceeding brought pursuant to Subsection 13-42-133(1), (2), or (3)
1236 must be commenced within four years after the conduct that is the basis of the administrator's
1237 complaint.

1238 (2) An action brought pursuant to Section 13-42-135 must be commenced within two
1239 years after the latest of:

1240 (a) the individual's last transmission of money to a provider;

1241 (b) the individual's last transmission of money to a creditor at the direction of the
1242 provider;

1243 (c) the provider's last disbursement to a creditor of the individual;

1244 (d) the provider's last accounting to the individual pursuant to Subsection
1245 13-42-127(1);

1246 (e) the date on which the individual discovered or reasonably should have discovered
1247 the facts giving rise to the individual's claim; or

1248 (f) termination of actions or proceedings by the administrator with respect to a
1249 violation of the chapter.

1250 (3) The period prescribed in Subsection (2)(e) is tolled during any period during which
1251 the provider or, if different, the defendant has materially and willfully misrepresented
1252 information required by this chapter to be disclosed to the individual, if the information so
1253 misrepresented is material to the establishment of the liability of the defendant under this
1254 chapter.

1255 Section 40. Section **13-42-138** is enacted to read:

1256 **13-42-138. Uniformity of application and construction.**

1257 In applying and construing this uniform act, consideration must be given to the need to
1258 promote uniformity of the law with respect to its subject matter among states that enact it.

1259 Section 41. Section **13-42-139** is enacted to read:

1260 **13-42-139. Relation to Electronic Signatures in Global and National Commerce**
1261 **Act.**

1262 This chapter modifies, limits, and supersedes the federal Electronic Signatures in
1263 Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify,
1264 limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize
1265 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
1266 Section 7003(b).

1267 Section 42. Section **13-42-140** is enacted to read:

1268 **13-42-140. Transitional provisions -- Application to existing transactions.**

1269 (1) Transactions entered into before July 1, 2007 and the rights, duties, and interests
1270 resulting from them may be completed, terminated, or enforced as required or permitted by a
1271 law amended, repealed, or modified by this chapter as though the amendment, repeal, or
1272 modification had not occurred.

1273 (2) (a) A person registered under Chapter 21, Credit Services Organizations Act, on
1274 June 30, 2007, that is required to be registered under this chapter on July 1, 2007, shall be
1275 considered to be registered under this chapter until the license in effect on June 30, 2007,
1276 expires.

1277 (b) Notwithstanding Subsection (2)(a), except for the registration requirement, a person
1278 subject to this chapter shall comply with this chapter for any transaction entered into on or after
1279 July 1, 2007.

1280 Section 43. Section **13-42-141** is enacted to read:

1281 **13-42-141. Severability.**

1282 If any provision of this chapter or its application to any person or circumstance is held
1283 invalid, the invalidity does not affect other provisions or applications of this chapter that can be
1284 given effect without the invalid provision or application, and to this end the provisions of this
1285 chapter are severable.

1286 Section 44. **Effective date.**

1287 This bill takes effect on July 1, 2007.