



- 28 provider;
- 29       ▶ requires disclosures and documents to be in English, unless provider primarily
- 30 communicates with the individual in another language;
- 31       ▶ requires providers to maintain trust accounts and determines how funds in trust
- 32 accounts shall be disbursed and reconciled;
- 33       ▶ allows for the imposition of fees and other charges;
- 34       ▶ prohibits the provider from soliciting voluntary contributions and provides for the
- 35 acceptance of other certain voluntary contributions;
- 36       ▶ permits an agreement to be voidable in certain instances;
- 37       ▶ allows for termination of agreements;
- 38       ▶ requires periodic reports and retention of records;
- 39       ▶ sets out prohibited acts and practices;
- 40       ▶ requires notification to the administrator when a provider is served with a notice of
- 41 civil action;
- 42       ▶ provides that the provider is liable for any delegated duty or obligation under an
- 43 agreement;
- 44       ▶ establishes the power and duties of the administrator;
- 45       ▶ establishes the administrator may enforce this chapter and rules made under this
- 46 chapter, impose an administrative fine, and recover reasonable cost of enforcement;
- 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 that the provider is not liable for a violation if the provider proves the
- 55 violation was not intentional and resulted from a good-faith error;
- 56       ▶ provides a statute of limitations;
- 57       ▶ requires uniformity of application and construction;
- 58       ▶ modifies, limits, and supersedes certain provisions of the federal Electronic

59 Signatures in Global and National Commerce Act;

60       ▶ provides a transitional provision; and

61       ▶ provides a severability clause.

62 **Monies Appropriated in this Bill:**

63       None

64 **Other Special Clauses:**

65       This bill takes effect on July 1, 2007.

66 **Utah Code Sections Affected:**

67 AMENDS:

68       **13-2-1**, as last amended by Chapters 70, 256 and 306, Laws of Utah 2005

69       **13-21-2**, as last amended by Chapter 55, Laws of Utah 2004

70 ENACTS:

71       **13-42-101**, Utah Code Annotated 1953

72       **13-42-102**, Utah Code Annotated 1953

73       **13-42-103**, Utah Code Annotated 1953

74       **13-42-104**, Utah Code Annotated 1953

75       **13-42-105**, Utah Code Annotated 1953

76       **13-42-106**, Utah Code Annotated 1953

77       **13-42-107**, Utah Code Annotated 1953

78       **13-42-108**, Utah Code Annotated 1953

79       **13-42-109**, Utah Code Annotated 1953

80       **13-42-110**, Utah Code Annotated 1953

81       **13-42-111**, Utah Code Annotated 1953

82       **13-42-112**, Utah Code Annotated 1953

83       **13-42-113**, Utah Code Annotated 1953

84       **13-42-114**, Utah Code Annotated 1953

85       **13-42-115**, Utah Code Annotated 1953

86       **13-42-116**, Utah Code Annotated 1953

87       **13-42-117**, Utah Code Annotated 1953

88       **13-42-118**, Utah Code Annotated 1953

89       **13-42-119**, Utah Code Annotated 1953

- 90            **13-42-120**, Utah Code Annotated 1953
- 91            **13-42-121**, Utah Code Annotated 1953
- 92            **13-42-122**, Utah Code Annotated 1953
- 93            **13-42-123**, Utah Code Annotated 1953
- 94            **13-42-124**, Utah Code Annotated 1953
- 95            **13-42-125**, Utah Code Annotated 1953
- 96            **13-42-126**, Utah Code Annotated 1953
- 97            **13-42-127**, Utah Code Annotated 1953
- 98            **13-42-128**, Utah Code Annotated 1953
- 99            **13-42-129**, Utah Code Annotated 1953
- 100           **13-42-130**, Utah Code Annotated 1953
- 101           **13-42-131**, Utah Code Annotated 1953
- 102           **13-42-132**, Utah Code Annotated 1953
- 103           **13-42-133**, Utah Code Annotated 1953
- 104           **13-42-134**, Utah Code Annotated 1953
- 105           **13-42-135**, Utah Code Annotated 1953
- 106           **13-42-136**, Utah Code Annotated 1953
- 107           **13-42-137**, Utah Code Annotated 1953
- 108           **13-42-138**, Utah Code Annotated 1953
- 109           **13-42-139**, Utah Code Annotated 1953
- 110           **13-42-140**, Utah Code Annotated 1953
- 111           **13-42-141**, Utah Code Annotated 1953



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

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

115            **13-2-1. Consumer protection division established -- Functions.**

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

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

119            (a) Chapter 5, Unfair Practices Act;

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

- 121 (c) Chapter 11, Utah Consumer Sales Practices Act;  
 122 (d) Chapter 15, Business Opportunity Disclosure Act;  
 123 (e) Chapter 20, New Motor Vehicles Warranties Act;  
 124 (f) Chapter 21, Credit Services Organizations Act;  
 125 (g) Chapter 22, Charitable Solicitations Act;  
 126 (h) Chapter 23, Health Spa Services Protection Act;  
 127 (i) Chapter 25a, Telephone and Facsimile Solicitation Act;  
 128 (j) Chapter 26, Telephone Fraud Prevention Act;  
 129 (k) Chapter 28, Prize Notices Regulation Act;  
 130 (l) Chapter 32a, Pawnshop Transaction Information Act;  
 131 (m) Chapter 34, Utah Postsecondary Proprietary School Act; ~~[and]~~  
 132 (n) Chapter 41, Price Controls During Emergencies Act~~[-]; and~~  
 133 (o) Chapter 42, Uniform Debt-Management Services Act.

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

135 **13-21-2. Definitions -- Exemptions.**

136 As used in this chapter:

- 137 (1) "Buyer" means an individual who is solicited to purchase or who purchases the  
 138 services of a credit services organization.
- 139 (2) "Credit reporting agency" means a person that, for a monetary fee, dues, or on a  
 140 cooperative nonprofit basis, regularly engages in whole or in part in the practice of assembling  
 141 or evaluating consumer credit information or other information on consumers for the purpose  
 142 of furnishing consumer reports to third persons.
- 143 (3) (a) "Credit services organization" means a person who, with respect to the  
 144 extension of credit by others, sells, provides, or performs, or represents that the person can or  
 145 will sell, provide, or perform, in return for the payment of money or other valuable  
 146 consideration any of the following services:
- 147 (i) improving a buyer's credit record, history, or rating; or  
 148 ~~[(ii) obtaining an extension of credit for a buyer;]~~  
 149 ~~[(iii)]~~ (ii) providing advice, assistance, instruction, or instructional materials to a buyer  
 150 with regard to ~~[either]~~ Subsection (3)(a)(i) ~~[or (ii);]~~;  
 151 ~~[(iv) debt reduction or debt management plans;]~~

152 [~~(v) represent itself or its employee as a debt professional or credit counselor, or]~~

153 [~~(vi) negotiate with a buyer's creditor.]~~

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

155 (i) a person authorized to make loans or extensions of credit under the laws of this state  
156 or the United States who is subject to regulation and supervision by this state or the United  
157 States and who derives at least 35% of the person's income from making loans and extensions  
158 of credit;

159 (ii) a depository institution:

160 (A) as defined in Section 7-1-103; or

161 (B) that is regulated or supervised by the Federal Deposit Insurance Corporation and  
162 the National Credit Union Association;

163 (iii) a person licensed as a real estate broker by this state if the person is acting within  
164 the course and scope of that license;

165 (iv) a person licensed to practice law in this state if the person renders services within  
166 the course and scope of the person's practice as an attorney;

167 (v) a broker-dealer registered with the Securities and Exchange Commission or the  
168 Commodity Futures Trading Commission if the broker-dealer is acting within the course and  
169 scope of that regulation; or

170 (vi) a credit reporting agency.

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

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

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

175 **13-42-101. Title.**

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

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

178 **13-42-102. Definitions.**

179 In this chapter:

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

181 (2) "Affiliate":

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

- 183           (i) the spouse of the individual;  
184           (ii) a sibling of the individual or the spouse of a sibling;  
185           (iii) an individual or the spouse of an individual who is a lineal ancestor or lineal  
186 descendant of the individual or the individual's spouse;  
187           (iv) an aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or  
188 grandnephew, whether related by the whole or the half blood or adoption, or the spouse of any  
189 of them; or  
190           (v) any other individual occupying the residence of the individual; and  
191           (b) with respect to an entity, means:  
192           (i) a person that directly or indirectly controls, is controlled by, or is under common  
193 control with the entity;  
194           (ii) an officer of, or an individual performing similar functions with respect to, the  
195 entity;  
196           (iii) a director of, or an individual performing similar functions with respect to, the  
197 entity;  
198           (iv) subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), a  
199 person that receives or received more than \$25,000 from the entity in either the current year or  
200 the preceding year or a person that owns more than 10% of, or an individual who is employed  
201 by or is a director of, a person that receives or received more than \$25,000 from the entity in  
202 either the current year or the preceding year;  
203           (v) an officer or director of, or an individual performing similar functions with respect  
204 to, a person described in Subsection (2)(b)(i);  
205           (vi) the spouse of, or an individual occupying the residence of, an individual described  
206 in Subsections (2)(b)(i) through (v); or  
207           (vii) an individual who has the relationship specified in Subsection (2)(a)(iv) to an  
208 individual or the spouse of an individual described in Subsections (2)(b)(i) through (v).  
209           (3) "Agreement" means an agreement between a provider and an individual for the  
210 performance of debt-management services.  
211           (4) "Bank" means a financial institution, including a commercial bank, savings bank,  
212 savings and loan association, credit union, and trust company, engaged in the business of  
213 banking, chartered under federal or state law, and regulated by a federal or state banking

214 regulatory authority.

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

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

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

223 (8) "Day" means calendar day.

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

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

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

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

234 (i) licensed by this state;

235 (ii) subject to a disciplinary mechanism;

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

237 (iv) subject to a continuing education requirement.

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

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

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

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

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

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

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

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

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

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

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

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

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

265 (a) established in an insured bank;

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

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

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

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

272 **13-42-103. Exempt agreements and persons.**

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

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

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

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

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

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

285 (b) a bank;

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

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

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

291 **13-42-104. Registration required.**

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

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

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

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

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

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

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

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

- 307 (b) the bond required by Section 13-42-113;  
308 (c) identification of all trust accounts required by Section 13-42-122 and an irrevocable  
309 consent authorizing the administrator to review and examine the trust accounts;  
310 (d) evidence of insurance in the amount of \$250,000:  
311 (i) against the risks of dishonesty, fraud, theft, and other misconduct on the part of the  
312 applicant or a director, employee, or agent of the applicant;  
313 (ii) issued by an insurance company authorized to do business in this state and rated at  
314 least A by a nationally recognized rating organization;  
315 (iii) with no deductible;  
316 (iv) payable to the applicant, the individuals who have agreements with the applicant,  
317 and this state, as their interests may appear; and  
318 (v) not subject to cancellation by the applicant without the approval of the  
319 administrator;  
320 (e) a record consenting to the jurisdiction of this state containing:  
321 (i) the name, business address, and other contact information of its registered agent in  
322 this state for purposes of service of process; or  
323 (ii) the appointment of the administrator as agent of the provider for purposes of  
324 service of process; and  
325 (f) if the applicant is organized as a not-for-profit entity or is exempt from taxation,  
326 evidence of not-for-profit and tax-exempt status applicable to the applicant under the Internal  
327 Revenue Code, 26 U.S.C. Section 501.
- 328 Section 8. Section **13-42-106** is enacted to read:  
329 **13-42-106. Application for registration -- Required information.**  
330 **An application for registration must be signed under penalty of perjury and include:**  
331 **(1) the applicant's name, principal business address and telephone number, and all**  
332 **other business addresses in this state, electronic-mail addresses, and Internet website addresses;**  
333 **(2) all names under which the applicant conducts business;**  
334 **(3) the address of each location in this state at which the applicant will provide**  
335 **debt-management services or a statement that the applicant will have no such location;**  
336 **(4) the name and home address of each officer and director of the applicant and each**  
337 **person that owns at least 10% of the applicant;**

338 (5) identification of every jurisdiction in which, during the five years immediately  
339 preceding the application:

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

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

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

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

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

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

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

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

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

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

365 (14) at the applicant's expense, the results of a criminal records check, including  
366 fingerprints, conducted within the immediately preceding 12 months, covering every officer of  
367 the applicant and every employee or agent of the applicant who is authorized to have access to  
368 the trust account required by Section 13-42-122;

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

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

373 (a) any affiliate of the applicant; or

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

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

380 (18) the identity of each director who is an affiliate, as defined in Subsection  
381 13-42-102(2)(a) or (2)(b)(i), (ii), (iv), (v), (vi), or (vii), of the applicant; and

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

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

385 **13-42-107. Application for registration -- Obligation to update information.**

386 An applicant or registered provider shall notify the administrator within ten days after a  
387 change in the information specified in Subsection 13-42-105(2)(d) or (f) or Subsection  
388 13-42-106(1), (3), (6), (12), or (13).

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

390 **13-42-108. Application for registration -- Public information.**

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

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

395 **13-42-109. Certification of registration -- Issuance or denial.**

396 (1) Except as otherwise provided in Subsections (2) and (3), the administrator shall  
397 issue a certificate of registration as a provider to a person that complies with Sections  
398 13-42-105 and 13-42-106.

399 (2) The administrator may deny registration if:

- 400 (a) the application contains information that is materially erroneous or incomplete;  
401 (b) an officer, director, or owner of the applicant has been convicted of a crime, or  
402 suffered a civil judgment, involving dishonesty or the violation of state or federal securities  
403 laws;  
404 (c) the applicant or any of its officers, directors, or owners has defaulted in the payment  
405 of money collected for others; or  
406 (d) the administrator finds that the financial responsibility, experience, character, or  
407 general fitness of the applicant or its owners, directors, employees, or agents does not warrant  
408 belief that the business will be operated in compliance with this chapter.
- 409 (3) The administrator shall deny registration if:  
410 (a) the application is not accompanied by the fee established by the administrator in  
411 accordance with Section 63-38-3.2; or  
412 (b) with respect to an applicant that is organized as a not-for-profit entity or has  
413 obtained tax-exempt status under the Internal Revenue Code, 26 U.S.C. Section 501, the  
414 applicant's board of directors is not independent of the applicant's employees and agents.
- 415 (4) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), a  
416 board of directors is not independent for purposes of Subsection (3) if more than one-fourth of  
417 its members:  
418 (a) are affiliates of the applicant, as defined in Subsection 13-42-102(2)(a) or  
419 13-42-102(2)(b)(i), (ii), (iv), (v), (vi), or (vii); or  
420 (b) after the date ten years before first becoming a director of the applicant, were  
421 employed by or directors of a person that received from the applicant more than \$25,000 in  
422 either the current year or the preceding year.
- 423 Section 12. Section **13-42-110** is enacted to read:  
424 **13-42-110. Certificate of registration -- Timing.**  
425 (1) The administrator shall approve or deny an initial registration as a provider within  
426 120 days after an application is filed. In connection with a request pursuant to Subsection  
427 13-42-106(19) for additional information, the administrator may extend the 120-day period for  
428 not more than 60 days. Within seven days after denying an application, the administrator, in a  
429 record, shall inform the applicant of the reasons for the denial.  
430 (2) If the administrator denies an application for registration as a provider or does not

431 act on an application within the time prescribed in Subsection (1), the applicant may appeal and  
432 request a hearing pursuant to Title 63, Chapter 46b, Administrative Procedures Act.

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

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

436 **13-42-111. Renewal of registration.**

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

438 (2) An application for renewal of registration as a provider must be in a form

439 prescribed by the administrator, signed under penalty of perjury, and:

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

441 (b) be accompanied by the fee established by the administrator in accordance with

442 Section 63-38-3.2 and the bond required by Section 13-42-113;

443 (c) contain the matter required for initial registration as a provider by Subsections  
444 13-42-106(8) and (9) and a financial statement, audited by an accountant licensed to conduct

445 audits, for the applicant's fiscal year immediately preceding the application;

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

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

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

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

455 (iii) with no deductible;

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

458 (v) not subject to cancellation by the applicant without the approval of the  
459 administrator;

460 (f) disclose the total amount of money received by the applicant pursuant to plans  
461 during the preceding 12 months from or on behalf of individuals who reside in this state and

462 the total amount of money distributed to creditors of those individuals during that period;

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

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

468 (3) Except for the information required by Subsections 13-42-106(7), (14), and (17)  
469 and the addresses required by Subsection 13-42-106(4), the administrator shall make the  
470 information in an application for renewal of registration as a provider available to the public.

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

474 (5) If the administrator denies an application for renewal of registration as a provider,  
475 the applicant, within 30 days after receiving notice of the denial, may appeal and request a  
476 hearing pursuant to Title 63, Chapter 46b, Administrative Procedures Act. Subject to Section  
477 13-42-134, while the appeal is pending the applicant shall continue to provide  
478 debt-management services to individuals with whom it has agreements. If the denial is  
479 affirmed, subject to the administrator's order and Section 13-42-134, the applicant shall  
480 continue to provide debt-management services to individuals with whom it has agreements  
481 until, with the approval of the administrator, it transfers the agreements to another registered  
482 provider or returns to the individuals all unexpended money that is under the applicant's  
483 control.

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

485 **13-42-112. Registration in another state -- Rulemaking.**

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

491 (b) The administrator shall accept the application and the license or certificate from  
492 the other state as an application for registration as a provider or for renewal of registration as a

493 provider, as appropriate, in this state if:

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

496 (ii) the applicant provides the information required by Subsections 13-42-106(1), (3),  
497 (10), (12), and (13);

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

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

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

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

508 **13-42-113. Bond required.**

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

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

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

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

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

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

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

523 (3) If the principal amount of a surety bond is reduced by payment of a claim or a

524 judgment, the provider shall immediately notify the administrator and, within 30 days after  
525 notice by the administrator, file a new or additional surety bond in an amount to comply with  
526 the \$100,000 requirement. If for any reason a surety terminates a bond, the provider shall  
527 immediately file a new surety bond in the amount of \$100,000.

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

530 (a) the administrator assesses expenses under Subsection 13-42-132(2)(a), issues a  
531 final order under Subsection 13-42-133(1)(b), or recovers a final judgment under Subsection  
532 13-42-133(1)(d) or (e) or Subsection 13-42-133(4); or

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

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

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

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

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

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

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

548 **13-42-114. Bond required -- Substitute.**

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

554 (a) a certificate of insurance issued by an insurance company authorized to do business

555 in this state and rated at least A by a nationally recognized rating organization, with no  
556 deductible;

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

560 (c) with the approval of the administrator:

561 (i) an irrevocable letter of credit, issued or confirmed by a bank approved by the  
562 administrator, payable upon presentation of a certificate by the administrator stating that the  
563 provider or its agent has not complied with this chapter; or

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

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

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

570 **13-42-115. Requirement of good faith.**

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

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

573 **13-42-116. Customer service.**

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

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

579 **13-42-117. Prerequisites for providing debt-management services.**

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

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

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

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

588 Set-up fee \_\_\_\_\_

589 dollar amount of fee

590 Monthly service fee \_\_\_\_\_

591 dollar amount of fee or method of determining amount

592 Settlement fee \_\_\_\_\_

593 dollar amount of fee or method of determining amount

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

595 \_\_\_\_\_

596 (item) dollar amount or method of determining amount

597 \_\_\_\_\_

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

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

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

603 (b) has prepared a financial analysis; and

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

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

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

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

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

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

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

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

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

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

617 required by Subsection (2); and

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

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

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

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

624 (iv) all other creditors.

625 (4) Before an individual assents to an agreement to engage in a plan, the provider shall  
626 inform the individual, in a record that contains nothing else, that is given separately, and that  
627 the individual may keep whether or not the individual assents to the agreement:

628 (a) of the name and business address of the provider;

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

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

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

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

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

640 (5) If a provider may receive payments from an individual's creditors and the plan  
641 contemplates that the individual's creditors will reduce finance charges or fees for late payment,  
642 default, or delinquency, the provider may comply with Subsection (4) by providing the  
643 following disclosure, surrounded by black lines:

644 IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

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

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

649

\_\_\_\_\_  
Name and business address of provider

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

IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

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

659

\_\_\_\_\_  
Name and business address of provider

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

IMPORTANT INFORMATION FOR YOU TO CONSIDER

664  
665 (1) Our program is not right for all individuals, and you may ask us to provide  
666 information about bankruptcy and other ways to deal with your debts.

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

669 lead your creditors to increase finance and other charges; and  
670 lead your creditors to undertake activity, including lawsuits, to collect the debts.

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

673

\_\_\_\_\_  
Name and business address of provider

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

676 **13-42-118. Communication by electronic or other means.**

677 (1) In this section:

678 (a) "Consumer" means an individual who seeks or obtains goods or services that are

679 used primarily for personal, family, or household purposes.

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

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

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

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

690 (a) contain no other information; and

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

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

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

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

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

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

709 (c) the names of its principal officers.

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

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

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

719 **13-42-119. Form and contents of agreement.**

720 (1) An agreement must:

721 (a) be in a record;

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

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

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

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

726 (f) disclose:

727 (i) the services to be provided;

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

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

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

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

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

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

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

742 (vii) that the provider may terminate the agreement for good cause, upon return of

743 unexpended money of the individual;

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

745 (ix) that the individual may contact the administrator with any questions or complaints

746 regarding the provider; and

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

748 (2) For purposes of Subsection (1)(e), delivery of an electronic record occurs when it is

749 made available in a format in which the individual may retrieve, save, and print it and the

750 individual is notified that it is available.

751 (3) If the administrator supplies the provider with any information required under

752 Subsection (1)(f)(x), the provider may comply with that requirement only by disclosing the

753 information supplied by the administrator.

754 (4) An agreement must provide that:

755 (a) the individual has a right to terminate the agreement at any time, without penalty or

756 obligation, by giving the provider written or electronic notice, in which event:

757 (i) the provider will refund all unexpended money that the provider or its agent has

758 received from or on behalf of the individual for the reduction or satisfaction of the individual's

759 debt;

760 (ii) with respect to an agreement that contemplates that creditors will settle debts for

761 less than the principal amount of debt, the provider will refund 65% of any portion of the

762 set-up fee that has not been credited against the settlement fee; and

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

764 ineffective;

765 (b) the individual authorizes any bank in which the provider or its agent has established

766 a trust account to disclose to the administrator any financial records relating to the trust

767 account; and

768 (c) the provider will notify the individual within five days after learning of a creditor's

769 decision to reject or withdraw from a plan and that this notice will include:

770 (i) the identity of the creditor; and

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

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

779 (6) An agreement may not:

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

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

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

788 (d) contain a provision that:

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

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

792 (7) All rights and obligations specified in Subsection (4) and Section 13-42-120 exist  
793 even if not provided in the agreement. A provision in an agreement which violates Subsection  
794 (4), (5), or (6) is void.

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

796 **13-42-120. Cancellation of agreement -- Waiver.**

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

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

803 surrounded by bold black lines:

804 Notice of Right to Cancel

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

808 To cancel this agreement during this period, send an e-mail to  
809 \_\_\_\_\_ or mail or deliver a signed, dated copy of this  
810 E-mail address of provider  
811 notice, or any other written notice to \_\_\_\_\_  
812 \_\_\_\_\_ Name of provider  
813 at \_\_\_\_\_ before midnight on \_\_\_\_\_.  
814 \_\_\_\_\_ Address of provider \_\_\_\_\_ Date

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

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

819 I cancel this agreement,  
820 \_\_\_\_\_  
821 Print your name  
822 \_\_\_\_\_  
823 Signature  
824 \_\_\_\_\_  
825 Date

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

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

833 **13-42-121. Required language.**

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

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

839 **13-42-122. Trust account.**

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

844 (2) Money held in trust by a provider is not property of the provider or its designee.  
845 The money is not available to creditors of the provider or designee, except an individual from  
846 whom or on whose behalf the provider received money, to the extent that the money has not  
847 been disbursed to creditors of the individual.

848 (3) A provider shall:

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

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

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

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

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

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

864 (5) A trust account must at all times have a cash balance equal to the sum of the

865 balances of each individual's account.

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

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

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

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

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

885 **13-42-123. Fees and other charges.**

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

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

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

896 by the provider.

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

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

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

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

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

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

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

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

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

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

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

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

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

934 **13-42-124. Voluntary contributions.**

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

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

941 **13-42-125. Voidable agreements.**

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

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

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

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

950 **13-42-126. Termination of agreements.**

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

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

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

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

957 13-42-123(4)(b) which has not been credited against settlement fees.

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

959 **13-42-127. Periodic reports and retention of records.**

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

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

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

963 (i) at least once each month; and

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

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

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

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

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

973 (d) the amount held in reserve; and

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

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

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

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

979 (iv) the calculation of a settlement fee.

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

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

985 **13-42-128. Prohibited acts and practices.**

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

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

988 (b) settle a debt on behalf of an individual for more than 50% of the principal amount

989 of the debt owed a creditor, unless the individual assents to the settlement after the creditor has  
990 assented;

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

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

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

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

999 (ii) before termination of an agreement, properly authorized by the agreement and this  
1000 chapter, and for:

1001 (A) payment to one or more creditors pursuant to a plan; or

1002 (B) payment of a fee;

1003 (f) offer a gift or bonus, premium, reward, or other compensation to an individual for  
1004 executing an agreement;

1005 (g) offer, pay, or give a gift or bonus, premium, reward, or other compensation to a  
1006 person for referring a prospective customer, if the person making the referral has a financial  
1007 interest in the outcome of debt-management services provided to the customer, unless neither  
1008 the provider nor the person making the referral communicates to the prospective customer the  
1009 identity of the source of the referral;

1010 (h) receive a bonus, commission, or other benefit for referring an individual to a  
1011 person;

1012 (i) structure a plan in a manner that would result in a negative amortization of any of an  
1013 individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund  
1014 or waive the finance charge upon payment of the principal amount of the debt;

1015 (j) compensate its employees on the basis of a formula that incorporates the number of  
1016 individuals the employee induces to enter into agreements;

1017 (k) settle a debt or lead an individual to believe that a payment to a creditor is in  
1018 settlement of a debt to the creditor unless, at the time of settlement, the individual receives a  
1019 certification by the creditor that the payment is in full settlement of the debt;

- 1020 (l) make a representation that:
- 1021 (i) the provider will furnish money to pay bills or prevent attachments;
- 1022 (ii) payment of a certain amount will permit satisfaction of a certain amount or range of
- 1023 indebtedness; or
- 1024 (iii) participation in a plan will or may prevent litigation, garnishment, attachment,
- 1025 repossession, foreclosure, eviction, or loss of employment;
- 1026 (m) misrepresent that it is authorized or competent to furnish legal advice or perform
- 1027 legal services;
- 1028 (n) represent that it is a not-for-profit entity unless it is organized and properly
- 1029 operating as a not-for-profit under the law of the state in which it was formed or that it is a
- 1030 tax-exempt entity unless it has received certification of tax-exempt status from the Internal
- 1031 Revenue Service;
- 1032 (o) take a confession of judgment or power of attorney to confess judgment against an
- 1033 individual;
- 1034 (p) employ an unfair, unconscionable, or deceptive act or practice, including the
- 1035 knowing omission of any material information; or
- 1036 (q) make or use any untrue or misleading statement:
- 1037 (i) to the administrator; or
- 1038 (ii) in the provision of services subject to this chapter.
- 1039 (2) If a provider furnishes debt-management services to an individual, the provider may
- 1040 not, directly or indirectly:
- 1041 (a) purchase a debt or obligation of the individual;
- 1042 (b) receive from or on behalf of the individual:
- 1043 (i) a promissory note or other negotiable instrument other than a check or a demand
- 1044 draft; or
- 1045 (ii) a post-dated check or demand draft;
- 1046 (c) lend money or provide credit to the individual, except as a deferral of a settlement
- 1047 fee at no additional expense to the individual;
- 1048 (d) obtain a mortgage or other security interest from any person in connection with the
- 1049 services provided to the individual;
- 1050 (e) except as permitted by federal law, disclose the identity or identifying information

1051 of the individual or the identity of the individual's creditors, except to:  
1052 (i) the administrator, upon proper demand;  
1053 (ii) a creditor of the individual, to the extent necessary to secure the cooperation of the  
1054 creditor in a plan; or  
1055 (iii) the extent necessary to administer the plan;  
1056 (f) except as otherwise provided in Subsection 13-42-123(6), provide the individual  
1057 less than the full benefit of a compromise of a debt arranged by the provider;  
1058 (g) charge the individual for or provide credit or other insurance, coupons for goods or  
1059 services, membership in a club, access to computers or the Internet, or any other matter not  
1060 directly related to debt-management services or educational services concerning personal  
1061 finance; or  
1062 (h) furnish legal advice or perform legal services, unless the person furnishing that  
1063 advice to or performing those services for the individual is licensed to practice law.  
1064 (3) This chapter does not authorize any person to engage in the practice of law.  
1065 (4) A provider may not receive a gift or bonus, premium, reward, or other  
1066 compensation, directly or indirectly, for advising, arranging, or assisting an individual in  
1067 connection with obtaining, an extension of credit or other service from a lender or service  
1068 provider, except for educational or counseling services required in connection with a  
1069 government-sponsored program.  
1070 (5) Unless a person supplies goods, services, or facilities generally and supplies them  
1071 to the provider at a cost no greater than the cost the person generally charges to others, a  
1072 provider may not purchase goods, services, or facilities from the person if an employee or a  
1073 person that the provider should reasonably know is an affiliate of the provider:  
1074 (a) owns more than 10% of the person; or  
1075 (b) is an employee or affiliate of the person.  
1076 Section 31. Section **13-42-129** is enacted to read:  
1077 **13-42-129. Notice of litigation.**  
1078 No later than 30 days after a provider has been served with notice of a civil action for  
1079 violation of this chapter by or on behalf of an individual who resides in this state at either the  
1080 time of an agreement or the time the notice is served, the provider shall notify the administrator  
1081 in a record that it has been sued.

1082 Section 32. Section **13-42-130** is enacted to read:

1083 **13-42-130. Advertising.**

1084 A provider that advertises debt-management services shall disclose, in an easily  
1085 comprehensible manner, the information specified in Subsections 13-42-117(4)(c) and (d).

1086 Section 33. Section **13-42-131** is enacted to read:

1087 **13-42-131. Liability for the conduct of other persons.**

1088 If a provider delegates any of its duties or obligations under an agreement or this  
1089 chapter to another person, including an independent contractor, the provider is liable for  
1090 conduct of the person which, if done by the provider, would violate the agreement or this  
1091 chapter.

1092 Section 34. Section **13-42-132** is enacted to read:

1093 **13-42-132. Powers of administrator.**

1094 (1) The administrator may act on its own initiative or in response to complaints and  
1095 may receive complaints, take action to obtain voluntary compliance with this chapter, refer  
1096 cases to the attorney general, and seek or provide remedies as provided in this chapter.

1097 (2) The administrator may investigate and examine, in this state or elsewhere, by  
1098 subpoena or otherwise, the activities, books, accounts, and records of a person that provides or  
1099 offers to provide debt-management services, or a person to which a provider has delegated its  
1100 obligations under an agreement or this chapter, to determine compliance with this chapter.

1101 Information that identifies individuals who have agreements with the provider shall not be  
1102 disclosed to the public. In connection with the investigation, the administrator may:

1103 (a) charge the person the reasonable expenses necessarily incurred to conduct the  
1104 examination;

1105 (b) require or permit a person to file a statement under oath as to all the facts and  
1106 circumstances of a matter to be investigated; and

1107 (c) seek a court order authorizing seizure from a bank at which the person maintains a  
1108 trust account required by Section 13-42-122, any or all money, books, records, accounts, and  
1109 other property of the provider that is in the control of the bank and relates to individuals who  
1110 reside in this state.

1111 (3) The administrator may adopt rules to implement the provisions of this chapter in  
1112 accordance with Title 63, Chapter 46a, Utah Administrative Rulemaking Act.

1113 (4) The administrator may enter into cooperative arrangements with any other federal  
1114 or state agency having authority over providers and may exchange with any of those agencies  
1115 information about a provider, including information obtained during an examination of the  
1116 provider.

1117 (5) The administrator shall establish fees in accordance with Section 63-38-3.2 to be  
1118 paid by providers for the expense of administering this chapter.

1119 (6) The administrator, by rule, shall adopt dollar amounts instead of those specified in  
1120 Sections 13-42-102, 13-42-105, 13-42-109, 13-42-113, 13-42-123, 13-42-133, and 13-42-135  
1121 to reflect inflation, as measured by the United States Bureau of Labor Statistics Consumer  
1122 Price Index for All Urban Consumers or, if that index is not available, another index adopted  
1123 by rule by the administrator. The administrator shall adopt a base year and adjust the dollar  
1124 amounts, effective on July 1 of each year, if the change in the index from the base year, as of  
1125 December 31 of the preceding year, is at least 10%. The dollar amount must be rounded to the  
1126 nearest \$100, except that the amounts in Section 13-42-123 must be rounded to the nearest  
1127 dollar.

1128 (7) The administrator shall notify registered providers of any change in dollar amounts  
1129 made pursuant to Subsection (6) and make that information available to the public.

1130 Section 35. Section **13-42-133** is enacted to read:

1131 **13-42-133. Administrative remedies.**

1132 (1) The administrator may enforce this chapter and rules adopted under this chapter by  
1133 taking one or more of the following actions:

1134 (a) ordering a provider or a director, employee, or other agent of a provider to cease  
1135 and desist from any violations;

1136 (b) ordering a provider or a person that has caused a violation to correct the violation,  
1137 including making restitution of money or property to a person aggrieved by a violation;

1138 (c) subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6),  
1139 imposing on a provider or a person that has caused a violation an administrative fine not  
1140 exceeding \$10,000 for each violation;

1141 (d) prosecuting a civil action to:

1142 (i) enforce an order; or

1143 (ii) obtain restitution or an injunction or other equitable relief, or both; or

- 1144 (e) intervening in an action brought under Section 13-42-135.
- 1145 (2) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), if  
1146 a person violates or knowingly authorizes, directs, or aids in the violation of a final order  
1147 issued under Subsection (1)(a) or (b), the administrator may impose an administrative fine not  
1148 exceeding \$20,000 for each violation.
- 1149 (3) The administrator may maintain an action to enforce this chapter in any county.
- 1150 (4) The administrator may recover the reasonable costs of enforcing the chapter under  
1151 Subsections (1) through (3), including attorney's fees based on the hours reasonably expended  
1152 and the hourly rates for attorneys of comparable experience in the community.
- 1153 (5) In determining the amount of an administrative fine to impose under Subsection (1)  
1154 or (2), the administrator shall consider the seriousness of the violation, the good faith of the  
1155 violator, any previous violations by the violator, the deleterious effect of the violation on the  
1156 public, the net worth of the violator, and any other factor the administrator considers relevant to  
1157 the determination of the administrative fine.
- 1158 (6) All money received through administrative fines imposed under this chapter shall  
1159 be deposited in the Consumer Protection Education and Training Fund created by Section  
1160 13-2-8.
- 1161 Section 36. Section **13-42-134** is enacted to read:
- 1162 **13-42-134. Suspension, revocation, or nonrenewal of registration.**
- 1163 (1) In this section, "insolvent" means:
- 1164 (a) having generally ceased to pay debts in the ordinary course of business other than as  
1165 a result of good-faith dispute;
- 1166 (b) being unable to pay debts as they become due; or
- 1167 (c) being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C.  
1168 Section 101 et seq.
- 1169 (2) The administrator may suspend, revoke, or deny renewal of a provider's registration  
1170 if:
- 1171 (a) a fact or condition exists that, if it had existed when the registrant applied for  
1172 registration as a provider, would have been a reason for denying registration;
- 1173 (b) the provider has committed a material violation of this chapter or a rule or order of  
1174 the administrator under this chapter;

1175 (c) the provider is insolvent;

1176 (d) the provider or an employee or affiliate of the provider has refused to permit the  
1177 administrator to make an examination authorized by this chapter, failed to comply with  
1178 Subsection 13-42-132(2)(b) within 15 days after request, or made a material misrepresentation  
1179 or omission in complying with Subsection 13-42-132(2)(b); or

1180 (e) the provider has not responded within a reasonable time and in an appropriate  
1181 manner to communications from the administrator.

1182 (3) If a provider does not comply with Subsection 13-42-122(6) or if the administrator  
1183 otherwise finds that the public health or safety or general welfare requires emergency action,  
1184 the administrator may order a summary suspension of the provider's registration, effective on  
1185 the date specified in the order.

1186 (4) If the administrator suspends, revokes, or denies renewal of the registration of a  
1187 provider, the administrator may seek a court order authorizing seizure of any or all of the  
1188 money in a trust account required by Section 13-42-122, books, records, accounts, and other  
1189 property of the provider which are located in this state.

1190 (5) If the administrator suspends or revokes a provider's registration, the provider may  
1191 appeal and request a hearing pursuant to Title 63, Chapter 46b, Administrative Procedures Act.

1192 Section 37. Section **13-42-135** is enacted to read:

1193 **13-42-135. Private enforcement.**

1194 (1) If an individual voids an agreement pursuant to Subsection 13-42-125(2), the  
1195 individual may recover in a civil action all money paid or deposited by or on behalf of the  
1196 individual pursuant to the agreement, except amounts paid to creditors, in addition to the  
1197 recovery under Subsections (3)(c) and (d).

1198 (2) If an individual voids an agreement pursuant to Subsection 13-42-125(1), the  
1199 individual may recover in a civil action three times the total amount of the fees, charges,  
1200 money, and payments made by the individual to the provider, in addition to the recovery under  
1201 Subsection (3)(d).

1202 (3) Subject to Subsection (4), an individual with respect to whom a provider violates  
1203 this chapter may recover in a civil action from the provider and any person that caused the  
1204 violation:

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

1206 violation;

1207 (b) except as otherwise provided in Subsection (4) and subject to adjustment of the  
1208 dollar amount pursuant to Subsection 13-42-132(6), with respect to a violation of Section  
1209 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,  
1210 or Subsection 13-42-128(1), (2), or (4), the greater of the amount recoverable under Subsection  
1211 (3)(a) or \$5,000;

1212 (c) punitive damages; and

1213 (d) reasonable attorney's fees and costs.

1214 (4) In a class action, except for a violation of Subsection 13-42-128(1)(e), the  
1215 minimum damages provided in Subsection (3)(b) do not apply.

1216 (5) In addition to the remedy available under Subsection (3), if a provider violates an  
1217 individual's rights under Section 13-42-120, the individual may recover in a civil action all  
1218 money paid or deposited by or on behalf of the individual pursuant to the agreement, except for  
1219 amounts paid to creditors.

1220 (6) A provider is not liable under this section for a violation of this chapter if the  
1221 provider proves that the violation was not intentional and resulted from a good-faith error  
1222 notwithstanding the maintenance of procedures reasonably adapted to avoid the error. An error  
1223 of legal judgment with respect to a provider's obligations under this chapter is not a good-faith  
1224 error. If, in connection with a violation, the provider has received more money than authorized  
1225 by an agreement or this chapter, the defense provided by this Subsection (6) is not available  
1226 unless the provider refunds the excess within two business days of learning of the violation.

1227 (7) The administrator shall assist an individual in enforcing a judgment against the  
1228 surety bond or other security provided under Section 13-42-113 or 13-42-114.

1229 Section 38. Section **13-42-136** is enacted to read:

1230 **13-42-136. Violation of Consumer Sales Practices Act.**

1231 If an act or practice of a provider violates both this chapter and Chapter 11, Utah  
1232 Consumer Sales Practices Act, an individual may not recover under both for the same act or  
1233 practice.

1234 Section 39. Section **13-42-137** is enacted to read:

1235 **13-42-137. Statute of limitations.**

1236 (1) An action or proceeding brought pursuant to Subsection 13-42-133(1), (2), or (3)

1237 must be commenced within four years after the conduct that is the basis of the administrator's  
1238 complaint.

1239 (2) An action brought pursuant to Section 13-42-135 must be commenced within two  
1240 years after the latest of:

1241 (a) the individual's last transmission of money to a provider;

1242 (b) the individual's last transmission of money to a creditor at the direction of the  
1243 provider;

1244 (c) the provider's last disbursement to a creditor of the individual;

1245 (d) the provider's last accounting to the individual pursuant to Subsection  
1246 13-42-127(1);

1247 (e) the date on which the individual discovered or reasonably should have discovered  
1248 the facts giving rise to the individual's claim; or

1249 (f) termination of actions or proceedings by the administrator with respect to a  
1250 violation of the chapter.

1251 (3) The period prescribed in Subsection (2)(e) is tolled during any period during which  
1252 the provider or, if different, the defendant has materially and willfully misrepresented  
1253 information required by this chapter to be disclosed to the individual, if the information so  
1254 misrepresented is material to the establishment of the liability of the defendant under this  
1255 chapter.

1256 Section 40. Section **13-42-138** is enacted to read:

1257 **13-42-138. Uniformity of application and construction.**

1258 In applying and construing this uniform act, consideration must be given to the need to  
1259 promote uniformity of the law with respect to its subject matter among states that enact it.

1260 Section 41. Section **13-42-139** is enacted to read:

1261 **13-42-139. Relation to Electronic Signatures in Global and National Commerce**  
1262 **Act.**

1263 This chapter modifies, limits, and supersedes the federal Electronic Signatures in  
1264 Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify,  
1265 limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize  
1266 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.  
1267 Section 7003(b).

1268 Section 42. Section **13-42-140** is enacted to read:

1269 **13-42-140. Transitional provisions -- Application to existing transactions.**

1270 (1) Transactions entered into before July 1, 2007 and the rights, duties, and interests  
1271 resulting from them may be completed, terminated, or enforced as required or permitted by a  
1272 law amended, repealed, or modified by this chapter as though the amendment, repeal, or  
1273 modification had not occurred.

1274 (2) (a) A person registered under Chapter 21, Credit Services Organizations Act, on  
1275 June 30, 2007, that is required to be registered under this chapter on July 1, 2007, shall be  
1276 considered to be registered under this chapter until the license in effect on June 30, 2007,  
1277 expires.

1278 (b) Notwithstanding Subsection (2)(a), except for the registration requirement, a person  
1279 subject to this chapter shall comply with this chapter for any transaction entered into on or after  
1280 July 1, 2007.

1281 Section 43. Section **13-42-141** is enacted to read:

1282 **13-42-141. Severability.**

1283 If any provision of this chapter or its application to any person or circumstance is held  
1284 invalid, the invalidity does not affect other provisions or applications of this chapter that can be  
1285 given effect without the invalid provision or application, and to this end the provisions of this  
1286 chapter are severable.

1287 Section 44. **Effective date.**

1288 This bill takes effect on July 1, 2007.

---

---

**Legislative Review Note**

**as of 1-25-06 4:15 PM**

Based on a limited legal review, this legislation has not been determined to have a high probability of being held unconstitutional.

**Office of Legislative Research and General Counsel**