

1                   **AMENDMENTS TO UNIFORM**  
2                   **DEBT-MANAGEMENT SERVICES ACT**

3                   2009 GENERAL SESSION

4                   STATE OF UTAH

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

6                   House Sponsor: Jack R. Draxler

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7                   **LONG TITLE**

8                   **General Description:**

9                   This bill amends the Uniform Debt-Management Services Act.

10                  **Highlighted Provisions:**

11                  This bill:

- 12                  ▶ amends the insurance requirements for a debt-management services provider;
- 13                  ▶ amends the advertising requirements for a debt-management services provider; and
- 14                  ▶ makes technical corrections.

15                  **Monies Appropriated in this Bill:**

16                  None

17                  **Other Special Clauses:**

18                  None

19                  **Utah Code Sections Affected:**

20                  **AMENDS:**

21                  **13-42-105**, as last amended by Laws of Utah 2008, Chapter 382

22                  **13-42-111**, as last amended by Laws of Utah 2008, Chapter 382

23                  **13-42-114**, as enacted by Laws of Utah 2006, Chapter 154

24                  **13-42-117**, as enacted by Laws of Utah 2006, Chapter 154

25                  **13-42-118**, as enacted by Laws of Utah 2006, Chapter 154

26                  **13-42-119**, as last amended by Laws of Utah 2008, Chapter 3

27                  **13-42-120**, as enacted by Laws of Utah 2006, Chapter 154

28                  **13-42-122**, as enacted by Laws of Utah 2006, Chapter 154

30           **13-42-123**, as enacted by Laws of Utah 2006, Chapter 154  
31           **13-42-128**, as enacted by Laws of Utah 2006, Chapter 154  
32           **13-42-130**, as enacted by Laws of Utah 2006, Chapter 154

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

35           Section 1. Section **13-42-105** is amended to read:

36       **13-42-105. Application for registration -- Form, fee, and accompanying**  
37       **documents.**

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

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

42           (a) the fee established by the administrator in accordance with Section 63J-1-303;

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

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

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

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

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

52           (iii) with [no] a deductible not exceeding \$5,000;

53           (iv) payable [to] for the benefit of the applicant, [the] this state, and individuals who  
54       [have agreements with the applicant, and] are residents of this state, as their interests may  
55       appear; and

56           (v) not subject to cancellation by the applicant [without the approval of] or the insurer  
57       until 60 days after written notice has been given to the administrator;

58                   (e) a record consenting to the jurisdiction of this state containing:  
59                    (i) the name, business address, and other contact information of its registered agent in  
60 this state for purposes of service of process; or  
61                    (ii) the appointment of the administrator as agent of the provider for purposes of  
62 service of process; and  
63                   (f) if the applicant is organized as a not-for-profit entity or is exempt from taxation,  
64 evidence of not-for-profit and tax-exempt status applicable to the applicant under the Internal  
65 Revenue Code, 26 U.S.C. Section 501.

66                   (3) (a) The administrator may waive or reduce the insurance requirement in  
67 Subsection 13-42-105(2)(d) if the provider does not:  
68                   (i) maintain control of a trust account or receive money paid by an individual pursuant  
69 to a plan for distribution to creditors;  
70                   (ii) make payments to creditors on behalf of individuals;  
71                   (iii) collect fees by means of automatic payment from individuals; and  
72                   (iv) execute any powers of attorney that may be utilized by the provider to collect fees  
73 from or expend funds on behalf of an individual.

74                   (b) A waiver or reduction in insurance requirements allowed by the administrator  
75 under Subsection (3)(a) shall balance the reduction in risk posed by a provider meeting the  
76 stated requirements against any continued need for insurance against employee and director  
77 dishonesty.

78                   Section 2. Section **13-42-111** is amended to read:

79                   **13-42-111. Renewal of registration.**

80                   (1) A provider must obtain a renewal of its registration annually.  
81                   (2) An application for renewal of registration as a provider must be in a form  
82 prescribed by the administrator, signed under penalty of perjury, and:  
83                   (a) be filed no fewer than 30 and no more than 60 days before the registration expires;  
84                   (b) be accompanied by the fee established by the administrator in accordance with  
85 Section 63J-1-303 and the bond required by Section 13-42-113;

86                   (c) contain the matter required for initial registration as a provider by Subsections  
87 13-42-106(8) and (9) and a financial statement, audited by an accountant licensed to conduct  
88 audits, for the applicant's fiscal year immediately preceding the application;

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

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

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

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

99                   (iii) with [no] a deductible not exceeding \$5,000;

100                  (iv) payable [to] for the benefit of the applicant, [the] this state, and individuals who  
101 [have agreements with the applicant, and] are residents of this state, as their interests may  
102 appear; and

103                  (v) not subject to cancellation by the applicant [~~without the approval of~~] or the insurer  
104 until 60 days after written notice has been given to the administrator;

105                  (f) disclose the total amount of money received by the applicant pursuant to plans  
106 during the preceding 12 months from or on behalf of individuals who reside in this state and  
107 the total amount of money distributed to creditors of those individuals during that period;

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

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

113                  (3) Except for the information required by Subsections 13-42-106(7), (14), and (17)

114 and the addresses required by Subsection 13-42-106(4), the administrator shall make the  
115 information in an application for renewal of registration as a provider available to the public.

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

119       (5) If the administrator denies an application for renewal of registration as a provider,  
120 the applicant, within 30 days after receiving notice of the denial, may appeal and request a  
121 hearing pursuant to Title 63G, Chapter 4, Administrative Procedures Act. Subject to Section  
122 13-42-134, while the appeal is pending the applicant shall continue to provide  
123 debt-management services to individuals with whom it has agreements. If the denial is  
124 affirmed, subject to the administrator's order and Section 13-42-134, the applicant shall  
125 continue to provide debt-management services to individuals with whom it has agreements  
126 until, with the approval of the administrator, it transfers the agreements to another registered  
127 provider or returns to the individuals all unexpended money that is under the applicant's  
128 control.

129       (6) (a) The administrator may waive or reduce the insurance requirement in  
130 Subsection 13-42-111(1)(e) if the provider does not:

131           (i) maintain control of a trust account or receive money paid by an individual pursuant  
132 to a plan for distribution to creditors;  
133           (ii) make payments to creditors on behalf of individuals;  
134           (iii) collect fees by means of automatic payment from individuals; and  
135           (iv) execute any powers of attorney that may be utilized by the provider to collect fees  
136 from or expend funds on behalf of an individual.

137       (b) A waiver or reduction in insurance requirements allowed by the administrator  
138 under Subsection (6)(a) shall balance the reduction in risk posed by a provider meeting the  
139 stated requirements against any continued need for insurance against employee and director  
140 dishonesty.

141       Section 3. Section **13-42-114** is amended to read:

142           **13-42-114. Bond required -- Substitute.**

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

149           (a) a certificate of insurance:

150           (i) issued by an insurance company authorized to do business in this state and rated at  
151 least A or equivalent by a nationally recognized rating organization[;] approved by the  
152 administrator; and

153           (ii) with no deductible, or if the provider supplies a bond in the amount of \$5,000, a  
154 deductible not exceeding \$5,000;

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

158           (c) with the approval of the administrator:

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

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

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

167           Section 4. Section **13-42-117** is amended to read:

168           **13-42-117. Prerequisites for providing debt-management services.**

169           (1) Before providing debt-management services, a registered provider shall give the

170 individual an itemized list of goods and services and the charges for each. The list must be  
171 clear and conspicuous, be in a record the individual may keep whether or not the individual  
172 assents to an agreement, and describe the goods and services the provider offers:

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

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

175 (c) for a charge if the individual enters into an agreement, using the following

176 terminology, as applicable, and format:

177 Set-up fee \_\_\_\_\_

178 dollar amount of fee

179 Monthly service fee \_\_\_\_\_

180 dollar amount of fee or method of determining amount

181 Settlement fee \_\_\_\_\_

182 dollar amount of fee or method of determining amount

183 Goods and services in addition to those provided in connection with a plan:  
184 \_\_\_\_\_

185 (item) dollar amount or method of determining amount

186 \_\_\_\_\_

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

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

190 (a) provides the individual with reasonable education about the management of  
191 personal finance;

192 (b) has prepared a financial analysis; and

193 (c) if the individual is to make regular, periodic payments to a creditor or a provider:

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

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

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

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

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

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

201                   (a) provide the individual with a copy of the analysis and plan required by Subsection  
202 (2) in a record that identifies the provider and that the individual may keep whether or not the  
203 individual assents to the agreement;

204                   (b) inform the individual of the availability, at the individual's option, of assistance by  
205 a toll-free communication system or in person to discuss the financial analysis and plan  
206 required by Subsection (2); and

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

209                   (i) creditors that the provider expects to participate in the plan and grant concessions;  
210                   (ii) creditors that the provider expects to participate in the plan but not grant  
211 concessions;

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

213                   (iv) all other creditors.

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

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

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

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

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

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

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

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

## IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

236 (2) Using a debt-management plan may [hurt your credit rating or credit scores] make  
237 it harder for you to obtain credit.

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

239

**Name and business address of provider**

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

## IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

248 (2) Using a debt-management plan may [hurt your credit rating or credit scores] make  
249 it harder for you to obtain credit.

250

**Name and business address of provider**

(7) If a plan an agreement contemplates that creditors will settle debts for less than the full principal amount of debt owed, a provider may comply with Subsection (4) by

254 providing the following disclosure, surrounded by black lines:

## IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

258 (2) Nonpayment of your debts under our program may

259 hurt your credit rating or credit scores;

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

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

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

264

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26

Name and business address of provider

266 Section 5. Section **13-42-118** is amended to read:

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

268 (1) In this section:

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

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

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

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

281 (a) contain no other information; and

282                   (b) the individual must see before proceeding to assent to formation of [a ~~plan~~] an  
283 agreement.

284                   (5) At the time of providing the materials and agreement required by Subsections  
285 13-42-117(3) and (4), Section 13-42-119, and Section 13-42-127, a provider shall inform the  
286 individual that upon electronic, telephonic, or written request, it will send the individual a  
287 written copy of the materials, and shall comply with a request as provided in Subsection (6).

288                   (6) If a provider is requested, before the expiration of 90 days after [a ~~plan~~] an  
289 agreement is completed or terminated, to send a written copy of the materials required by  
290 Subsections 13-42-117(3) and (4), Section 13-42-119, or Section 13-42-127, the provider  
291 shall send them at no charge within three business days after the request, but the provider need  
292 not comply with a request more than once per calendar month or if it reasonably believes the  
293 request is made for purposes of harassment. If a request is made more than 90 days after [a  
294 ~~plan~~] an agreement is completed or terminated, the provider shall send within a reasonable  
295 time a written copy of the materials requested.

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

299                   (a) its name and all names under which it does business;  
300                   (b) its principal business address, telephone number, and electronic-mail address, if  
301 any; and  
302                   (c) the names of its principal officers.

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

306                   (9) If a provider wishes to terminate an agreement with a consumer pursuant to  
307 Subsection (8), it shall notify the consumer that it will terminate the agreement unless the  
308 consumer, within 30 days after receiving the notification, consents to electronic  
309 communication in the manner provided in Section 101(c) of the federal act. If the consumer

310 consents, the provider may terminate the agreement only as permitted by Subsection  
311 13-42-119(1)(f)(vii).

312       Section 6. Section **13-42-119** is amended to read:

313       **13-42-119. Form and contents of agreement.**

314       (1) An agreement must:

315           (a) be in a record;

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

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

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

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

320           (f) disclose:

321              (i) the services to be provided;

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

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

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

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

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

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

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

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

338                         (viii) that the individual may cancel the agreement as provided in Section 13-42-120;  
339                         (ix) that the individual may contact the administrator with any questions or complaints  
340                         regarding the provider; and  
341                         (x) the address, telephone number, and Internet address or website of the  
342                         administrator.

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

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

349                         (4) An agreement must provide that:

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

352                         (i) the provider will refund all unexpended money that the provider or its agent has  
353                         received from or on behalf of the individual for the reduction or satisfaction of the individual's  
354                         debt;

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

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

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

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

365                         (i) the identity of the creditor; and

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

367                         (5) An agreement may confer on a provider a power of attorney to settle the  
368 individual's debt for no more than 50% of the principal amount of the debt. An agreement  
369 may not confer a power of attorney to settle a debt for more than 50% of that amount, but may  
370 confer a power of attorney to negotiate with creditors of the individual on behalf of the  
371 individual. An agreement must provide that the provider will obtain the assent of the  
372 individual after a creditor has assented to a settlement for more than 50% of the principal  
373 amount of the debt.

374 (6) An agreement may not:

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

377                   (b) except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. Section  
378                   2, or Title 78B, Chapter 11, Utah Uniform Arbitration Act, contain a provision that modifies  
379                   or limits otherwise available forums or procedural rights, including the right to trial by jury,  
380                   that are generally available to the individual under law other than this chapter;

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

383 (d) contain a provision that:

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

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

387               (7) All rights and obligations specified in Subsection (4) and Section 13-42-120 exist  
388 even if not provided in the agreement. A provision in an agreement which violates Subsection  
389 (4), (5), or (6) is void.

390 Section 7. Section **13-42-120** is amended to read:

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

392 (1) An individual may cancel an agreement before midnight of the third business day  
393 after the individual assents to it, unless the agreement does not comply with Subsection (2) or

394 Section 13-42-119 or Section 13-42-128, in which event the individual may cancel the  
395 agreement within 30 days after the individual assents to it. To exercise the right to cancel, the  
396 individual must give notice in a record to the provider. Notice by mail is given when mailed.

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

## Notice of Right to Cancel

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

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

\_\_\_\_\_ or mail or deliver a signed, dated copy of this

E-mail address of provider

notice, or any other written notice to \_\_\_\_\_

### Name of provider

at \_\_\_\_\_ before midnight on \_\_\_\_\_.

409 Address of provider

Date

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

412 You also may terminate this agreement at any later time, but we [are] may not be  
413 required to refund fees you have paid us.

414 I cancel this agreement,

---

---

## Print your name

---

419

420 Date  
421 (3) If a personal financial emergency necessitates the disbursement of an individual's

422 money to one or more of the individual's creditors before the expiration of three days after an  
423 agreement is signed, an individual may waive the right to cancel. To waive the right, the  
424 individual must send or deliver a signed, dated statement in the individual's own words  
425 describing the circumstances that necessitate a waiver. The waiver must explicitly waive the  
426 right to cancel. A waiver by means of a standard form record is void.

427       Section 8. Section **13-42-122** is amended to read:

428       **13-42-122. Trust account.**

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

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

437       (3) A provider shall:

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

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

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

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

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

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

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

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

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

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

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

473                   Section 9. Section **13-42-123** is amended to read:

474                   **13-42-123. Fees and other charges.**

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

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

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

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

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

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

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

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

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

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

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

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

506 the educational and counseling services warrant the larger fee.

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

510 (6) (a) Except as otherwise provided in Subsections (3) and (4), if [a plan] an  
511 agreement contemplates that creditors will settle an individual's debts for less than the  
512 principal amount of the debt, compensation for services in connection with settling a debt may  
513 not exceed[, with respect to each debt, 30% of the excess of the principal amount of the debt  
514 over the amount paid the creditor pursuant to the plan, less to the extent it has not been  
515 credited against an earlier settlement fee:] one of the following applicable settlement fee limits  
516 in Subsection (6)(b) or (c), the terms of which shall be clearly disclosed in the agreement.

517 [(a) the fee charged pursuant to Subsection (4)(b)(i); and]

518 [(b) the aggregate of fees charged pursuant to Subsection (4)(b)(ii).]

519 (b) (i) With respect to agreements where a flat settlement fee is charged based on the  
520 overall amount of included debt, total aggregate fees charged may not exceed 17% of the  
521 principal amount of debt included in the agreement, including any fees charged under  
522 Subsections (4)(b)(i) and (ii).

523 (ii) The flat settlement fee authorized under this Subsection (6)(b) shall be assessed in  
524 equal monthly payments over no less than half of the length of the plan, as estimated at the  
525 plan's inception, unless:

526 (A) payment is voluntarily accelerated by the individual in a separate record; and

527 (B) at least half of the principal amount of overall debt included in the agreement at its  
528 inception has been settled.

529 (c) (i) With respect to agreements where fees are calculated as a percentage of the  
530 amount saved by an individual, a settlement fee may not exceed 30% of the excess of the  
531 outstanding amount of each debt over the amount actually paid to the creditor, as calculated at  
532 the time of settlement.

533 (ii) Settlement fees authorized under this Subsection (6)(c):

534           (A) may be collected only as debts are settled; and  
535           (B) the total aggregate amount of fees charged to any individual under this chapter,  
536           including fees charged under Subsections (4)(b)(i) and (ii), may not exceed 20% of the  
537           principal amount of debt included in the agreement at the agreement's inception.

538           (d) A provider may not impose or receive fees under both Subsections (6)(b) and (c).

539           (7) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), if  
540 a payment to a provider by an individual under this chapter is dishonored, a provider may  
541 impose a reasonable charge on the individual, not to exceed the lesser of \$25 and the amount  
542 permitted by law other than this chapter.

543           Section 10. Section **13-42-128** is amended to read:

544           **13-42-128. Prohibited acts and practices.**

545           (1) A provider may not, directly or indirectly:  
546           (a) misappropriate or misapply money held in trust;  
547           (b) settle a debt on behalf of an individual for more than 50% of the principal amount  
548 of the debt owed a creditor, unless the individual assents to the settlement after the creditor has  
549 assented;  
550           (c) take a power of attorney that authorizes it to settle a debt, unless the power of  
551 attorney expressly limits the provider's authority to settle debts for not more than 50% of the  
552 principal amount of the debt owed a creditor;

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

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

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

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

560           (A) payment to one or more creditors pursuant to [a plan] an agreement; or

561           (B) payment of a fee;

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

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

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

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

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

576                   (k) settle a debt or lead an individual to believe that a payment to a creditor is in  
577 settlement of a debt to the creditor unless, at the time of settlement, the individual:

578                   (i) receives a certification by the creditor that the payment is in full settlement of the  
579 debt; or

580                   (ii) is part of a payment plan, the terms of which are included in the certification,  
581 which upon completion will result in full settlement of the debt;

582                   (l) make a representation that:

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

584                   (ii) payment of a certain amount will permit satisfaction of a certain amount or range  
585 of indebtedness; or

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

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

- 590                 (n) represent in its agreements, disclosures required by this chapter, advertisements, or  
591         Internet website that it is:  
592                 (i) a not-for-profit entity unless it is organized and properly operating as a  
593         not-for-profit entity under the law of the state in which it was formed [~~or that it is~~]; or  
594                 (ii) a tax-exempt entity unless it has received certification of tax-exempt status from  
595         the Internal Revenue Service and is properly operating as a not-for-profit entity under the law  
596         of the state in which it was formed;  
597                 (o) take a confession of judgment or power of attorney to confess judgment against an  
598         individual;  
599                 (p) employ an unfair, unconscionable, or deceptive act or practice, including the  
600         knowing omission of any material information; or  
601                 (q) make or use any untrue or misleading statement:  
602                 (i) to the administrator; or  
603                 (ii) in the provision of services subject to this chapter.  
604                 (2) If a provider furnishes debt-management services to an individual, the provider  
605         may not, directly or indirectly:  
606                 (a) purchase a debt or obligation of the individual;  
607                 (b) receive from or on behalf of the individual:  
608                 (i) a promissory note or other negotiable instrument other than a check or a demand  
609         draft; or  
610                 (ii) a post-dated check or demand draft;  
611                 (c) lend money or provide credit to the individual, except as a deferral of a settlement  
612         fee at no additional expense to the individual;  
613                 (d) obtain a mortgage or other security interest from any person in connection with the  
614         services provided to the individual;  
615                 (e) except as permitted by federal law, disclose the identity or identifying information  
616         of the individual or the identity of the individual's creditors, except to:  
617                 (i) the administrator, upon proper demand;

618               (ii) a creditor of the individual, to the extent necessary to secure the cooperation of the  
619 creditor in a plan; or

620               (iii) the extent necessary to administer the plan;

621               (f) except as otherwise provided in Subsection 13-42-123(6), provide the individual  
622 less than the full benefit of a compromise of a debt arranged by the provider;

623               (g) charge the individual for or provide credit or other insurance, coupons for goods or  
624 services, membership in a club, access to computers or the Internet, or any other matter not  
625 directly related to debt-management services or educational services concerning personal  
626 finance, except to the extent such services are expressly authorized by the administrator; or

627               (h) furnish legal advice or perform legal services, unless the person furnishing that  
628 advice to or performing those services for the individual is licensed to practice law.

629               (3) This chapter does not authorize any person to engage in the practice of law.

630               (4) A provider may not receive a gift or bonus, premium, reward, or other  
631 compensation, directly or indirectly, for advising, arranging, or assisting an individual in  
632 connection with obtaining, an extension of credit or other service from a lender or service  
633 provider, except for educational or counseling services required in connection with a  
634 government-sponsored program.

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

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

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

641               Section 11. Section **13-42-130** is amended to read:

642               **13-42-130. Advertising.**

643               [A provider] (1) If a provider whose agreements contemplate that creditors will reduce  
644 finance charges or fees for late payment, default, or delinquency advertises debt-management  
645 services, it shall disclose, in an easily comprehensible manner, that using a debt-management

646     plan may make it harder for the individual to obtain credit.

647         (2) If a provider whose agreements contemplate that creditors will settle for less than  
648         the full principal amount of debt that advertises debt-management services,it shall disclose, in  
649         an easily comprehensible manner[,:]

650             (a) the information specified in Subsections 13-42-117(4)(c) and (d)[:]; and

651             (b) the provider's settlement fee structure, consistent with the limitations of Section  
652         13-42-123.