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

2009 GENERAL SESSION

STATE OF UTAH

Chief Sponsor: Lyle W. Hillyard

House Sponsor: Jack R. Draxler

LONG TITLE

General Description:

This bill amends the Uniform Debt-Management Services Act.

Highlighted Provisions:

This bill:

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

Monies Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

- 13-42-105**, as last amended by Laws of Utah 2008, Chapter 382
- 13-42-111**, as last amended by Laws of Utah 2008, Chapter 382
- 13-42-114**, as enacted by Laws of Utah 2006, Chapter 154
- 13-42-117**, as enacted by Laws of Utah 2006, Chapter 154
- 13-42-118**, as enacted by Laws of Utah 2006, Chapter 154
- 13-42-119**, as last amended by Laws of Utah 2008, Chapter 3



- 28 **13-42-120**, as enacted by Laws of Utah 2006, Chapter 154
- 29 **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

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

67 **13-42-111. Renewal of registration.**

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

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

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

72 (b) be accompanied by the fee established by the administrator in accordance with
73 Section 63J-1-303 and the bond required by Section 13-42-113;

74 (c) contain the matter required for initial registration as a provider by Subsections
75 13-42-106(8) and (9) and a financial statement, audited by an accountant licensed to conduct
76 audits, for the applicant's fiscal year immediately preceding the application;

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

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

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

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

87 (iii) with ~~no~~ a deductible not exceeding \$5,000;

88 (iv) payable ~~to~~ for the benefit of the applicant, ~~the~~ this state, and individuals who
89 ~~[have agreements with the applicant, and]~~ are residents of this state, as their interests may

90 appear; and

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

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

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

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

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

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

107 (5) If the administrator denies an application for renewal of registration as a provider,
108 the applicant, within 30 days after receiving notice of the denial, may appeal and request a
109 hearing pursuant to Title 63G, Chapter 4, Administrative Procedures Act. Subject to Section
110 13-42-134, while the appeal is pending the applicant shall continue to provide
111 debt-management services to individuals with whom it has agreements. If the denial is
112 affirmed, subject to the administrator's order and Section 13-42-134, the applicant shall
113 continue to provide debt-management services to individuals with whom it has agreements
114 until, with the approval of the administrator, it transfers the agreements to another registered
115 provider or returns to the individuals all unexpended money that is under the applicant's
116 control.

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

118 **13-42-114. Bond required -- Substitute.**

119 (1) Instead of the surety bond required by Section 13-42-113, a provider may deliver to
120 the administrator, in the amount required by Subsection 13-42-113(2), and, except as otherwise

121 provided in Subsection (1)(c)(i), payable or available to this state and to individuals who reside
122 in this state when they agree to receive debt-management services from the provider, as their
123 interests may appear, if the provider or its agent does not comply with this chapter:

124 (a) a certificate of insurance;

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

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

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

133 (c) with the approval of the administrator:

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

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

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

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

143 **13-42-117. Prerequisites for providing debt-management services.**

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

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

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

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

152 Set-up fee _____
 153 dollar amount of fee
 154 Monthly service fee _____
 155 dollar amount of fee or method of determining amount
 156 Settlement fee _____
 157 dollar amount of fee or method of determining amount
 158 Goods and services in addition to those provided in connection with a plan:
 159 _____
 160 (item) dollar amount or method of determining amount
 161 _____
 162 (item) dollar amount or method of determining amount.

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

165 (a) provides the individual with reasonable education about the management of
 166 personal finance;

167 (b) has prepared a financial analysis; and

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

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

170 (ii) has made a determination, based on the provider's analysis of the information
 171 provided by the individual and otherwise available to it, that the plan is suitable for the
 172 individual and the individual will be able to meet the payment obligations under the plan; and

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

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

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

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

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

183 provider to be creditors of the individual, provide the individual with a list of:

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

185 (ii) creditors that the provider expects to participate in the plan but not grant

186 concessions;

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

188 (iv) all other creditors.

189 (4) Before an individual assents to an agreement [~~to engage in a plan~~], the provider

190 shall inform the individual, in a record that contains nothing else, that is given separately, and

191 that the individual may keep whether or not the individual assents to the agreement:

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

193 (b) that plans are not suitable for all individuals and the individual may ask the

194 provider about other ways, including bankruptcy, to deal with indebtedness;

195 (c) that establishment of a plan may adversely affect the individual's credit rating or

196 credit scores;

197 (d) that nonpayment of debt may lead creditors to increase finance and other charges or

198 undertake collection activity, including litigation;

199 (e) unless it is not true, that the provider may receive compensation from the creditors

200 of the individual; and

201 (f) that, unless the individual is insolvent, if a creditor settles for less than the full

202 amount of the debt, the plan may result in the creation of taxable income to the individual, even

203 though the individual does not receive any money.

204 (5) If a provider may receive payments from an individual's creditors and the plan

205 contemplates that the individual's creditors will reduce finance charges or fees for late payment,

206 default, or delinquency, the provider may comply with Subsection (4) by providing the

207 following disclosure, surrounded by black lines:

208 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

209 (1) Debt-management plans are not right for all individuals, and you may ask us to

210 provide information about other ways, including bankruptcy, to deal with your debts.

211 (2) Using a debt-management plan may [~~hurt your credit rating or credit scores~~] make

212 it harder for you to obtain credit.

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

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Name and business address of provider

(6) If a provider will not receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, a provider may comply with Subsection (4) by providing the 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.

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

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 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.

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

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

Name and business address of provider

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

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

(1) In this section:

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

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

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

248 (2) A provider may satisfy the requirements of Section 13-42-117, 13-42-119, or
249 13-42-127 by means of the Internet or other electronic means if the provider obtains a
250 consumer's consent in the manner provided by Section 101(c)(1) of the federal act.

251 (3) The disclosures and materials required by Sections 13-42-117, 13-42-119, and
252 13-42-127 shall be presented in a form that is capable of being accurately reproduced for later
253 reference.

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

256 (a) contain no other information; and

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

259 (5) At the time of providing the materials and agreement required by Subsections
260 13-42-117(3) and (4), Section 13-42-119, and Section 13-42-127, a provider shall inform the
261 individual that upon electronic, telephonic, or written request, it will send the individual a
262 written copy of the materials, and shall comply with a request as provided in Subsection (6).

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

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

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

275 (b) its principal business address, telephone number, and electronic-mail address, if

276 any; and

277 (c) the names of its principal officers.

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

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

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

287 **13-42-119. Form and contents of agreement.**

288 (1) An agreement must:

289 (a) be in a record;

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

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

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

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

294 (f) disclose:

295 (i) the services to be provided;

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

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

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

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

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

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

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

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

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

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

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

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

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

322 (4) An agreement must provide that:

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

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

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

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

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

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

- 338 (i) the identity of the creditor; and
- 339 (ii) the right of the individual to modify or terminate the agreement.
- 340 (5) An agreement may confer on a provider a power of attorney to settle the
- 341 individual's debt for no more than 50% of the principal amount of the debt. An agreement may
- 342 not confer a power of attorney to settle a debt for more than 50% of that amount, but may
- 343 confer a power of attorney to negotiate with creditors of the individual on behalf of the
- 344 individual. An agreement must provide that the provider will obtain the assent of the
- 345 individual after a creditor has assented to a settlement for more than 50% of the principal
- 346 amount of the debt.
- 347 (6) An agreement may not:
- 348 (a) provide for application of the law of any jurisdiction other than the United States
- 349 and this state;
- 350 (b) except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. Section 2,
- 351 or Title 78B, Chapter 11, Utah Uniform Arbitration Act, contain a provision that modifies or
- 352 limits otherwise available forums or procedural rights, including the right to trial by jury, that
- 353 are generally available to the individual under law other than this chapter;
- 354 (c) contain a provision that restricts the individual's remedies under this chapter or law
- 355 other than this chapter; or
- 356 (d) contain a provision that:
- 357 (i) limits or releases the liability of any person for not performing the agreement or for
- 358 violating this chapter; or
- 359 (ii) indemnifies any person for liability arising under the agreement or this chapter.
- 360 (7) All rights and obligations specified in Subsection (4) and Section 13-42-120 exist
- 361 even if not provided in the agreement. A provision in an agreement which violates Subsection
- 362 (4), (5), or (6) is void.

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

364 **13-42-120. Cancellation of agreement -- Waiver.**

365 (1) An individual may cancel an agreement before midnight of the third business day
366 after the individual assents to it, unless the agreement does not comply with Subsection (2) or
367 Section 13-42-119 or Section 13-42-128, in which event the individual may cancel the
368 agreement within 30 days after the individual assents to it. To exercise the right to cancel, the

369 individual must give notice in a record to the provider. Notice by mail is given when mailed.

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

372 Notice of Right to Cancel

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

376 To cancel this agreement during this period, send an e-mail to
377 _____ or mail or deliver a signed, dated copy of this
378 E-mail address of provider
379 notice, or any other written notice to _____
380 Name of provider
381 at _____ before midnight on _____.
382 Address of provider Date

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

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

387 I cancel this agreement,
388 _____
389 Print your name
390 _____
391 Signature
392 _____
393 Date

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

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

401 **13-42-122. Trust account.**

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

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

410 (3) A provider shall:

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

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

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

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

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

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

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

428 (6) If a provider has established a trust account pursuant to Subsection (1), the provider
429 shall reconcile the trust account at least once a month. The reconciliation must compare the
430 cash balance in the trust account with the sum of the balances in each individual's account. If

431 the provider or its designee has more than one trust account, each trust account must be
432 individually reconciled.

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

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

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

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

447 **13-42-123. Fees and other charges.**

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

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

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

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

461 (a) If an individual assents to a plan that contemplates that creditors will reduce finance

462 charges or fees for late payment, default, or delinquency, the provider may charge:

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

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

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

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

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

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

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

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

483 (6) Except as otherwise provided in Subsections (3) and (4), if [~~a plan~~] an agreement
484 contemplates that creditors will settle an individual's debts for less than the principal amount of
485 the debt, compensation for services in connection with settling a debt may not exceed, with
486 respect to each debt, 30% of the excess of the principal amount of the debt over the amount
487 paid the creditor pursuant to the [~~plan~~] agreement, less to the extent it has not been credited
488 against an earlier settlement fee:

489 (a) the fee charged pursuant to Subsection (4)(b)(i); and

490 (b) the aggregate of fees charged pursuant to Subsection (4)(b)(ii).

491 (7) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), if
492 a payment to a provider by an individual under this chapter is dishonored, a provider may

493 impose a reasonable charge on the individual, not to exceed the lesser of \$25 and the amount
494 permitted by law other than this chapter.

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

496 **13-42-128. Prohibited acts and practices.**

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

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

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

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

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

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

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

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

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

513 (B) payment of a fee;

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

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

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

523 (i) structure a plan in a manner that would result in a negative amortization of any of an

524 individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund
525 or waive the finance charge upon payment of the principal amount of the debt;

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

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

531 (l) make a representation that:

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

533 (ii) payment of a certain amount will permit satisfaction of a certain amount or range of
534 indebtedness; or

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

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

539 (n) represent in its agreements, disclosures required by this chapter, advertisements, or
540 Internet website that it is:

541 (i) a not-for-profit entity unless it is organized and properly operating as a
542 not-for-profit entity under the law of the state in which it was formed [~~or that it is~~]; or

543 (ii) a tax-exempt entity unless it has received certification of tax-exempt status from
544 the Internal Revenue Service and is properly operating as a not-for-profit entity under the law
545 of the state in which it was formed;

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

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

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

551 (i) to the administrator; or

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

553 (2) If a provider furnishes debt-management services to an individual, the provider may
554 not, directly or indirectly:

- 555 (a) purchase a debt or obligation of the individual;
- 556 (b) receive from or on behalf of the individual:
 - 557 (i) a promissory note or other negotiable instrument other than a check or a demand
 - 558 draft; or
 - 559 (ii) a post-dated check or demand draft;
- 560 (c) lend money or provide credit to the individual, except as a deferral of a settlement
- 561 fee at no additional expense to the individual;
- 562 (d) obtain a mortgage or other security interest from any person in connection with the
- 563 services provided to the individual;
- 564 (e) except as permitted by federal law, disclose the identity or identifying information
- 565 of the individual or the identity of the individual's creditors, except to:
 - 566 (i) the administrator, upon proper demand;
 - 567 (ii) a creditor of the individual, to the extent necessary to secure the cooperation of the
 - 568 creditor in a plan; or
 - 569 (iii) the extent necessary to administer the plan;
- 570 (f) except as otherwise provided in Subsection 13-42-123(6), provide the individual
- 571 less than the full benefit of a compromise of a debt arranged by the provider;
- 572 (g) charge the individual for or provide credit or other insurance, coupons for goods or
- 573 services, membership in a club, access to computers or the Internet, or any other matter not
- 574 directly related to debt-management services or educational services concerning personal
- 575 finance, except to the extent such services are expressly authorized by the administrator; or
- 576 (h) furnish legal advice or perform legal services, unless the person furnishing that
- 577 advice to or performing those services for the individual is licensed to practice law.
- 578 (3) This chapter does not authorize any person to engage in the practice of law.
- 579 (4) A provider may not receive a gift or bonus, premium, reward, or other
- 580 compensation, directly or indirectly, for advising, arranging, or assisting an individual in
- 581 connection with obtaining, an extension of credit or other service from a lender or service
- 582 provider, except for educational or counseling services required in connection with a
- 583 government-sponsored program.
- 584 (5) Unless a person supplies goods, services, or facilities generally and supplies them
- 585 to the provider at a cost no greater than the cost the person generally charges to others, a

586 provider may not purchase goods, services, or facilities from the person if an employee or a
587 person that the provider should reasonably know is an affiliate of the provider:

- 588 (a) owns more than 10% of the person; or
- 589 (b) is an employee or affiliate of the person.

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

591 **13-42-130. Advertising.**

592 ~~[A provider]~~ (1) If a provider whose agreements contemplate that creditors will reduce
593 finance charges or fees for late payment, default, or delinquency advertises debt-management
594 services, it shall disclose, in an easily comprehensible manner, that using a debt-management
595 plan may make it harder for the individual to obtain credit.

596 (2) If a provider whose agreements contemplate that creditors will settle for less than
597 the full principal amount of debt that advertises debt-management services, it shall disclose, in
598 an easily comprehensible manner, the information specified in Subsections 13-42-117(4)(c)
599 and (d).

Legislative Review Note
as of 2-2-09 2:00 PM

Office of Legislative Research and General Counsel

S.B. 167 - Amendments to Uniform Debt-management Services Act

Fiscal Note

2009 General Session

State of Utah

State Impact

Enactment of this bill will not require additional appropriations.

Individual, Business and/or Local Impact

Enactment of this bill likely will not result in direct, measurable costs and/or benefits for individuals, businesses, or local governments.
