

## S.B. 167

# AMENDMENTS TO UNIFORM DEBT-MANAGEMENT SERVICES ACT

SENATE FLOOR AMENDMENTS

AMENDMENT 1

FEBRUARY 13, 2009 4:50 PM

Senator **Lyle W. Hillyard** proposes the following amendments:

1. *Page 3, Line 65:*

65 Revenue Code, 26 U.S.C. Section 501.

**(3) (a) The administrator may waive or reduce the insurance requirement in Subsection 13-42-105**

**(2)(d) if the provider does not:**

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

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

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

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

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

2. *Page 4, Line 116:*

116 control.

**(6) (a) The administrator may waive or reduce the insurance requirement in Subsection 13-42-105**

**(2)(d) if the provider does not:**

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

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

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

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

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

3. *Page 6, Lines 163 through 168:*

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 to a creditor or a provider :

4. Page 12, Lines 340 through 341:

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}~~ outstanding amount of the debt. An  
agreement may

5. Page 16, Lines 483 through 490:

483 (6) (a) 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).}~~ one of the following  
applicable settlement fee limits in Subsection (6)(b) or (c), the terms of which shall be clearly disclosed in  
the agreement.

(b)(i) With respect to agreements where a flat settlement fee is charged based on the overall amount  
of included debt, total aggregate fees charged may not exceed 15% of the principal amount of debt  
included in the agreement, including any fees charged under Subsections (4)(b)(i) and (ii).

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

(A) accelerated by the individual; or

(B) until offers of settlement by creditors are obtained on at least half of the outstanding debt  
included in the agreement.

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

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

(A) shall become billable only as debts are settled; and

(B) the total aggregate amount of fees charged to any individual under this chapter, including fees  
charged under Subsections (4)(b)(i) and (ii), may not exceed 18% of the principal amount of debt included  
in the agreement at the agreement's inception.

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

6. Page 18, Lines 528 through 530:

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 ;  
(i) receives a  
530 certification by the creditor that the payment is in full settlement of the debt ; or  
(ii) is part of a payment plan that, upon completion, will lead to full settlement of the debt ;

7. Page 20, Lines 596 through 599:

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 {;} ;  
(a) the information specified in Subsections 13-42-117(4)(c)  
599 and (d) ; and  
(b) the provider's settlement fee structure, consistent with the limitations of Section 13-42-123 .