

**Senator Patricia W. Jones** proposes the following substitute bill:

**UTAH DIVISION OF CONSUMER PROTECTION**

**AMENDMENTS**

2012 GENERAL SESSION

STATE OF UTAH

**Chief Sponsor: Derek E. Brown**

Senate Sponsor: Patricia W. Jones

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**LONG TITLE**

**General Description:**

This bill modifies provisions relating to matters under the jurisdiction of the Utah Division of Consumer Protection.

**Highlighted Provisions:**

This bill:

▶ modifies what constitutes a deceptive act or practice for purposes of the Consumer Sales Practices Act and modifies a provision relating to service of process under that act;

▶ modifies dollar threshold amounts for purposes of plans subject to the Business Opportunity Disclosure Act;

▶ modifies the definition of "telephone solicitation" for purposes of the Telephone Fraud Prevention Act; and

▶ modifies the Uniform Debt-Management Services Act, including to:

• modify provisions relating to an application for registration as a debt-management service provider, renewal application, and the suspension, revocation, or nonrenewal of registration;

• modify provisions relating to bonds required to be provided by registered



- 26 providers;
- 27           • modify a provision relating to prerequisites before providing debt-management
- 28 services;
- 29           • modify provisions relating to debt-management service agreements;
- 30           • modify provisions relating to fees and other charges;
- 31           • repeal a provision relating to cancellation of an agreement and replace it with a
- 32 provision relating to terminating an agreement;
- 33           • repeal a provision relating to termination of an agreement and replace it with a
- 34 provision relating to retention of records;
- 35           • modify a provision relating to required accountings;
- 36           • modify provisions relating to prohibited acts and provider liability; and
- 37           • modify administrative remedy provisions; and
- 38         ▶ makes technical changes.

39 **Money Appropriated in this Bill:**

40           None

41 **Other Special Clauses:**

42           None

43 **Utah Code Sections Affected:**

44 **AMENDS:**

45           **13-11-4**, as last amended by Laws of Utah 2010, Chapter 54

46           **13-11-6**, as last amended by Laws of Utah 2010, Chapter 378

47           **13-15-2**, as last amended by Laws of Utah 2001, Chapter 196

48           **13-26-2**, as last amended by Laws of Utah 2005, Chapter 18

49           **13-42-102**, as enacted by Laws of Utah 2006, Chapter 154

50           **13-42-105**, as last amended by Laws of Utah 2010, Chapter 378

51           **13-42-106**, as last amended by Laws of Utah 2010, Chapter 378

52           **13-42-107**, as enacted by Laws of Utah 2006, Chapter 154

53           **13-42-110**, as last amended by Laws of Utah 2008, Chapter 382

54           **13-42-111**, as last amended by Laws of Utah 2010, Chapters 218 and 378

55           **13-42-112**, as last amended by Laws of Utah 2008, Chapter 382

56           **13-42-113**, as last amended by Laws of Utah 2010, Chapter 378

- 57 13-42-114, as last amended by Laws of Utah 2009, Chapter 229
- 58 13-42-117, as last amended by Laws of Utah 2010, Chapter 378
- 59 13-42-118, as last amended by Laws of Utah 2010, Chapter 378
- 60 13-42-119, as last amended by Laws of Utah 2010, Chapter 378
- 61 13-42-121, as last amended by Laws of Utah 2010, Chapter 378
- 62 13-42-122, as last amended by Laws of Utah 2010, Chapter 378
- 63 13-42-123, as last amended by Laws of Utah 2009, Chapter 229
- 64 13-42-127, as enacted by Laws of Utah 2006, Chapter 154
- 65 13-42-128, as last amended by Laws of Utah 2009, Chapter 229
- 66 13-42-130, as last amended by Laws of Utah 2009, Chapter 229
- 67 13-42-131, as enacted by Laws of Utah 2006, Chapter 154
- 68 13-42-132, as last amended by Laws of Utah 2010, Chapter 378
- 69 13-42-133, as enacted by Laws of Utah 2006, Chapter 154
- 70 13-42-134, as last amended by Laws of Utah 2008, Chapter 382
- 71 13-42-135, as enacted by Laws of Utah 2006, Chapter 154
- 72 13-42-137, as last amended by Laws of Utah 2010, Chapter 378
- 73 13-42-139, as enacted by Laws of Utah 2006, Chapter 154

74 REPEALS AND REENACTS:

- 75 13-42-120, as last amended by Laws of Utah 2010, Chapter 378
- 76 13-42-126, as enacted by Laws of Utah 2006, Chapter 154



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

79 Section 1. Section 13-11-4 is amended to read:

80 **13-11-4. Deceptive act or practice by supplier.**

81 (1) A deceptive act or practice by a supplier in connection with a consumer transaction  
82 violates this chapter whether it occurs before, during, or after the transaction.

83 (2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or  
84 practice if the supplier knowingly or intentionally:

85 (a) indicates that the subject of a consumer transaction has sponsorship, approval,  
86 performance characteristics, accessories, uses, or benefits, if it has not;

87 (b) indicates that the subject of a consumer transaction is of a particular standard,

88 quality, grade, style, or model, if it is not;

89 (c) indicates that the subject of a consumer transaction is new, or unused, if it is not, or  
90 has been used to an extent that is materially different from the fact;

91 (d) indicates that the subject of a consumer transaction is available to the consumer for  
92 a reason that does not exist, including any of the following reasons falsely used in an  
93 advertisement:

94 (i) "going out of business";

95 (ii) "bankruptcy sale";

96 (iii) "lost our lease";

97 (iv) "building coming down";

98 (v) "forced out of business";

99 (vi) "final days";

100 (vii) "liquidation sale";

101 (viii) "fire sale";

102 (ix) "quitting business"; or

103 (x) an expression similar to any of the expressions in Subsections (2)(d)(i) through

104 (ix);

105 (e) indicates that the subject of a consumer transaction has been supplied in accordance  
106 with a previous representation, if it has not;

107 (f) indicates that the subject of a consumer transaction will be supplied in greater  
108 quantity than the supplier intends;

109 (g) indicates that replacement or repair is needed, if it is not;

110 (h) indicates that a specific price advantage exists, if it does not;

111 (i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier  
112 does not have;

113 (j) (i) indicates that a consumer transaction involves or does not involve a warranty, a  
114 disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if  
115 the representation is false; or

116 (ii) fails to honor a warranty or a particular warranty term;

117 (k) indicates that the consumer will receive a rebate, discount, or other benefit as an  
118 inducement for entering into a consumer transaction in return for giving the supplier the names

119 of prospective consumers or otherwise helping the supplier to enter into other consumer  
120 transactions, if receipt of the benefit is contingent on an event occurring after the consumer  
121 enters into the transaction;

122 (l) after receipt of payment for goods or services, fails to ship the goods or furnish the  
123 services within the time advertised or otherwise represented or, if no specific time is advertised  
124 or represented, fails to ship the goods or furnish the services within 30 days, unless within the  
125 applicable time period the supplier provides the buyer with the option to:

126 (i) cancel the sales agreement and receive a refund of all previous payments to the  
127 supplier if the refund is mailed or delivered to the buyer within 10 business days after the day  
128 on which the seller receives written notification from the buyer of the buyer's intent to cancel  
129 the sales agreement and receive the refund; or

130 (ii) extend the shipping date to a specific date proposed by the supplier;

131 (m) except as provided in Subsection (3)(b), fails to furnish a notice meeting the  
132 requirements of Subsection (3)(a) of the purchaser's right to cancel a direct solicitation sale  
133 within three business days of the time of purchase if:

134 (i) the sale is made other than at the supplier's established place of business pursuant to  
135 the supplier's personal contact, whether through mail, electronic mail, facsimile transmission,  
136 telephone, or any other form of direct solicitation; and

137 (ii) the sale price exceeds \$25;

138 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title  
139 76, Chapter 6a, Pyramid Scheme Act;

140 (o) represents that the funds or property conveyed in response to a charitable  
141 solicitation will be donated or used for a particular purpose or will be donated to or used by a  
142 particular organization, if the representation is false;

143 (p) if a consumer indicates the consumer's intention of making a claim for a motor  
144 vehicle repair against the consumer's motor vehicle insurance policy:

145 (i) commences the repair without first giving the consumer oral and written notice of:

146 (A) the total estimated cost of the repair; and

147 (B) the total dollar amount the consumer is responsible to pay for the repair, which  
148 dollar amount may not exceed the applicable deductible or other copay arrangement in the  
149 consumer's insurance policy; or

150 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a  
151 consumer was initially told the consumer was responsible to pay as an insurance deductible or  
152 other copay arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that  
153 amount is less than the full amount the motor vehicle insurance policy requires the insured to  
154 pay as a deductible or other copay arrangement, unless:

155 (A) the consumer's insurance company denies that coverage exists for the repair, in  
156 which case, the full amount of the repair may be charged and collected from the consumer; or

157 (B) the consumer misstates, before the repair is commenced, the amount of money the  
158 insurance policy requires the consumer to pay as a deductible or other copay arrangement, in  
159 which case, the supplier may charge and collect from the consumer an amount that does not  
160 exceed the amount the insurance policy requires the consumer to pay as a deductible or other  
161 copay arrangement;

162 (q) includes in any contract, receipt, or other written documentation of a consumer  
163 transaction, or any addendum to any contract, receipt, or other written documentation of a  
164 consumer transaction, any confession of judgment or any waiver of any of the rights to which a  
165 consumer is entitled under this chapter;

166 (r) charges a consumer for a consumer transaction or a portion of a consumer  
167 transaction that has not previously been agreed to by the consumer;

168 (s) solicits or enters into a consumer transaction with a person who lacks the mental  
169 ability to comprehend the nature and consequences of:

170 (i) the consumer transaction; or

171 (ii) the person's ability to benefit from the consumer transaction;

172 (t) solicits for the sale of a product or service by providing a consumer with an  
173 unsolicited check or negotiable instrument the presentment or negotiation of which obligates  
174 the consumer to purchase a product or service, unless the supplier is:

175 (i) a depository institution under Section 7-1-103;

176 (ii) an affiliate of a depository institution; or

177 (iii) an entity regulated under Title 7, Financial Institutions Act;

178 (u) sends an unsolicited mailing to a person that appears to be a billing, statement, or  
179 request for payment for a product or service the person has not ordered or used, or that implies  
180 that the mailing requests payment for an ongoing product or service the person has not received

181 or requested;

182 (v) issues a gift certificate, instrument, or other record in exchange for payment to  
183 provide the bearer, upon presentation, goods or services in a specified amount without printing  
184 in a readable manner on the gift certificate, instrument, packaging, or record any expiration  
185 date or information concerning a fee to be charged and deducted from the balance of the gift  
186 certificate, instrument, or other record; or

187 (w) misrepresents the geographical origin or location of the supplier's business [~~in~~  
188 ~~connection with the sale of cut flowers, flower arrangements, or floral products~~].

189 (3) (a) The notice required by Subsection (2)(m) shall:

190 (i) be a conspicuous statement written in dark bold with at least 12-point type on the  
191 first page of the purchase documentation; and

192 (ii) read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT  
193 ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time period  
194 reflecting the supplier's cancellation policy but not less than three business days) AFTER THE  
195 DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT, WHICHEVER IS  
196 LATER".

197 (b) A supplier is exempt from the requirements of Subsection (2)(m) if the supplier's  
198 cancellation policy:

199 (i) is communicated to the buyer; and

200 (ii) offers greater rights to the buyer than Subsection (2)(m).

201 (4) (a) A gift certificate, instrument, or other record that does not print an expiration  
202 date in accordance with Subsection (2)(v) does not expire.

203 (b) A gift certificate, instrument, or other record that does not include printed  
204 information concerning a fee to be charged and deducted from the balance of the gift  
205 certificate, instrument, or other record is not subject to the charging and deduction of the fee.

206 (c) Subsections (2)(v) and (4)(b) do not apply to a gift certificate, instrument, or other  
207 record useable at multiple, unaffiliated sellers of goods or services if an expiration date is  
208 printed on the gift certificate, instrument, or other record.

209 Section 2. Section **13-11-6** is amended to read:

210 **13-11-6. Service of process.**

211 (1) In addition to any other method provided by rule or statute, personal jurisdiction

212 over a supplier may be acquired in a civil action or proceeding instituted in the district court by  
 213 the service of process ~~[in the following manner. If a]~~ as provided in Subsection (3).

214 (2) (a) A supplier that engages in any act or practice in this state governed by this [act]  
 215 chapter, or engages in a consumer transaction subject to this [act, he] chapter, may designate an  
 216 agent upon whom service of process may be made in ~~[this]~~ the state. ~~[The agent]~~

217 (b) A designation of an agent under Subsection (2)(a) shall be in writing and filed with  
 218 the Division of Corporations and Commercial Code.

219 (c) An agent designated under this Subsection (2) shall be a resident of or a corporation  
 220 authorized to do business in [this] the state. [The designation shall be in writing and filed with  
 221 the Division of Corporations and Commercial Code. If no]

222 (3) (a) Subject to Subsection (3)(b), process upon a supplier may be served as provided  
 223 in Section 16-17-301 if:

224 (i) a designation is not made and filed[;] under Subsection (2); or [if]

225 (ii) process cannot be served in [this] the state upon the designated agent[; whether or  
 226 not the supplier is a resident of this state or is authorized to do business in this state, process  
 227 may be served upon the director of the Division of Corporations and Commercial Code, but  
 228 service upon him].

229 (b) Service upon a supplier is not effective unless the plaintiff promptly mails a copy of  
 230 the process and pleadings by registered or certified mail to the defendant at [his] the  
 231 defendant's last reasonably ascertainable address. [An]

232 (c) The plaintiff shall file an affidavit of compliance with this section [shall be filed]:

233 (i) with the clerk of the court; and

234 (ii) on or before the return day of the process, if any, or within any future time the court  
 235 allows.

236 Section 3. Section **13-15-2** is amended to read:

237 **13-15-2. Definitions.**

238 As used in this chapter:

239 (1) (a) "Assisted marketing plan" means the sale or lease of any products, equipment,  
 240 supplies, or services that are sold to the purchaser upon payment of an initial required  
 241 consideration of ~~[\$300]~~ \$500 or more for the purpose of enabling the purchaser to start a  
 242 business, and in which the seller represents:



243 (i) that the seller will provide locations or assist the purchaser in finding locations for  
244 the use or operation of vending machines, racks, display cases, or other similar devices, or  
245 currency operated amusement machines or devices, on premises neither owned nor leased by  
246 the purchaser or seller;

247 (ii) that the seller will purchase any or all products made, produced, fabricated, grown,  
248 or modified by the purchaser, using in whole or in part the supplies, services, or chattels sold to  
249 the purchaser;

250 (iii) that the seller will provide the purchaser with a guarantee that the purchaser will  
251 receive income from the assisted marketing plan that exceeds the price paid for the assisted  
252 marketing plan, or repurchase any of the products, equipment, supplies, or chattels supplied by  
253 the seller if the purchaser is dissatisfied with the assisted marketing plan; or

254 (iv) that upon payment by the purchaser of a fee or sum of money, which exceeds  
255 [~~\$300~~] \$500 to the seller, the seller will provide a sales program or marketing program that will  
256 enable the purchaser to derive income from the assisted marketing plan that exceeds the price  
257 paid for the marketing plan.

258 (b) "Assisted marketing plan" does not include:

259 (i) the sale of an ongoing business when the owner of that business sells and intends to  
260 sell only that one assisted marketing plan;

261 (ii) not-for-profit sale of sales demonstration equipment, materials, or samples for a  
262 total price of [~~\$300~~] \$500 or less; or

263 (iii) the sale of a package franchise or a product franchise defined by and in compliance  
264 with Federal Trade Commission rules governing franchise and business opportunity ventures.

265 (c) As used in Subsection (1)(a)(iii) "guarantee" means a written agreement, signed by  
266 the purchaser and seller, disclosing the complete details and any limitations or exceptions of  
267 the agreement.

268 (2) "Business opportunity" means an assisted marketing plan subject to this chapter.

269 (3) "Division" means the Division of Consumer Protection of the Department of  
270 Commerce.

271 (4) (a) "Initial required consideration" means the total amount a purchaser is obligated  
272 to pay under the terms of the assisted marketing plan, either prior to or at the time of delivery  
273 of the products, equipment, supplies, or services, or within six months of the commencement

274 of operation of the assisted marketing plan by the purchaser. If payment is over a period of  
275 time, "initial required consideration" means the sum of the down payment and the total  
276 monthly payments.

277 (b) "Initial required consideration" does not mean the not-for-profit sale of sales  
278 demonstration equipment, materials, or supplies for a total price of less than [~~\$300~~] \$500.

279 (5) "Person" means any natural person, corporation, partnership, organization,  
280 association, trust, or any other legal entity.

281 (6) "Purchaser" means a person who becomes obligated to pay for an assisted  
282 marketing plan.

283 (7) "Registered trademark" or "service mark" means a trademark, trade name, or  
284 service mark registered with the United States Patent and Trademark Office, or Utah, or the  
285 state of incorporation if a corporation.

286 (8) "Seller" means a person who sells or offers to sell an assisted marketing plan.

287 Section 4. Section **13-26-2** is amended to read:

288 **13-26-2. Definitions.**

289 As used in this chapter, unless the context otherwise requires:

290 (1) "Continuity plan" means a shipment, with the prior express consent of the buyer, at  
291 regular intervals of similar special-interest products. A continuity plan is distinguished from a  
292 subscription arrangement by no binding commitment period or purchase amount.

293 (2) "Division" means the Division of Consumer Protection.

294 (3) "Fictitious personal name" means a name other than an individual's true name. An  
295 "individual's true name" is the name taken at birth unless changed by operation of law or by  
296 civil action.

297 (4) "Material statement" or "material fact" means information that a person of ordinary  
298 intelligence or prudence would consider important in deciding whether or not to accept an offer  
299 extended through a telephone solicitation.

300 (5) "Premium" means a gift, bonus, prize, award, certificate, or other document by  
301 which a prospective purchaser is given a right, chance, or privilege to purchase or receive  
302 goods or services with a stated or represented value of \$25 or more as an inducement to a  
303 prospective purchaser to purchase other goods or services.

304 (6) "Subscription arrangements," "standing order arrangements," "supplements," and

305 "series arrangements" mean products or services provided, with the prior express request or  
306 consent of the buyer, for a specified period of time at a price dependent on the duration of  
307 service and to complement an initial purchase.

308 (7) (a) "Telephone solicitation," "sale," "selling," or "solicitation of sale" means:

309 (i) a sale or solicitation of goods or services in which:

310 (A) (I) the seller solicits the sale over the telephone;

311 (II) the purchaser's agreement to purchase is made over the telephone; and

312 (III) the purchaser, over the telephone, pays for or agrees to commit to payment for  
313 goods or services prior to or upon receipt by the purchaser of the goods or services;

314 (B) the solicitor, not exempt under Section 13-26-4, induces a prospective purchaser  
315 over the telephone, to make and keep an appointment that directly results in the purchase of  
316 goods or services by the purchaser that would not have occurred without the telephone  
317 solicitation and inducement by the solicitor;

318 (C) the seller offers or promises a premium to a prospective purchaser if:

319 (I) the seller induces the prospective purchaser to initiate a telephone contact with the  
320 telephone soliciting business; and

321 (II) the resulting solicitation meets the requirements of Subsection (7)(a); or

322 (D) the solicitor solicits a charitable donation involving the exchange of any premium,  
323 prize, gift, ticket, subscription, or other benefit in connection with any appeal made for a  
324 charitable purpose by an organization that is not otherwise exempt under Subsection  
325 13-26-4(2)(b)(iv); or

326 (ii) a telephone solicitation as defined in Section 13-25a-102.

327 (b) "Telephone solicitation," "sale," "selling," or "solicitation of sale" does not include  
328 a sale or solicitation that occurs solely through an Internet website without the use of a  
329 telephone call.

330 [~~(b)~~] (c) A solicitation of sale or telephone solicitation is considered complete when  
331 made, whether or not the person receiving the solicitation agrees to the sale or to make a  
332 charitable donation.

333 (8) "Telephone soliciting business" means a sole proprietorship, partnership, limited  
334 liability company, corporation, or other association of individuals engaged in a common effort  
335 to conduct telephone solicitations.

336 (9) "Telephone solicitor" or "solicitor" means a person, partnership, limited liability  
337 company, corporation, or other entity that:

- 338 (a) makes a telephone solicitation; or
- 339 (b) causes a telephone solicitation to be made.

340 Section 5. Section **13-42-102** is amended to read:

341 **13-42-102. Definitions.**

342 In this chapter:

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

344 (2) "Affiliate":

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

- 346 (i) the spouse of the individual;
- 347 (ii) a sibling of the individual or the spouse of a sibling;
- 348 (iii) an individual or the spouse of an individual who is a lineal ancestor or lineal  
349 descendant of the individual or the individual's spouse;

350 (iv) an aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or  
351 grandnephew, whether related by the whole or the half blood or adoption, or the spouse of any  
352 of them; or

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

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

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

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

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

361 (iv) subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), a  
362 person that receives or received more than \$25,000 from the entity for debt management  
363 services in either the current year or the preceding year or a person that owns more than 10%  
364 of, or an individual who is employed by or is a director of, a person that receives or received  
365 more than \$25,000 from the entity for debt management services in either the current year or  
366 the preceding year;

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

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

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

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

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

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

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

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

387 (8) "Day" means calendar day.

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

391 (a) legal services provided in an attorney-client relationship if:

392 (i) the services are provided by an attorney who:

393 (A) is licensed or otherwise authorized to practice law in this state; and

394 (B) provides legal services in representing the individual in the individual's relationship  
395 with a creditor; and

396 (ii) there is no intermediary between the individual and the creditor other than the  
397 attorney or an individual under the direct supervision of the attorney;

398 (b) accounting services provided in an accountant-client relationship if:  
399 (i) the services are provided by a certified public accountant who:  
400 (A) is licensed to provide accounting services in this state; [or] and  
401 (B) provides accounting services in representing the individual in the individual's  
402 relationship with a creditor; and

403 (ii) there is no intermediary between the individual and the creditor other than the  
404 accountant or an individual under the direct supervision of the accountant; or

405 (c) financial-planning services provided in a financial planner-client relationship by a  
406 member of a financial-planning profession [~~whose members~~] if:

407 (i) the administrator, by rule, determines that members are:

408 [~~(i)~~] (A) licensed by this state;

409 [~~(ii)~~] (B) subject to a disciplinary mechanism;

410 [~~(iii)~~] (C) subject to a code of professional responsibility; and

411 [~~(iv)~~] (D) subject to a continuing education requirement[-]; and

412 (ii) there is no intermediary between the individual and the creditor other than the  
413 financial planner or an individual under the direct supervision of the financial planner.

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

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

417 (12) "Lead generator" means a person who, in the regular course of business, supplies a  
418 provider with the name of a potential customer, directs a communication of an individual to a  
419 provider, or otherwise refers a customer to a provider.

420 [~~(12)~~] (13) "Person" means an individual, corporation, business trust, estate, trust,  
421 partnership, limited liability company, association, joint venture, or any other legal or  
422 commercial entity. The term does not include a public corporation, government, or  
423 governmental subdivision, agency, or instrumentality.

424 [~~(13)~~] (14) "Plan" means a program or strategy in which a provider furnishes  
425 debt-management services to an individual and which includes a schedule of payments to be  
426 made by or on behalf of the individual and used to pay debts owed by the individual.

427 [~~(14)~~] (15) "Principal amount of the debt" means the amount of a debt at the time of an  
428 agreement.

429           ~~[(15)]~~ (16) "Provider" means a person that provides, offers to provide, or agrees to  
430 provide debt-management services directly or through others.

431           ~~[(16)]~~ (17) "Record" means information that is inscribed on a tangible medium or that  
432 is stored in an electronic or other medium and is retrievable in perceivable form.

433           ~~[(17)]~~ (18) "Settlement fee" means a charge imposed on or paid by an individual in  
434 connection with a creditor's assent to accept in full satisfaction of a debt an amount less than  
435 the principal amount of the debt.

436           ~~[(18)]~~ (19) "Sign" means, with present intent to authenticate or adopt a record:

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

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

440           ~~[(19)]~~ (20) "State" means a state of the United States, the District of Columbia, Puerto  
441 Rico, the United States Virgin Islands, or any territory or insular possession subject to the  
442 jurisdiction of the United States.

443           ~~[(20)]~~ (21) "Trust account" means an account held by a provider that is:

444           (a) established in ~~[an insured]~~ a bank in which deposit accounts are insured;

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

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

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

450           Section 6. Section **13-42-105** is amended to read:

451           **13-42-105. Application for registration -- Form, fee, and accompanying**  
452 **documents.**

453           (1) An application for registration as a provider shall be in a form prescribed by the  
454 administrator.

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

457           (a) the fee established by the administrator in accordance with Section 63J-1-504;

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

459           (c) identification of all trust accounts ~~[required by]~~ subject to Section 13-42-122 and an

460 irrevocable consent authorizing the administrator to review and examine the trust accounts;  
461 (d) evidence of insurance in the amount of \$250,000:  
462 (i) against the risks of dishonesty, fraud, theft, and other misconduct on the part of the  
463 applicant or a director, employee, or agent of the applicant;  
464 (ii) issued by an insurance company authorized to do business in this state and rated at  
465 least A or equivalent by a nationally recognized rating organization approved by the  
466 administrator;  
467 (iii) with a deductible not exceeding \$5,000;  
468 (iv) payable ~~[for the benefit of]~~ to the applicant~~;~~ and this state~~;~~ and individuals who  
469 are] for the benefit of the residents of this state, as their interests may appear; and  
470 (v) not subject to cancellation by the applicant or the insurer until 60 days after written  
471 notice has been given to the administrator;  
472 (e) a record consenting to the jurisdiction of this state containing:  
473 (i) the name, business address, and other contact information of its registered agent in  
474 this state for purposes of service of process; or  
475 (ii) the appointment of the administrator as agent of the provider for purposes of  
476 service of process; and  
477 (f) if the applicant is organized as a not-for-profit entity or ~~[is exempt from taxation]~~  
478 has obtained tax exempt status under the Internal Revenue Code, 26 U.S.C. Section 501,  
479 evidence of not-for-profit [and] or tax-exempt status [applicable to the applicant under the  
480 Internal Revenue Code, 26 U.S.C. Section 501], or both.  
481 (3) (a) The administrator may waive or reduce the insurance requirement in Subsection  
482 ~~[13-42-105](2)(d)~~ if the provider does not:  
483 (i) maintain control of a trust account or receive money paid by an individual pursuant  
484 to a plan for distribution to creditors;  
485 (ii) make payments to creditors on behalf of individuals;  
486 (iii) collect fees by means of automatic payment from individuals; and  
487 (iv) execute any powers of attorney that may be utilized by the provider to collect fees  
488 from or expend funds on behalf of an individual.  
489 (b) A waiver or reduction in insurance requirements allowed by the administrator under  
490 Subsection (3)(a) shall balance the reduction in risk posed by a provider meeting the stated



491 requirements against any continued need for insurance against employee and director  
492 dishonesty.

493 Section 7. Section **13-42-106** is amended to read:

494 **13-42-106. Application for registration -- Required information.**

495 An application for registration as a provider shall be signed under penalty of perjury  
496 and include:

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

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

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

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

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

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

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

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

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

518 (8) evidence of accreditation by an independent accrediting organization approved by  
519 the administrator;

520 (9) evidence that, [~~within~~] no later than 12 months after initial employment, each of the  
521 applicant's counselors becomes certified as a certified counselor;

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

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

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

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

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

535 (15) the names and addresses of all employers of each director during the 10 years  
536 immediately preceding the application;

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

539 (a) any affiliate of the applicant; or

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

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

546 (18) the identity of each director who is an affiliate, as defined in Subsection  
547 13-42-102(2)(a) or (2)(b)(i), (ii), (iv), (v), (vi), or (vii), of the applicant; and

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

550 Section 8. Section **13-42-107** is amended to read:

551 **13-42-107. Application for registration -- Obligation to update information.**

552 An applicant or registered provider shall notify the administrator [~~within~~] no later than

553 10 days after a change in the information specified in Subsection 13-42-105(2)(d) or (f) or  
554 Subsection 13-42-106(1), (3), (6), (12), or (13).

555 Section 9. Section **13-42-110** is amended to read:

556 **13-42-110. Certificate of registration -- Timing.**

557 (1) The administrator shall approve or deny an initial registration as a provider [~~within~~  
558 no later than 120 days after an application is filed. In connection with a request pursuant to  
559 Subsection 13-42-106(19) for additional information, the administrator may extend the 120-day  
560 period for not more than 60 days. Within seven days after denying an application, the  
561 administrator, in a record, shall inform the applicant of the reasons for the denial.

562 (2) If the administrator denies an application for registration as a provider or does not  
563 act on an application within the time prescribed in Subsection (1), the applicant may appeal and  
564 request a hearing pursuant to Title 63G, Chapter 4, Administrative Procedures Act.

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

567 Section 10. Section **13-42-111** is amended to read:

568 **13-42-111. Renewal of registration.**

569 (1) A provider shall obtain a renewal of its registration annually.

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

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

573 (b) be accompanied by the fee established by the administrator in accordance with  
574 Section 63J-1-504 and the bond required by Section 13-42-113;

575 (c) contain the matter required for initial registration as a provider by Subsections  
576 13-42-106(8) and (9) and a financial statement, audited by an accountant licensed to conduct  
577 audits, for the applicant's fiscal year immediately preceding the application;

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

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

583 (i) against risks of dishonesty, fraud, theft, and other misconduct on the part of the

584 applicant or a director, employee, or agent of the applicant;

585 (ii) issued by an insurance company authorized to do business in this state and rated at  
586 least ~~[A]~~ A- or equivalent by a nationally recognized rating organization approved by the  
587 administrator;

588 (iii) with a deductible not exceeding \$5,000;

589 (iv) payable ~~[for the benefit of]~~ to the applicant~~;~~ and this state~~;~~ and individuals who  
590 are] for the benefit of the residents of this state, as their interests may appear; and

591 (v) not subject to cancellation by the applicant or the insurer until 60 days after written  
592 notice has been given to the administrator;

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

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

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

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

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

607 (5) If the administrator denies an application for renewal of registration as a provider,  
608 the applicant, ~~[within]~~ no later than 30 days after receiving notice of the denial, may appeal and  
609 request a hearing pursuant to Title 63G, Chapter 4, Administrative Procedures Act. Subject to  
610 Section 13-42-134, while the appeal is pending the applicant shall continue to provide  
611 debt-management services to individuals with whom it has agreements. If the denial is  
612 affirmed, subject to the administrator's order and Section 13-42-134, the applicant shall  
613 continue to provide debt-management services to individuals with whom it has agreements  
614 until, with the approval of the administrator, it transfers the agreements to another registered

615 provider or returns to the individuals all unexpended money that is under the applicant's  
616 control.

617 (6) (a) The administrator may waive or reduce the insurance requirement in Subsection  
618 (2)(e) if the provider does not:

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

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

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

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

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

629 Section 11. Section **13-42-112** is amended to read:

630 **13-42-112. Registration in another state -- Rulemaking.**

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

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

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

641 (ii) the applicant provides the information required by Subsections 13-42-105(2)(d) and  
642 13-42-106(1), (3), (7), (10), (12), and (13);

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

646 (iv) the applicant files a surety bond or substitute in accordance with Section  
647 13-42-113 or 13-42-114 that is solely payable or available to this state and to individuals who  
648 reside in this state.

649 (2) The administrator, in accordance with Title 63G, Chapter 3, Utah Administrative  
650 Rulemaking Act, shall make rules designating the states in which a provider may have a license  
651 or certificate that may be submitted to the administrator in compliance with this section.

652 Section 12. Section **13-42-113** is amended to read:

653 **13-42-113. Bond required.**

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

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

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

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

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

664 (b) be issued by a bonding, surety, or insurance company authorized to do business in  
665 this state and rated at least [~~A~~] A- by a nationally recognized rating organization; and

666 (c) have payment conditioned [~~upon~~] on noncompliance of the provider or its agent  
667 with this chapter.

668 (3) If the principal amount of a surety bond is reduced by payment of a claim or a  
669 judgment, the provider shall immediately notify the administrator and, [~~within~~] no later than 30  
670 days after notice by the administrator, file a new or additional surety bond in an amount to  
671 comply with the \$100,000 requirement. If for any reason a surety terminates a bond, the  
672 provider shall immediately file a new surety bond in the amount of \$100,000.

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

675 (a) the administrator assesses expenses under Subsection 13-42-132(2)(a), issues a  
676 final order under Subsection 13-42-133(1)(b), or recovers a final judgment under Subsection

677 13-42-133(1)(d) or (e) or Subsection 13-42-133(4); or

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

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

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

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

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

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

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

693 **13-42-114. Bond required -- Substitute.**

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

700 [~~(a) a certificate of insurance:]~~

701 [~~(i) issued by an insurance company authorized to do business in this state and rated at~~  
702 ~~least A or equivalent by a nationally recognized rating organization approved by the~~  
703 ~~administrator, and]~~

704 [~~(ii) with no deductible, or if the provider supplies a bond in the amount of \$5,000, a~~  
705 ~~deductible not exceeding \$5,000;]~~

706 [~~(b) a certificate of deposit issued or confirmed by a bank approved by the~~  
707 ~~administrator, payable upon presentation of a certificate by the administrator stating that the~~

708 ~~provider or its agent has not complied with this chapter; or]~~

709 ~~[(c) with the approval of the administrator:]~~

710 ~~[(i)]~~ (a) an irrevocable letter of credit, issued or confirmed by a bank approved by the  
711 administrator, payable ~~[upon]~~ on presentation of a certificate by the administrator stating that  
712 the provider or its agent has not complied with this chapter; or

713 ~~[(ii)]~~ (b) bonds or other obligations of the United States or guaranteed by the United  
714 States or bonds or other obligations of this state or a political subdivision of this state, to be:

715 (i) deposited and maintained with a bank approved by the administrator for this  
716 purpose~~[-]; and~~

717 (ii) delivered by the bank to the administrator on presentation of a certificate by the  
718 administrator stating that the provider or its agent has not complied with this chapter.

719 (2) If a provider furnishes a substitute pursuant to Subsection (1), ~~[the provisions of]~~  
720 Subsections 13-42-113(1), (3), (4), and (5) apply to the substitute.

721 Section 14. Section ~~13-42-117~~ is amended to read:

722 **13-42-117. Prerequisites for providing debt-management services.**

723 (1) Before providing debt-management services, a ~~[registered]~~ provider shall give the  
724 individual an itemized list of goods and services and the charges for each. The list shall be  
725 clear and conspicuous, be in a record the individual may keep whether or not the individual  
726 assents to an agreement, and describe the goods and services the provider offers:

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

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

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

731 Set-up fee \_\_\_\_\_  
732 dollar amount of fee

733 Monthly service fee \_\_\_\_\_  
734 dollar amount of fee or method of determining amount

735 Settlement fee \_\_\_\_\_  
736 dollar amount of fee or method of determining amount

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

738 \_\_\_\_\_



739 (item) dollar amount or method of determining amount

740

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

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

744 (a) provides the individual with reasonable education about the management of  
745 personal finance;

746 (b) has prepared a financial analysis~~[-and]~~ including at least the following matters  
747 affecting the individual's financial condition:

748 (i) assets;

749 (ii) income;

750 (iii) debt, including secured debt; and

751 (iv) other liabilities; and

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

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

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

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

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

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

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

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

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

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

770 concessions;

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

772 (iv) all other creditors.

773 (4) Before an individual assents to an agreement, the provider shall inform the  
774 individual, in a separate record [~~that contains nothing else, that is given separately, and~~] that  
775 the individual may keep whether or not the individual assents to the agreement:

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

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

779 (c) of the amount of time necessary to achieve the results that the provider represents to  
780 be achievable;

781 (d) if the provider intends to include a settlement offer to any of the individual's  
782 creditors or debt collectors:

783 (i) of the time by which the provider will make a bona fide settlement offer to any of  
784 the individual's creditors or debt collectors; and

785 (ii) of the amount of money or the percentage of each outstanding debt that the  
786 individual must accumulate before the provider will make a bona fide settlement offer to each  
787 creditor or debt collector;

788 [~~(e)~~] (e) that establishment of a plan may adversely affect the individual's credit rating  
789 or credit scores;

790 [~~(f)~~] (f) that nonpayment of debt may lead creditors to increase finance and other  
791 charges or undertake collection activity, including litigation;

792 (g) if the provider requests or requires the individual to place money in an account at  
793 an insured financial institution, that the individual:

794 (i) owns the funds held in the account;

795 (ii) may withdraw from the provider's plan at any time without penalty; and

796 (iii) is entitled to receive all money in the account, other than money that the provider  
797 earns as provided in Section 13-42-123, at the time the individual withdraws from the  
798 provider's plan;

799 [~~(h)~~] (h) unless it is not true, that the provider may receive compensation from the  
800 creditors of the individual; and

801 [~~f~~] (i) that, unless the individual is insolvent, if a creditor settles for less than the full  
802 amount of the debt, the plan may result in the creation of taxable income to the individual, even  
803 though the individual does not receive any money.

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

808 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

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

811 (2) Using a debt-management plan may make it harder for you to obtain credit.

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

813

---

814 Name and business address of provider

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

819 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

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

822 (2) Using a debt-management plan may make it harder for you to obtain credit.

823

---

824 Name and business address of provider

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

828 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

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

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

832 hurt your credit rating or credit scores;  
833 lead your creditors to increase finance and other charges; and  
834 lead your creditors to undertake activity, including lawsuits, to collect the debts.  
835 (3) Reduction of debt under our program may result in taxable income to you, even  
836 though you will not actually receive any money.

837

---

Name and business address of provider

838

839 Section 15. Section **13-42-118** is amended to read:

840 **13-42-118. Communication by electronic or other means.**

841 (1) In this section:

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

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

846 (2) A provider may satisfy the requirements of Section 13-42-117, 13-42-119, or  
847 13-42-127 by means of the Internet or other electronic means if the provider obtains a  
848 consumer's consent in the manner provided by Section 101(c)(1) of the federal act.

849 (3) The disclosures and materials required by Sections 13-42-117, 13-42-119, and  
850 13-42-127 shall be presented in a form that is capable of being accurately reproduced for later  
851 reference.

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

854 (a) contain no other information; and

855 (b) the individual is able to see before proceeding to assent to formation of an  
856 agreement.

857 (5) At the time of providing the materials and agreement required by Subsections  
858 13-42-117(3) and (4), Section 13-42-119, and Section 13-42-127, a provider shall inform the  
859 individual that ~~upon~~ on electronic, telephonic, or written request, it will send the individual a  
860 written copy of the materials, and shall comply with a request as provided in Subsection (6).

861 (6) If a provider is requested, before the expiration of 90 days after an agreement is  
862 completed or terminated, to send a written copy of the materials required by Subsections

863 13-42-117(3) and (4), Section 13-42-119, or Section 13-42-127, the provider shall send them at  
864 no charge [~~within~~] no later than three business days after the request, but the provider need not  
865 comply with a request more than once per calendar month or if it reasonably believes the  
866 request is made for purposes of harassment. If a request is made more than 90 days after an  
867 agreement is completed or terminated, the provider shall send within a reasonable time a  
868 written copy of the materials requested.

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

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

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

875 (c) the names of its principal officers.

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

879 (9) If a provider wishes to terminate an agreement with a consumer pursuant to  
880 Subsection (8), it shall notify the consumer that it will terminate the agreement unless the  
881 consumer, [~~within~~] no later than 30 days after receiving the notification, consents to electronic  
882 communication in the manner provided in Section 101(c) of the federal act. If the consumer  
883 consents, the provider may terminate the agreement only as permitted by Subsection  
884 13-42-119(1)(f)[~~(vii)~~](iv)(D).

885 Section 16. Section **13-42-119** is amended to read:

886 **13-42-119. Form and contents of agreement.**

887 (1) An agreement shall:

888 (a) be in a record;

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

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

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

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

893 (f) disclose:

894 (i) the services to be provided;

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

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

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

901 (A) each creditor of the individual to which payment will be made, the amount owed to  
902 each creditor, and any concessions the provider reasonably believes each creditor will offer;  
903 ~~[and]~~

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

906 ~~[(v)]~~ (C) each creditor that the provider believes will not participate in the plan and to  
907 which the provider will not direct payment; and

908 (D) the provider may terminate the agreement for good cause, upon return of  
909 unexpended money of the individual;

910 (v) if a plan contemplates the settlement of the individual's debt for less than the  
911 principal amount of the debt, an estimate of:

912 (A) the duration of the plan based on all enrolled debts;

913 (B) the length of time before the individual may reasonably expect a settlement offer;  
914 and

915 (C) the amount of savings needed to accrue before the individual may reasonably  
916 expect a settlement offer, expressed as either a dollar amount or a percentage, for each enrolled  
917 debt;

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

919 ~~[(vii) that the provider may terminate the agreement for good cause, upon return of~~  
920 ~~unexpended money of the individual;]~~

921 ~~[(viii)]~~ (vii) that the individual may ~~[cancel the agreement as provided in Section~~  
922 ~~13-42-120]~~ terminate the agreement at any time by giving written or electronic notice, and that,  
923 if notice of termination is given, the individual will receive all unexpended money that the  
924 provider or its designee has received from or on behalf of the individual for payment of a credit

925 and, except to the extent they have been earned, the provider's fees;

926 ~~[(ix)]~~ (viii) that the individual may contact the administrator with any questions or  
927 complaints regarding the provider; and

928 ~~[(x)]~~ (ix) the address, telephone number, and Internet address or website of the  
929 administrator.

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

933 (3) If the administrator supplies the provider with any information required under  
934 Subsection (1)(f)~~[(x)]~~(ix), the provider may comply with that requirement only by disclosing  
935 the information supplied by the administrator.

936 (4) An agreement shall provide that:

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

939 ~~[(i) the provider will refund all unexpended money that the provider or its agent has  
940 received from or on behalf of the individual for the reduction or satisfaction of the individual's  
941 debt;]~~

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

945 ~~[(iii) all powers of attorney granted by the individual to the provider are revoked and  
946 ineffective;]~~

947 ~~[(b)]~~ (a) the individual authorizes any bank in which the provider or its agent has  
948 established a trust account to disclose to the administrator any financial records relating to the  
949 trust account; and

950 ~~[(c)]~~ (b) the provider will notify the individual ~~[within]~~ no later than five business days  
951 after learning of a creditor's final decision to reject or withdraw from a plan and that this notice  
952 will include:

953 (i) the identity of the creditor; and

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

955 ~~[(5) An agreement may confer on a provider a power of attorney to settle the~~

956 individual's debt for no more than 50% of the principal amount of the debt. An agreement may  
 957 not confer a power of attorney to settle a debt for more than 50% of that amount, but may  
 958 confer a power of attorney to negotiate with creditors of the individual on behalf of the  
 959 individual. An agreement shall provide that the provider will obtain the assent of the  
 960 individual after a creditor has assented to a settlement for more than 50% of the principal  
 961 amount of the debt.]

962 [(6)] (5) An agreement may not:

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

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

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

971 (d) contain a provision that:

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

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

975 [(7)] (6) [All rights and obligations specified in Subsection (4) and Section 13-42-120  
 976 exist even if not provided in the agreement.] A provision in an agreement which violates  
 977 Subsection [(4);] (5)[;] or (6) is void.

978 Section 17. Section **13-42-120** is repealed and reenacted to read:

979 **13-42-120. Termination of agreement.**

980 (1) An individual who is a party to an agreement may terminate the agreement at any  
 981 time, without penalty or obligation, by giving the provider notice in a record.

982 (2) A provider may terminate an agreement if an individual who is a party to the  
 983 agreement fails for 60 days to make a payment or deposit required by the agreement or if other  
 984 good cause exists.

985 (3) If an agreement is terminated:

986 (a) the provider, no later than seven business days after the termination, shall pay the



987 individual who is a party to the agreement all money the provider or its designee received from  
988 or on behalf of the individual, other than:

989 (i) an amount properly disbursed to a creditor; and

990 (ii) fees earned pursuant to Section 13-42-123; and

991 (b) any power of attorney granted by the individual to the provider is revoked.

992 Section 18. Section **13-42-121** is amended to read:

993 **13-42-121. Required language.**

994 Unless the administrator, by rule, provides otherwise, the disclosures and documents  
995 required by this chapter shall be in English. If a provider communicates with an individual  
996 primarily in a language other than English, the provider shall furnish a translation [~~into~~] in the  
997 other language of the disclosures and documents required by this chapter.

998 Section 19. Section **13-42-122** is amended to read:

999 **13-42-122. Trust account.**

1000 (1) All money paid to a provider by or on behalf of an individual for distribution to  
1001 creditors pursuant to a plan is held in trust. [~~Within~~] No later than two business days after  
1002 receipt, the provider shall deposit the money in a trust account established for the benefit of  
1003 individuals to whom the provider is furnishing debt-management services.

1004 (2) A provider whose agreement contemplates the settlement of an individual's debt for  
1005 less than the principal amount of the debt may request or require the individual to place money  
1006 in an account to be used to pay a creditor or the provider's fees, or both, if:

1007 (a) the money is held in an insured account at a bank;

1008 (b) the individual owns the money held in the account and is paid any interest accrued  
1009 on the account;

1010 (c) the entity administering the account is not the provider or an affiliate of the  
1011 provider, unless the affiliate is described in Subsection 13-42-102(2)(b)(iv);

1012 (d) the entity administering the account does not give or accept any money or other  
1013 compensation in exchange for a referral of business involving debt-management services; and

1014 (e) the individual may terminate the agreement at any time without penalty and on  
1015 termination must receive all money in the account, other than money earned by the provider in  
1016 compliance with this section.

1017 (3) If an agreement contemplates the reduction of finance charges or fees for late

1018 payment, default, or delinquency and the provider complies with Subsection (1), the provider  
1019 may request or require the individual to make payment to be used for both distribution to  
1020 creditors and payment of the provider's fees.

1021 [~~2~~] (4) Money held in trust by a provider is not property of the provider or its  
1022 designee. The money is not available to creditors of the provider or designee, except an  
1023 individual from whom or on whose behalf the provider received money, to the extent that the  
1024 money has not been disbursed to creditors of the individual.

1025 [~~3~~] (5) A provider shall:

1026 (a) maintain separate records of account for each individual to whom the provider is  
1027 furnishing debt-management services;

1028 (b) disburse money paid by or on behalf of the individual to creditors of the individual  
1029 as disclosed in the agreement, except that:

1030 (i) the provider may delay payment to the extent that a payment by the individual is not  
1031 final; and

1032 (ii) if a plan provides for regular periodic payments to creditors, the disbursement shall  
1033 comply with the due dates established by each creditor; and

1034 (c) promptly correct any payments that are not made or that are misdirected as a result  
1035 of an error by the provider or other person in control of the trust account and reimburse the  
1036 individual for any costs or fees imposed by a creditor as a result of the failure to pay or  
1037 misdirection.

1038 [~~4~~] (6) A provider may not commingle money in a trust account established for the  
1039 benefit of individuals to whom the provider is furnishing debt-management services with  
1040 money of other persons.

1041 [~~5~~] (7) A trust account shall at all times have a cash balance equal to the sum of the  
1042 balances of each individual's account.

1043 [~~6~~] (8) If a provider has established a trust account pursuant to Subsection (1), the  
1044 provider shall reconcile the trust account at least once a month. The reconciliation shall  
1045 compare the cash balance in the trust account with the sum of the balances in each individual's  
1046 account. If the provider or its designee has more than one trust account, each trust account  
1047 shall be individually reconciled.

1048 [~~7~~] (9) If a provider discovers, or has a reasonable suspicion of, embezzlement or

1049 other unlawful appropriation of money held in trust, the provider immediately shall notify the  
1050 administrator by a method approved by the administrator. Unless the administrator by rule  
1051 provides otherwise, [~~within~~] no later than five days thereafter, the provider shall give notice to  
1052 the administrator describing the remedial action taken or to be taken.

1053 [~~(8)~~] (10) If an individual terminates an agreement or it becomes reasonably apparent  
1054 to a provider that a plan has failed, the provider shall promptly refund to the individual all  
1055 money paid by or on behalf of the individual which has not been paid to creditors, less fees that  
1056 are payable to the provider under Section 13-42-123.

1057 [~~(9)~~] (11) Before relocating a trust account from one bank to another, a provider shall  
1058 inform the administrator of the name, business address, and telephone number of the new bank.  
1059 As soon as practicable, the provider shall inform the administrator of the account number of the  
1060 trust account at the new bank.

1061 Section 20. Section **13-42-123** is amended to read:

1062 **13-42-123. Fees and other charges.**

1063 (1) A provider may not impose directly or indirectly a fee or other charge on an  
1064 individual or receive money from or on behalf of an individual for debt-management services  
1065 except as permitted by this section.

1066 (2) A provider may not impose charges or receive payment for debt-management  
1067 services until the provider and the individual have signed an agreement that complies with  
1068 Sections 13-42-119 and 13-42-128.

1069 (3) If an individual assents to an agreement, a provider may not impose a fee or other  
1070 charge for educational [~~or~~], counseling, or similar services, [~~or the like~~], except as otherwise  
1071 provided in this [~~Subsection (3)~~] section and Subsection 13-42-128(4). The administrator may  
1072 authorize a provider to charge a fee based on the nature and extent of the [~~educational or~~  
1073 counseling] services furnished by the provider.

1074 (4) [~~Subject~~] (a) Subsections (4)(b) through (d) are subject to adjustment of dollar  
1075 amounts pursuant to Subsection 13-42-132(6)[~~, the following rules apply~~].

1076 [~~(a)~~] (b) If an individual assents to a plan that contemplates that creditors will reduce  
1077 finance charges or fees for late payment, default, or delinquency, the provider may charge:

1078 (i) a fee not exceeding \$50 for consultation, obtaining a credit report, setting up an  
1079 account, and the like; and

1080 (ii) a monthly service fee, not to exceed \$10 times the number of accounts remaining in  
1081 a plan at the time the fee is assessed, but not more than \$50 in any month.

1082 ~~[(b)]~~ (c) If an individual assents to an agreement that contemplates that creditors will  
1083 settle debts for less than the principal amount of the debt, a provider may ~~[charge:]~~ not request  
1084 or receive payment of any fee or consideration for the provider's service unless:

1085 ~~[(i) subject to Subsection 13-42-119(4), a fee for consultation, obtaining a credit report,~~  
1086 ~~setting up an account, and the like, in an amount not exceeding the lesser of \$400 and 4% of~~  
1087 ~~the debt in the plan at the inception of the plan; and]~~

1088 ~~[(ii) a monthly service fee, not to exceed \$10 times the number of accounts remaining~~  
1089 ~~in a plan at the time the fee is assessed, but not more than \$50 in any month.]~~

1090 ~~[(e) A provider may not impose or receive fees under both Subsections (4)(a) and (b).]~~

1091 (i) the provider has renegotiated, settled, reduced, or otherwise altered the terms of at  
1092 least one debt under an agreement executed by the individual;

1093 (ii) the individual has made at least one payment pursuant to that agreement between  
1094 the individual and the creditor or debt collector; and

1095 (iii) the fee or consideration for any individual debt that is renegotiated, settled,  
1096 reduced, or otherwise altered:

1097 (A) bears the same proportion to the total fee for renegotiating, settling, reducing, or  
1098 altering the terms of the entire debt as the individual debt amount at the time the debt was  
1099 enrolled in the service bears to the entire debt amount at the time the debt was enrolled in the  
1100 service; or

1101 (B) is a percentage of the amount saved as a result of the renegotiation, settlement,  
1102 reduction, or alteration, as calculated under Subsection (4)(e), which percentage may not  
1103 change from one individual debt to another.

1104 (d) Except as otherwise provided in Subsection 13-42-128(4), if an individual does not  
1105 assent to an agreement, a provider may receive for educational and counseling services it  
1106 provides to the individual a fee not exceeding \$100 or, with the approval of the administrator, a  
1107 larger fee. The administrator may approve a fee larger than \$100 if the nature and extent of the  
1108 educational and counseling services warrant the larger fee.

1109 (e) For purposes of Subsection (4)(e)(iii)(B), the amount saved is calculated as the  
1110 difference between the amount owed at the time the debt is enrolled in the service and the

1111 amount actually paid to satisfy the debt.

1112 (5) If, before the expiration of 90 days after the completion or termination of  
1113 educational or counseling services, an individual assents to an agreement, the provider shall  
1114 refund to the individual any fee paid pursuant to Subsection (4)(d).

1115 (6) ~~[(a)]~~ Except as otherwise provided in Subsections (3) and (4), if an agreement  
1116 contemplates that creditors will settle an individual's debts for less than the principal amount of  
1117 the debt~~;~~:

1118 (a) compensation for services in connection with settling a debt [may not exceed one of  
1119 the following applicable settlement fee limits in Subsection (6)(b) or (c), the terms of which  
1120 shall be clearly disclosed in the agreement.] shall be reasonable and clearly disclosed in the  
1121 agreement; and

1122 (b) a fee for settling a debt may be collected only as the debt is settled.

1123 ~~[(b) (i) With respect to agreements where a flat settlement fee is charged based on the~~  
1124 ~~overall amount of included debt, total aggregate fees charged may not exceed 17% of the~~  
1125 ~~principal amount of debt included in the agreement, including any fees charged under~~  
1126 ~~Subsections (4)(b)(i) and (ii).]~~

1127 ~~[(ii) The flat settlement fee authorized under this Subsection (6)(b) shall be assessed in~~  
1128 ~~equal monthly payments over no less than half of the length of the plan, as estimated at the~~  
1129 ~~plan's inception, unless:]~~

1130 ~~[(A) payment is voluntarily accelerated by the individual in a separate record; and]~~

1131 ~~[(B) at least half of the principal amount of overall debt included in the agreement at its~~  
1132 ~~inception has been settled.]~~

1133 ~~[(c) (i) With respect to agreements where fees are calculated as a percentage of the~~  
1134 ~~amount saved by an individual, a settlement fee may not exceed 30% of the excess of the~~  
1135 ~~outstanding amount of each debt over the amount actually paid to the creditor, as calculated at~~  
1136 ~~the time of settlement.]~~

1137 ~~[(ii) Settlement fees authorized under this Subsection (6)(c):]~~

1138 ~~[(A) may be collected only as debts are settled; and]~~

1139 ~~[(B) the total aggregate amount of fees charged to any individual under this chapter,~~  
1140 ~~including fees charged under Subsections (4)(b)(i) and (ii), may not exceed 20% of the~~  
1141 ~~principal amount of debt included in the agreement at the agreement's inception.]~~

1142 ~~[(d) A provider may not impose or receive fees under both Subsections (6)(b) and (c):]~~

1143 (7) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), if

1144 a payment to a provider by an individual under this chapter is dishonored, a provider may

1145 impose a reasonable charge on the individual, not to exceed the lesser of \$25 and the amount

1146 permitted by law other than this chapter.

1147 Section 21. Section **13-42-126** is repealed and reenacted to read:

1148 **13-42-126. Retention of records.**

1149 (1) For each individual for whom a provider provides debt-management services, the

1150 provider shall maintain records for five years after the final payment made by the individual.

1151 (2) The provider shall produce a copy of the records to the individual within a

1152 reasonable time after a request for the records.

1153 (3) The provider may use electronic or other means of storage of the records.

1154 Section 22. Section **13-42-127** is amended to read:

1155 **13-42-127. Periodic reports and retention of records.**

1156 (1) A provider shall provide the accounting required by Subsection (2):

1157 (a) ~~[upon]~~ on cancellation or termination of an agreement; and

1158 (b) before cancellation or termination of any agreement:

1159 (i) at least once each month; and

1160 (ii) ~~[within]~~ no later than five business days after a request by an individual, but the

1161 provider need not comply with more than one request in any calendar month.

1162 (2) A provider, in a record, shall provide each individual for whom it has established a

1163 plan an accounting of the following information:

1164 (a) the amount in an account containing money paid by or on behalf of the individual

1165 for fees or distribution to a creditor, or both, as of the date one month before the date of the

1166 accounting;

1167 ~~[(a)]~~ (b) the amount [of money received from the individual] paid into the account

1168 since the last report;

1169 ~~[(b)]~~ (c) the amounts and dates of disbursement made on the individual's behalf, or by

1170 the individual ~~[upon]~~ on the direction of the provider, since the last report to each creditor

1171 listed in the plan;

1172 ~~[(c)]~~ (d) the amounts deducted, as fees or otherwise, from the amount [received from

1173 ~~the individual]~~ paid into the account since the last report;

1174  ~~[(d) the amount held in reserve; and]~~

1175 (e) if, since the last report, a creditor has agreed to accept as payment in full an amount  
1176 less than the principal amount of the debt owed by the individual:

1177 (i) the total amount and terms of the settlement;

1178 (ii) the amount of the debt when the individual assented to the plan;

1179 (iii) the amount of the debt when the creditor agreed to the settlement; and

1180 (iv) the calculation of a settlement fee[-]; and

1181 (f) the amount in the account as of the date of the accounting.

1182 ~~[(3) A provider shall maintain records for each individual for whom it provides~~

1183 ~~debt-management services for five years after the final payment made by the individual and~~

1184 ~~produce a copy of them to the individual within a reasonable time after a request for them. The~~

1185 ~~provider may use electronic or other means of storage of the records.]~~

1186 (3) If an agreement contemplates that a creditor will settle a debt for less than the

1187 principal amount of the debt and the provider delegates performance of its duties under this

1188 section to another person, the provider may provide the information required by Subsection

1189 (2)(e) in a record separate from the record containing the other information required by

1190 Subsection (2).

1191 Section 23. Section **13-42-128** is amended to read:

1192 **13-42-128. Prohibited acts and practices.**

1193 (1) A provider may not, directly or indirectly:

1194 (a) include a secured debt in a plan, except as authorized by law other than this chapter;

1195 ~~[(a)]~~ (b) misappropriate or misapply money held in trust;

1196 ~~[(b)]~~ (c) settle a debt on behalf of an individual [for more than 50% of the principal

1197 ~~amount of the debt owed a creditor], unless the individual assents to the settlement after the~~

1198 ~~creditor has assented;~~

1199 ~~[(c)]~~ (d) take a power of attorney that authorizes it to settle a debt[, unless the power of

1200 ~~attorney expressly limits the provider's authority to settle debts for not more than 50% of the~~

1201 ~~principal amount of the debt owed a creditor];~~

1202 ~~[(d)]~~ (e) exercise or attempt to exercise a power of attorney after an individual has

1203 ~~terminated an agreement;~~

1204           ~~[(e)]~~ (f) initiate a transfer from an individual's account at a bank or with another person  
1205 unless the transfer is:

1206           (i) a return of money to the individual; or

1207           (ii) before termination of an agreement, properly authorized by the agreement and this  
1208 chapter, and for:

1209           (A) payment to one or more creditors pursuant to an agreement; or

1210           (B) payment of a fee;

1211           ~~[(f)]~~ (g) offer a gift or bonus, premium, reward, or other compensation to an individual  
1212 for executing an agreement;

1213           ~~[(g)]~~ (h) offer, pay, or give a gift or bonus, premium, reward, or other compensation to  
1214 a lead generator or other person for referring a prospective customer, if the person making the  
1215 referral:

1216           (i) has a financial interest in the outcome of debt-management services provided to the  
1217 customer, unless neither the provider nor the person making the referral communicates to the  
1218 prospective customer the identity of the source of the referral; or

1219           (ii) compensates its employees on the basis of a formula that incorporates the number  
1220 of the individuals the employee refers to the provider;

1221           ~~[(h)]~~ (i) receive a bonus, commission, or other benefit for referring an individual to a  
1222 person;

1223           ~~[(i)]~~ (j) structure a plan in a manner that would result in a negative amortization of any  
1224 of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to  
1225 refund or waive the finance charge ~~[upon]~~ on payment of the principal amount of the debt;

1226           ~~[(j)]~~ (k) compensate its employees on the basis of a formula that incorporates the  
1227 number of individuals the employee induces to enter into agreements;

1228           ~~[(k)]~~ (l) settle a debt or lead an individual to believe that a payment to a creditor is in  
1229 settlement of a debt to the creditor unless, at the time of settlement, the individual~~[-(i)]~~  
1230 receives a certification by the creditor that the payment:

1231           (i) is in full settlement of the debt; or

1232           (ii) is part of a ~~[payment]~~ settlement plan, the terms of which are included in the  
1233 certification, ~~[which upon completion will result in full settlement of]~~ that, if completed  
1234 according to its terms, will satisfy the debt;



1235           ~~[(t)]~~ (m) make a representation that:

1236           (i) the provider will furnish money to pay bills or prevent attachments;

1237           (ii) payment of a certain amount will permit satisfaction of a certain amount or range of

1238 indebtedness; or

1239           (iii) participation in a plan will or may prevent litigation, garnishment, attachment,

1240 repossession, foreclosure, eviction, or loss of employment;

1241           ~~[(m)]~~ (n) misrepresent that it is authorized or competent to furnish legal advice or

1242 perform legal services;

1243           ~~[(m)]~~ (o) represent in its agreements, disclosures required by this chapter,

1244 advertisements, or Internet website that it is:

1245           (i) a not-for-profit entity unless it is organized and properly operating as a

1246 not-for-profit entity under the law of the state in which it was formed; or

1247           (ii) a tax-exempt entity unless it has received certification of tax-exempt status from

1248 the Internal Revenue Service and is properly operating as a not-for-profit entity under the law

1249 of the state in which it was formed;

1250           ~~[(t)]~~ (p) take a confession of judgment or power of attorney to confess judgment

1251 against an individual;

1252           ~~[(p)]~~ (q) employ an unfair, unconscionable, or deceptive act or practice~~[-including the~~

1253 ~~knowing omission of];~~

1254           (r) knowingly omit any material information[;] or material aspect of any provider's

1255 service, including:

1256           (i) the amount of money or the percentage of the debt amount that an individual may

1257 save by using the provider's service;

1258           (ii) the amount of time necessary to achieve the results that the provider represents as

1259 achievable;

1260           (iii) the amount of money or the percentage of each outstanding debt that the individual

1261 is required to accumulate before the provider will:

1262           (A) initiate an attempt with the individual's creditors or debt collectors to negotiate,

1263 settle, or modify the terms of the individual's debt; or

1264           (B) make a bona fide offer to negotiate, settle, or modify the terms of the individual's

1265 debt;

- 1266 (iv) the effect of the service on:  
1267 (A) an individual's creditworthiness; or  
1268 (B) collection efforts of the individual's creditors or debt collectors;  
1269 (v) the percentage or number of individuals who achieve the results that the provider  
1270 represents are achievable; and  
1271 (vi) whether a provider's service is offered or provided by a nonprofit entity; or  
1272 ~~[(v)]~~ (s) make or use any untrue or misleading statement:  
1273 (i) to the administrator; or  
1274 (ii) in the provision of services subject to this chapter.  
1275 (2) If a provider furnishes debt-management services to an individual, the provider may  
1276 not, directly or indirectly:  
1277 (a) purchase a debt or obligation of the individual;  
1278 (b) receive from or on behalf of the individual:  
1279 (i) a promissory note or other negotiable instrument other than a check or a demand  
1280 draft; or  
1281 (ii) a post-dated check or demand draft;  
1282 (c) lend money or provide credit to the individual, ~~[except as]~~ unless the loan or credit  
1283 is:  
1284 (i) a deferral of a settlement fee at no additional expense to the individual; or  
1285 (ii) through an affiliate that is licensed separately from the provider;  
1286 (d) obtain a mortgage or other security interest from any person in connection with the  
1287 services provided to the individual;  
1288 (e) except as permitted by federal law, disclose the identity or identifying information  
1289 of the individual or the identity of the individual's creditors, except to:  
1290 (i) the administrator, ~~[upon]~~ on proper demand;  
1291 (ii) a creditor of the individual, to the extent necessary to secure the cooperation of the  
1292 creditor in a plan; or  
1293 (iii) the extent necessary to administer the plan;  
1294 (f) except as otherwise provided in Subsection 13-42-123~~[(6)]~~(4)(c), provide the  
1295 individual less than the full benefit of a compromise of a debt arranged by the provider;  
1296 (g) charge the individual for or provide credit or other insurance, coupons for goods or

1297 services, membership in a club, access to computers or the Internet, or any other matter not  
1298 directly related to debt-management services or educational services concerning personal  
1299 finance, except to the extent such services are expressly authorized by the administrator; or

1300 (h) furnish legal advice or perform legal services, unless the person furnishing that  
1301 advice to or performing those services for the individual is licensed to practice law.

1302 (3) This chapter does not authorize any person to engage in the practice of law.

1303 (4) A provider may not receive a gift or bonus, premium, reward, or other  
1304 compensation, directly or indirectly, for advising, arranging, or assisting an individual in  
1305 connection with obtaining, an extension of credit or other service from a lender or service  
1306 provider, except:

1307 (a) for educational or counseling services required in connection with a  
1308 government-sponsored program[-]; or

1309 (b) as authorized in Subsection 13-42-123(4)(d).

1310 (5) Unless a person supplies goods, services, or facilities generally and supplies them  
1311 to the provider at a cost no greater than the cost the person generally charges to others, a  
1312 provider may not purchase goods, services, or facilities from the person if an employee or a  
1313 person that the provider should reasonably know is an affiliate of the provider:

1314 (a) owns more than 10% of the person; or

1315 (b) is an employee or affiliate of the person.

1316 Section 24. Section **13-42-130** is amended to read:

1317 **13-42-130. Advertising.**

1318 (1) If a provider whose agreements contemplate that creditors will reduce finance  
1319 charges or fees for late payment, default, or delinquency advertises debt-management services,  
1320 it shall disclose, in an easily comprehensible manner, that using a debt-management plan may  
1321 make it harder for the individual to obtain credit.

1322 (2) If a provider whose agreements contemplate that creditors will settle for less than  
1323 the full principal amount of debt that advertises debt-management services, it shall disclose, in  
1324 an easily comprehensible manner:

1325 (a) the information specified in Subsections 13-42-117(4)[~~(e)~~](e) and [~~(d)~~](f); and

1326 (b) the provider's settlement fee structure, consistent with the limitations of Section  
1327 13-42-123.

1328 Section 25. Section **13-42-131** is amended to read:

1329 **13-42-131. Provider liability for the conduct of other persons -- Prohibited**  
1330 **conduct of person providing service to provider.**

1331 (1) If a provider delegates any of its duties or obligations under an agreement or this  
1332 chapter to another person, including an independent contractor, the provider is liable for  
1333 conduct of the person which, if done by the provider, would violate the agreement or this  
1334 chapter.

1335 (2) A lead generator or other person that provides services to or for a provider may not  
1336 engage in an unfair, unconscionable, or deceptive act or practice, including the knowing  
1337 omission of any material information, with respect to an individual who the lead generator or  
1338 other person has reason to believe is or may become a customer of the provider.

1339 Section 26. Section **13-42-132** is amended to read:

1340 **13-42-132. Powers of administrator.**

1341 (1) The administrator may act on its own initiative or in response to complaints and  
1342 may receive complaints, take action to obtain voluntary compliance with this chapter, refer  
1343 cases to the attorney general, and seek or provide remedies as provided in this chapter.

1344 (2) The administrator may investigate and examine, in this state or elsewhere, by  
1345 subpoena or otherwise, the activities, books, accounts, and records of a person that provides or  
1346 offers to provide debt-management services, or a person to which a provider has delegated its  
1347 obligations under an agreement or this chapter, to determine compliance with this chapter.  
1348 Information that identifies individuals who have agreements with the provider may not be  
1349 disclosed to the public. In connection with the investigation, the administrator may:

1350 (a) charge the person the reasonable expenses necessarily incurred to conduct the  
1351 examination;

1352 (b) require or permit a person to file a statement under oath as to all the facts and  
1353 circumstances of a matter to be investigated; and

1354 (c) seek a court order authorizing seizure from a bank at which the person maintains [a  
1355 trust] an account [required] contemplated by Section 13-42-122, any or all money, books,  
1356 records, accounts, and other property of the provider that is in the control of the bank and  
1357 relates to individuals who reside in this state.

1358 (3) The administrator may adopt rules to implement the provisions of this chapter in

1359 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1360 (4) The administrator may enter into cooperative arrangements with any other federal  
1361 or state agency having authority over providers and may exchange with any of those agencies  
1362 information about a provider, including information obtained during an examination of the  
1363 provider.

1364 (5) The administrator shall establish fees in accordance with Section 63J-1-504 to be  
1365 paid by providers for the expense of administering this chapter.

1366 (6) The administrator, by rule, shall adopt dollar amounts instead of those specified in  
1367 Sections 13-42-102, 13-42-105, 13-42-109, 13-42-113, 13-42-123, 13-42-133, and 13-42-135  
1368 to reflect inflation, as measured by the United States Bureau of Labor Statistics Consumer  
1369 Price Index for All Urban Consumers or, if that index is not available, another index adopted  
1370 by rule by the administrator. The administrator shall adopt a base year and adjust the dollar  
1371 amounts, effective on July 1 of each year, if the change in the index from the base year, as of  
1372 December 31 of the preceding year, is at least 10%. The dollar amount shall be rounded to the  
1373 nearest \$100, except that the amounts in Section 13-42-123 shall be rounded to the nearest  
1374 dollar.

1375 (7) The administrator shall notify registered providers of any change in dollar amounts  
1376 made pursuant to Subsection (6) and make that information available to the public.

1377 Section 27. Section **13-42-133** is amended to read:

1378 **13-42-133. Administrative remedies.**

1379 (1) The administrator may enforce this chapter and rules adopted under this chapter by  
1380 taking one or more of the following actions:

1381 (a) ordering a provider, lead generator, person administering an account pursuant to  
1382 Subsection 13-42-122(2), or [a] director, employee, or other agent of a provider to cease and  
1383 desist from any violations;

1384 (b) ordering a provider, lead generator, person administering an account pursuant to  
1385 Subsection 13-42-122(2), or [a] person that has caused a violation to correct the violation,  
1386 including making restitution of money or property to a person aggrieved by a violation;

1387 (c) subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6),  
1388 imposing on a provider, lead generator, person administering an account pursuant to  
1389 Subsection 13-42-122(2), or [a] other person that [has caused] violates or causes a violation an

1390 administrative fine not exceeding \$10,000 for each violation;

1391 (d) prosecuting a civil action to:

1392 (i) enforce an order; or

1393 (ii) obtain restitution or [~~an injunction or other~~] equitable relief, or both; or

1394 (e) intervening in an action brought under Section 13-42-135.

1395 (2) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), if

1396 a person violates or knowingly authorizes, directs, or aids in the violation of a final order

1397 issued under Subsection (1)(a) or (b), the administrator may impose an administrative fine not

1398 exceeding \$20,000 for each violation.

1399 (3) The administrator may maintain an action to enforce this chapter in any county.

1400 (4) The administrator may recover the reasonable costs of enforcing the chapter under

1401 Subsections (1) through (3), including [~~attorney's~~] attorney fees based on the hours reasonably

1402 expended and the hourly rates for attorneys of comparable experience in the community.

1403 (5) In determining the amount of an administrative fine to impose under Subsection (1)

1404 or (2), the administrator shall consider the seriousness of the violation, the good faith of the

1405 violator, any previous violations by the violator, the deleterious effect of the violation on the

1406 public, the net worth of the violator, and any other factor the administrator considers relevant to

1407 the determination of the administrative fine.

1408 (6) All money received through administrative fines imposed under this chapter shall

1409 be deposited in the Consumer Protection Education and Training Fund created by Section

1410 13-2-8.

1411 Section 28. Section **13-42-134** is amended to read:

1412 **13-42-134. Suspension, revocation, or nonrenewal of registration.**

1413 (1) In this section, "insolvent" means:

1414 (a) having generally ceased to pay debts in the ordinary course of business other than as  
1415 a result of good-faith dispute;

1416 (b) being unable to pay debts as they become due; or

1417 (c) being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C.

1418 Section 101 et seq.

1419 (2) The administrator may suspend, revoke, or deny renewal of a provider's registration

1420 if:

1421 (a) a fact or condition exists that, if it had existed when the registrant applied for  
1422 registration as a provider, would have been a reason for denying registration;

1423 (b) the provider has committed a material violation of this chapter or a rule or order of  
1424 the administrator under this chapter;

1425 (c) the provider is insolvent;

1426 (d) the provider ~~[or]~~, an employee or affiliate of the provider, a lead generator for the  
1427 provider, a person administering an account for the provider pursuant to Subsection  
1428 13-42-122(2), or a person to whom the provider has delegated its obligations under an  
1429 agreement or this chapter has refused to permit the administrator to make an examination  
1430 authorized by this chapter, failed to comply with Subsection 13-42-132(2)(b) ~~[within]~~ no later  
1431 than 15 days after request, or made a material misrepresentation or omission in complying with  
1432 Subsection 13-42-132(2)(b); or

1433 (e) the provider has not responded within a reasonable time and in an appropriate  
1434 manner to communications from the administrator.

1435 (3) If a provider becomes insolvent, the provider shall continue to provide  
1436 debt-management services to an individual with whom the provider has an agreement until:

1437 (a) with the administrator's approval, the provider transfers the agreement to another  
1438 registered provider; or

1439 (b) the provider returns to the individual all unexpended money that is under the  
1440 provider's control.

1441 ~~[(3)]~~ (4) If a provider does not comply with Subsection 13-42-122~~[(6)]~~(8) or if the  
1442 administrator otherwise finds that the public health or safety or general welfare requires  
1443 emergency action, the administrator may order a summary suspension of the provider's  
1444 registration, effective on the date specified in the order.

1445 ~~[(4)]~~ (5) If the administrator suspends, revokes, or denies renewal of the registration of  
1446 a provider, the administrator may seek a court order authorizing seizure of any or all of the  
1447 money in a trust account required by Section 13-42-122, books, records, accounts, and other  
1448 property of the provider which are located in this state.

1449 ~~[(5)]~~ (6) If the administrator suspends or revokes a provider's registration, the provider  
1450 may appeal and request a hearing pursuant to Title 63G, Chapter 4, Administrative Procedures  
1451 Act.

1452 Section 29. Section **13-42-135** is amended to read:

1453 **13-42-135. Private enforcement.**

1454 (1) If an individual voids an agreement pursuant to Subsection 13-42-125(2), the  
1455 individual may recover in a civil action all money paid or deposited by or on behalf of the  
1456 individual pursuant to the agreement, except amounts paid to creditors, in addition to the  
1457 recovery under Subsections (3)(c) and (d).

1458 (2) If an individual voids an agreement pursuant to Subsection 13-42-125(1), the  
1459 individual may recover in a civil action three times the total amount of the fees, charges,  
1460 money, and payments made by the individual to the provider, in addition to the recovery under  
1461 Subsection (3)(d).

1462 (3) Subject to Subsection (4), an individual with respect to whom a provider or other  
1463 person violates this chapter may recover in a civil action from the provider, the person, and any  
1464 person that caused the violation:

1465 (a) compensatory damages for injury, including noneconomic injury, caused by the  
1466 violation;

1467 (b) except as otherwise provided in Subsection (4) and subject to adjustment of the  
1468 dollar amount pursuant to Subsection 13-42-132(6), with respect to a violation of Section  
1469 13-42-117, 13-42-119, 13-42-120, 13-42-121, 13-42-122, 13-42-123, 13-42-124, 13-42-126, or  
1470 13-42-127, or Subsection 13-42-128(1), (2), or (4), the greater of the amount recoverable under  
1471 Subsection (3)(a) or \$5,000;

1472 (c) punitive damages; and

1473 (d) reasonable ~~[attorney's]~~ attorney fees and costs.

1474 (4) In a class action, except for a violation of Subsection 13-42-128(1)~~[(e)]~~(f), the  
1475 minimum damages provided in Subsection (3)(b) do not apply.

1476 ~~[(5) In addition to the remedy available under Subsection (3), if a provider violates an~~  
1477 ~~individual's rights under Section 13-42-120, the individual may recover in a civil action all~~  
1478 ~~money paid or deposited by or on behalf of the individual pursuant to the agreement, except for~~  
1479 ~~amounts paid to creditors.]~~

1480 ~~[(6)]~~ (5) A provider is not liable under this section for a violation of this chapter if the  
1481 provider proves that the violation was not intentional and resulted from a good-faith error  
1482 notwithstanding the maintenance of procedures reasonably adapted to avoid the error. An error



1483 of legal judgment with respect to a provider's obligations under this chapter is not a good-faith  
1484 error. If, in connection with a violation, the provider has received more money than authorized  
1485 by an agreement or this chapter, the defense provided by this Subsection [~~(6)~~] (5) is not  
1486 available unless the provider refunds the excess [~~within~~] no later than two business days of  
1487 learning of the violation.

1488 [~~(7)~~] (6) The administrator shall assist an individual in enforcing a judgment against  
1489 the surety bond or other security provided under Section 13-42-113 or 13-42-114.

1490 Section 30. Section **13-42-137** is amended to read:

1491 **13-42-137. Statute of limitations.**

1492 (1) An action or proceeding brought pursuant to Subsection 13-42-133(1), (2), or (3)  
1493 shall be commenced [~~within~~] no later than four years after the conduct that is the basis of the  
1494 administrator's complaint.

1495 (2) An action brought pursuant to Section 13-42-135 shall be commenced [~~within~~] no  
1496 later than two years after the latest of:

1497 (a) the individual's last transmission of money to a provider;

1498 (b) the individual's last transmission of money to a creditor at the direction of the  
1499 provider;

1500 (c) the provider's last disbursement to a creditor of the individual;

1501 (d) the provider's last accounting to the individual pursuant to Subsection  
1502 13-42-127(1);

1503 (e) the date on which the individual discovered or reasonably should have discovered  
1504 the facts giving rise to the individual's claim; or

1505 (f) termination of actions or proceedings by the administrator with respect to a  
1506 violation of the chapter.

1507 (3) The period prescribed in Subsection (2)(e) is tolled during any period during which  
1508 the provider or, if different, the defendant has materially and willfully misrepresented  
1509 information required by this chapter to be disclosed to the individual, if the information so  
1510 misrepresented is material to the establishment of the liability of the defendant under this  
1511 chapter.

1512 Section 31. Section **13-42-139** is amended to read:

1513 **13-42-139. Relation to Electronic Signatures in Global and National Commerce**

1514 **Act.**

1515           This chapter modifies, limits, and supersedes the [~~federal~~] Electronic Signatures in  
1516 Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify,  
1517 limit, or supersede Section 101(c) of that act, 15 U.S.C. Section 7001(c), or authorize  
1518 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.  
1519 Section 7003(b).