

HB0078S01 compared with HB0078

~~{deleted text}~~ shows text that was in HB0078 but was deleted in HB0078S01.

inserted text shows text that was not in HB0078 but was inserted into HB0078S01.

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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

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;

HB0078S01 compared with HB0078

- ▶ modifies the definition of "telephone solicitation" for purposes of the Telephone Fraud Prevention Act; and
- ▶ modifies the Uniform ~~Debt-Management~~ 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 providers;
 - modify a provision relating to prerequisites before providing debt-management services;
 - modify provisions relating to debt-management service agreements;
 - modify provisions relating to fees and other charges;
 - repeal a provision relating to cancellation of an agreement and replace it with a provision relating to terminating an agreement;
 - repeal a provision relating to termination of an agreement and replace it with a provision relating to retention of records;
 - modify a provision relating to required accountings;
 - modify provisions relating to prohibited acts and provider liability; and
 - modify administrative remedy provisions; and
- ▶ makes technical changes.

Money Appropriated in this Bill:

None

Other Special Clauses:

None

Utah Code Sections Affected:

AMENDS:

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

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

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

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

HB0078S01 compared with HB0078

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

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

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

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

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

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

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

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

13-42-114, as last amended by Laws of Utah 2009, Chapter 229

13-42-117, as last amended by Laws of Utah 2010, Chapter 378

13-42-118, as last amended by Laws of Utah 2010, Chapter 378

13-42-119, as last amended by Laws of Utah 2010, Chapter 378

13-42-121, as last amended by Laws of Utah 2010, Chapter 378

13-42-122, as last amended by Laws of Utah 2010, Chapter 378

13-42-123, as last amended by Laws of Utah 2009, Chapter 229

~~13-42-126~~ 13-42-127, as enacted by Laws of Utah 2006, Chapter 154

13-42-128, as last amended by Laws of Utah 2009, Chapter 229

13-42-130, as last amended by Laws of Utah 2009, Chapter 229

13-42-131, as enacted by Laws of Utah 2006, Chapter 154

13-42-132, as last amended by Laws of Utah 2010, Chapter 378

13-42-133, as enacted by Laws of Utah 2006, Chapter 154

13-42-134, as last amended by Laws of Utah 2008, Chapter 382

13-42-135, as enacted by Laws of Utah 2006, Chapter 154

13-42-137, as last amended by Laws of Utah 2010, Chapter 378

13-42-139, as enacted by Laws of Utah 2006, Chapter 154

REPEALS AND REENACTS:

13-42-120, as last amended by Laws of Utah 2010, Chapter 378

13-42-126, as enacted by Laws of Utah 2006, Chapter 154

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

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

HB0078S01 compared with HB0078

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

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

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

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

(b) indicates that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not;

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

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

(i) "going out of business";

(ii) "bankruptcy sale";

(iii) "lost our lease";

(iv) "building coming down";

(v) "forced out of business";

(vi) "final days";

(vii) "liquidation sale";

(viii) "fire sale";

(ix) "quitting business"; or

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

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

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

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

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

HB0078S01 compared with HB0078

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

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

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

(k) indicates that the consumer will receive a rebate, discount, or other benefit as an inducement for entering into a consumer transaction in return for giving the supplier the names of prospective consumers or otherwise helping the supplier to enter into other consumer transactions, if receipt of the benefit is contingent on an event occurring after the consumer enters into the transaction;

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

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

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

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

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

(ii) the sale price exceeds \$25;

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

(o) represents that the funds or property conveyed in response to a charitable solicitation will be donated or used for a particular purpose or will be donated to or used by a

HB0078S01 compared with HB0078

particular organization, if the representation is false;

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

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

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

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

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

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

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

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

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

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

(i) the consumer transaction; or

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

(t) solicits for the sale of a product or service by providing a consumer with an

HB0078S01 compared with HB0078

unsolicited check or negotiable instrument the presentment or negotiation of which obligates the consumer to purchase a product or service, unless the supplier is:

- (i) a depository institution under Section 7-1-103;
- (ii) an affiliate of a depository institution; or
- (iii) an entity regulated under Title 7, Financial Institutions Act;

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

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

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

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

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

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

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

- (i) is communicated to the buyer; and
- (ii) offers greater rights to the buyer than Subsection (2)(m).

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

(b) A gift certificate, instrument, or other record that does not include printed

HB0078S01 compared with HB0078

information concerning a fee to be charged and deducted from the balance of the gift certificate, instrument, or other record is not subject to the charging and deduction of the fee.

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

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

13-11-6. Service of process.

(1) In addition to any other method provided by rule or statute, personal jurisdiction over a supplier may be acquired in a civil action or proceeding instituted in the district court by the service of process ~~in the following manner. If a~~ as provided in Subsection (3).

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

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

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

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

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

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

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

(c) The plaintiff shall file an affidavit of compliance with this section ~~shall be filed];~~

(i) with the clerk of the court; and

HB0078S01 compared with HB0078

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

Section ~~(2)~~3. Section **13-15-2** is amended to read:

13-15-2. Definitions.

As used in this chapter:

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

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

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

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

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

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

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

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

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

HB0078S01 compared with HB0078

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

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

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

(4) (a) "Initial required consideration" means the total amount a purchaser is obligated to pay under the terms of the assisted marketing plan, either prior to or at the time of delivery of the products, equipment, supplies, or services, or within six months of the commencement of operation of the assisted marketing plan by the purchaser. If payment is over a period of time, "initial required consideration" means the sum of the down payment and the total monthly payments.

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

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

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

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

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

Section ~~13-26-1~~4. Section **13-26-2** is amended to read:

13-26-2. Definitions.

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

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

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

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

HB0078S01 compared with HB0078

civil action.

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

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

(6) "Subscription arrangements," "standing order arrangements," "supplements," and "series arrangements" mean products or services provided, with the prior express request or consent of the buyer, for a specified period of time at a price dependent on the duration of service and to complement an initial purchase.

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

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

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

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

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

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

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

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

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

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

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

HB0078S01 compared with HB0078

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

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

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

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

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

Section ~~4~~5. Section **13-42-102** is amended to read:

13-42-102. Definitions.

In this chapter:

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

(2) "Affiliate":

(a) with respect to an individual, means:

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

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

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

(b) with respect to an entity, means:

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

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

HB0078S01 compared with HB0078

entity;

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

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

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

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

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

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

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

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

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

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

(8) "Day" means calendar day.

(9) "Debt-management services" means services as an intermediary between an

HB0078S01 compared with HB0078

individual and one or more creditors of the individual for the purpose of obtaining concessions, but does not include:

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

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

(A) is licensed or otherwise authorized ~~{, by pro hac vice admission,}~~ to practice law in this state; and

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

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

(b) accounting services provided in an accountant-client relationship if:

(i) the services are provided by a certified public accountant who:

(A) is licensed to provide accounting services in this state; ~~{or}~~ and

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

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

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

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

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

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

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

~~[(iv)]~~ (D) subject to a continuing education requirement ~~{-}~~ and

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

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

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

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

HB0078S01 compared with HB0078

provider, or otherwise refers a customer to a provider.

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

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

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

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

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

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

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

- (a) to execute or adopt a tangible symbol; or
- (b) to attach to or logically associate with the record an electronic sound, symbol, or process.

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

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

- (a) established in ~~[an insured]~~ a bank in which deposit accounts are insured;
- (b) separate from other accounts of the provider or its designee;
- (c) designated as a trust account or other account designated to indicate that the money in the account is not the money of the provider or its designee; and
- (d) used to hold money of one or more individuals for disbursement to creditors of the individuals.

HB0078S01 compared with HB0078

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

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

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

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

- (a) the fee established by the administrator in accordance with Section 63J-1-504;
- (b) the bond required by Section 13-42-113;
- (c) identification of all trust accounts ~~[required by]~~ subject to Section 13-42-122 and an irrevocable consent authorizing the administrator to review and examine the trust accounts;
- (d) evidence of insurance in the amount of \$250,000:
 - (i) against the risks of dishonesty, fraud, theft, and other misconduct on the part of the applicant or a director, employee, or agent of the applicant;
 - (ii) issued by an insurance company authorized to do business in this state and rated at least A or equivalent by a nationally recognized rating organization approved by the administrator;
 - (iii) with a deductible not exceeding \$5,000;
 - (iv) payable ~~[for the benefit of]~~ to the applicant ~~;~~ and this state ~~;~~ and individuals who are for the benefit of the residents of this state, as their interests may appear; and
 - (v) not subject to cancellation by the applicant or the insurer until 60 days after written notice has been given to the administrator;
- (e) a record consenting to the jurisdiction of this state containing:
 - (i) the name, business address, and other contact information of its registered agent in this state for purposes of service of process; or
 - (ii) the appointment of the administrator as agent of the provider for purposes of service of process; and
- (f) if the applicant is organized as a not-for-profit entity or ~~[is exempt from taxation]~~ has obtained tax exempt status under the Internal Revenue Code, 26 U.S.C. Section 501, evidence of not-for-profit ~~[and]~~ or tax-exempt status ~~[applicable to the applicant under the Internal Revenue Code, 26 U.S.C. Section 501]~~ , or both.

HB0078S01 compared with HB0078

(3) (a) The administrator may waive or reduce the insurance requirement in Subsection ~~13-42-105~~(2)(d) if the provider does not:

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

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

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

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

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

- (1) the applicant's name, principal business address and telephone number, and all other business addresses in this state, electronic-mail addresses, and Internet website addresses;
- (2) all names under which the applicant conducts business;
- (3) the address of each location in this state at which the applicant will provide debt-management services or a statement that the applicant will have no such location;
- (4) the name and home address of each officer and director of the applicant and each person that owns at least 10% of the applicant;
- (5) identification of every jurisdiction in which, during the five years immediately preceding the application:
 - (a) the applicant or any of its officers or directors has been licensed or registered to provide debt-management services; or
 - (b) individuals have resided when they received debt-management services from the applicant;
- (6) a statement describing, to the extent it is known or should be known by the applicant, any material civil or criminal judgment or litigation and any material administrative

HB0078S01 compared with HB0078

or enforcement action by a governmental agency in any jurisdiction against the applicant, any of its officers, directors, owners, or agents, or any person who is authorized to have access to the trust account required by Section 13-42-122;

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

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

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

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

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

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

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

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

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

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

(a) any affiliate of the applicant; or

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

(17) a statement of the amount of compensation of the applicant's five most highly

HB0078S01 compared with HB0078

compensated employees for each of the three years immediately preceding the application or, if it has not been in operation for the three years preceding the application, for the period of its existence;

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

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

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

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

An applicant or registered provider shall notify the administrator [within] no later than 10 days after a change in the information specified in Subsection 13-42-105(2)(d) or (f) or Subsection 13-42-106(1), (3), (6), (12), or (13).

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

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

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

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

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

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

13-42-111. Renewal of registration.

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

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

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

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

HB0078S01 compared with HB0078

Section 63J-1-504 and the bond required by Section 13-42-113;

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

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

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

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

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

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

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

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

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

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

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

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

(4) If a registered provider files a timely and complete application for renewal of

HB0078S01 compared with HB0078

registration, the registration remains effective until the administrator, in a record, notifies the applicant of a denial and states the reasons for the denial.

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

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

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

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

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

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

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

Section ~~5~~11. Section **13-42-112** is amended to read:

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

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

HB0078S01 compared with HB0078

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

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

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

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

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

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

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

13-42-113. Bond required.

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

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

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

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

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

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

(c) have payment conditioned ~~[upon]~~ on noncompliance of the provider or its agent

HB0078S01 compared with HB0078

with this chapter.

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

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

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

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

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

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

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

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

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

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

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

(1) Instead of the surety bond required by Section 13-42-113, a provider, with the approval of the administrator and in the amount required by Subsection (2), may deliver to the administrator ~~[, in the amount required by Subsection 13-42-113(2), and, except as otherwise provided in Subsection (1)(c)(i), payable or available to this state and to individuals who reside~~

HB0078S01 compared with HB0078

in this state when they agree to receive debt-management services from the provider, as their interests may appear, if the provider or its agent does not comply with this chapter~~]~~:

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

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

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

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

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

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

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

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

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

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

Section ~~{6}~~ 14. Section **13-42-117** is amended to read:

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

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

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

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

HB0078S01 compared with HB0078

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

Set-up fee _____

dollar amount of fee

Monthly service fee _____

dollar amount of fee or method of determining amount

Settlement fee _____

dollar amount of fee or method of determining amount

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

(item) dollar amount or method of determining amount

(item) dollar amount or method of determining amount.

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

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

(b) has prepared a financial analysis~~;~~ and including at least the following matters affecting the individual's financial condition:

(i) assets;

(ii) income;

(iii) debt, including secured debt; and

(iv) other liabilities; and

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

(i) has prepared a plan for the individual;

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

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

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

HB0078S01 compared with HB0078

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

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

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

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

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

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

(iv) all other creditors.

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

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

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

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

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

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

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

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

~~[(d)]~~ (f) that nonpayment of debt may lead creditors to increase finance and other

HB0078S01 compared with HB0078

charges or undertake collection activity, including litigation;

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

(i) owns the funds held in the account;

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

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

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

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

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

IMPORTANT INFORMATION FOR YOU TO CONSIDER

- (1) Debt-management plans are not right for all individuals, and you may ask us to provide information about other ways, including bankruptcy, to deal with your debts.
- (2) Using a debt-management plan may make it harder for you to obtain credit.
- (3) We may receive compensation for our services from your creditors.

Name and business address of provider

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

IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

HB0078S01 compared with HB0078

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

Name and business address of provider

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

IMPORTANT INFORMATION FOR YOU TO CONSIDER

- (1) Our program is not right for all individuals, and you may ask us to provide information about bankruptcy and other ways to deal with your debts.
- (2) Nonpayment of your debts under our program may hurt your credit rating or credit scores; lead your creditors to increase finance and other charges; and lead your creditors to undertake activity, including lawsuits, to collect the debts.
- (3) Reduction of debt under our program may result in taxable income to you, even though you will not actually receive any money.

Name and business address of provider

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

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

- (1) In this section:
- (a) "Consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.
- (b) "Federal act" means the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.
- (2) A provider may satisfy the requirements of Section 13-42-117, 13-42-119, or 13-42-127 by means of the Internet or other electronic means if the provider obtains a consumer's consent in the manner provided by Section 101(c)(1) of the federal act.
- (3) The disclosures and materials required by Sections 13-42-117, 13-42-119, and 13-42-127 shall be presented in a form that is capable of being accurately reproduced for later reference.
- (4) With respect to disclosure by means of an Internet website, the disclosure of the

HB0078S01 compared with HB0078

information required by Subsection 13-42-117(4) shall appear on one or more screens that:

- (a) contain no other information; and
- (b) the individual is able to see before proceeding to assent to formation of an

agreement.

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

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

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

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

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

(9) If a provider wishes to terminate an agreement with a consumer pursuant to Subsection (8), it shall notify the consumer that it will terminate the agreement unless the consumer, ~~[within]~~no later than 30 days after receiving the notification, consents to electronic communication in the manner provided in Section 101(c) of the federal act. If the consumer consents, the provider may terminate the agreement only as permitted by Subsection

HB0078S01 compared with HB0078

13-42-119(1)(f)~~(vii)~~(iv)(D).

Section ~~7~~16. Section 13-42-119 is amended to read:

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

(1) An agreement shall:

- (a) be in a record;
- (b) be dated and signed by the provider and the individual;
- (c) include the name of the individual and the address where the individual resides;
- (d) include the name, business address, and telephone number of the provider;
- (e) be delivered to the individual immediately upon formation of the agreement; and
- (f) disclose:
 - (i) the services to be provided;
 - (ii) the amount, or method of determining the amount, of all fees, individually

itemized, to be paid by the individual;

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

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

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

and

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

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

and

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

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

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

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

HB0078S01 compared with HB0078

and

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

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

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

~~[(viii)]~~ (vii) that the individual may ~~cancel the agreement as provided in Section 13-42-120]~~ terminate the agreement at any time by giving written or electronic notice, and that, if notice of termination is given, the individual will receive all unexpended money that the provider or its designee has received from or on behalf of the individual for payment of a credit and, except to the extent they have been earned, the provider's fees;

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

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

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

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

(4) An agreement shall provide that:

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

~~[(i) the provider will refund all unexpended money that the provider or its agent has received from or on behalf of the individual {, including any accrued interest,} for the reduction or satisfaction of the individual's debt;]~~

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

HB0078S01 compared with HB0078

and]

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

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

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

- (i) the identity of the creditor; and
- (ii) the right of the individual to modify or terminate the agreement.

~~[(5)]~~ An agreement may confer on a provider a power of attorney to settle the individual's debt for no more than 50% of the principal amount of the debt. An agreement may not confer a power of attorney to settle a debt for more than 50% of that amount, but may confer a power of attorney to negotiate with creditors of the individual on behalf of the individual. An agreement shall provide that the provider will obtain the assent of the individual after a creditor has assented to a settlement for more than 50% of the principal amount of the debt.]

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

- (a) provide for application of the law of any jurisdiction other than the United States and this state;
- (b) except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. Section 2, or Title 78B, Chapter 11, Utah Uniform Arbitration Act, contain a provision that modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are generally available to the individual under law other than this chapter;
- (c) contain a provision that restricts the individual's remedies under this chapter or law other than this chapter; or
- (d) contain a provision that:
 - (i) limits or releases the liability of any person for not performing the agreement or for violating this chapter; or
 - (ii) indemnifies any person for liability arising under the agreement or this chapter.

HB0078S01 compared with HB0078

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

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

13-42-120. Termination of agreement.

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

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

(3) If an agreement is terminated:

(a) the provider, no later than seven business days after the termination, shall pay the individual who is a party to the agreement all money the provider or its designee received from or on behalf of the individual, other than:

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

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

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

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

13-42-121. Required language.

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

Section ~~{8}~~ 19. Section 13-42-122 is amended to read:

13-42-122. Trust account.

(1) ~~{(a)}~~ All money paid to a provider by or on behalf of an individual for distribution to creditors pursuant to a plan is held in trust. ~~{~~

~~———(b)}~~ [Within] No later than two business days after receipt, the provider shall deposit the money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services.

~~{(c)}~~ 2 A ~~{person administering a trust account under this Subsection (1) may not:~~

HB0078S01 compared with HB0078

~~(i) be owned or controlled by or affiliated with the provider; or~~
~~(ii) give or accept;~~provider whose agreement contemplates the settlement of an individual's debt for less than the principal amount of the debt may request or require the individual to place money in an account to be used to pay a creditor or the provider's fees, or both, if:

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

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

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

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

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

(3) If an agreement contemplates the reduction of finance charges or fees for late payment, default, or delinquency and the provider complies with Subsection (1), the provider may request or require the individual to make payment to be used for both distribution to creditors and payment of the provider's ~~service~~ fees.

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

~~(3)~~ (5) A provider shall:

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

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

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

HB0078S01 compared with HB0078

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

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

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

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

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

~~[(7)]~~ [(9)] If a provider discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the provider immediately shall notify the administrator by a method approved by the administrator. Unless the administrator by rule provides otherwise, ~~[within]~~ no later than five days thereafter, the provider shall give notice to the administrator describing the remedial action taken or to be taken.

~~[(8)]~~ [(10)] If an individual terminates an agreement or it becomes reasonably apparent to a provider that a plan has failed, the provider shall ~~{}~~ promptly ~~{, within seven business days after the individual's request, }~~ refund to the individual all money paid by or on behalf of the individual ~~{, including any accrued interest, }~~ which has not been paid to creditors, less fees that are payable to the provider under Section 13-42-123.

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

Section ~~{9}~~ 20. Section **13-42-123** is amended to read:

HB0078S01 compared with HB0078

13-42-123. Fees and other charges.

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

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

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

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

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

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

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

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

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

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

~~(c) A provider may not impose or receive fees under both Subsections (4)(a) and (b):]~~

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

HB0078S01 compared with HB0078

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

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

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

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

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

(e) For purposes of Subsection (4)(~~fa~~e)(iii)(B), the amount saved is calculated as the difference between the amount owed at the time the debt is enrolled in the service and the amount actually paid to satisfy the debt.

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

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

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

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

~~[(b) (i) With respect to agreements where a flat settlement fee is charged based on the~~

HB0078S01 compared with HB0078

overall amount of included debt, total aggregate fees charged may not exceed 17% of the principal amount of debt included in the agreement ~~{ }~~, including any fees charged under Subsections (4)(b)(i) and (ii). ~~{ }~~

~~[(ii) The flat settlement fee authorized under this Subsection (6)(b) ~~{ }~~ shall be assessed in equal monthly payments over no less than half of the length of the plan, as estimated at the plan's inception, unless: ~~{ may be collected only upon the settlement of all debt included in the settlement fee agreement. }~~~~

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

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

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

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

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

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

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

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

Section ~~{10}~~ 21. Section **13-42-126** is ~~{amended to read:~~

~~———— **13-42-126. Termination of agreements.**~~

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

~~———— (2) If a provider or an individual terminates an agreement} repealed and reenacted to read:~~

13-42-126. Retention of records.

HB0078S01 compared with HB0078

(1) For each individual for whom a provider provides debt-management services, the provider shall ~~immediately return~~ maintain records for five years after the final payment made by the individual.

(2) The provider shall produce a copy of the records to the individual~~;~~

~~— (a) any money of the individual held in trust for the benefit of the individual, including any accrued interest; and~~

~~— (b) 65% of any [portion of the] remaining set-up fee [received pursuant to Subsection 13-42-123(4)(b) which] that has not been credited against settlement fees.~~ within a reasonable time after a request for the records.

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

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

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

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

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

(b) before cancellation or termination of any agreement:

(i) at least once each month; and

(ii) [within] no later than five business days after a request by an individual, but the provider need not comply with more than one request in any calendar month.

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

(a) the amount in an account containing money paid by or on behalf of the individual for fees or distribution to a creditor, or both, as of the date one month before the date of the accounting;

~~[(a)] (b) the amount [of money received from the individual] paid into the account~~ since the last report;

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

~~[(c)] (d)~~ the amounts deducted, as fees or otherwise, from the amount ~~[received from the individual]~~ paid into the account since the last report;

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

HB0078S01 compared with HB0078

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

- (i) the total amount and terms of the settlement;
- (ii) the amount of the debt when the individual assented to the plan;
- (iii) the amount of the debt when the creditor agreed to the settlement; and
- (iv) the calculation of a settlement fee.

~~}; and~~

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

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

~~Section 11]~~

(3) If an agreement contemplates that a creditor will settle a debt for less than the principal amount of the debt and the provider delegates performance of its duties under this section to another person, the provider may provide the information required by Subsection (2)(e) in a record separate from the record containing the other information required by Subsection (2).

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

13-42-128. Prohibited acts and practices.

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

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

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

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

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

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

HB0078S01 compared with HB0078

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

- (i) a return of money to the individual; or
- (ii) before termination of an agreement, properly authorized by the agreement and this

chapter, and for:

- (A) payment to one or more creditors pursuant to an agreement; or
- (B) payment of a fee;

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

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

[(i)] has a financial interest in the outcome of debt-management services provided to the customer, unless neither the provider nor the person making the referral communicates to the prospective customer the identity of the source of the referral; ~~†~~

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

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

~~—— (j) compensate; or~~

[(ii)] compensates its employees on the basis of a formula that incorporates the number of the individuals the employee ~~†~~induces to refers to the provider;

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

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

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

~~[(k)]~~ [(l)] settle a debt or lead an individual to believe that a payment to a creditor is in

HB0078S01 compared with HB0078

settlement of a debt to the creditor unless, at the time of settlement, the individual~~;~~

~~— (i) (j)~~ receives a certification by the creditor that the payment:

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

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

~~(k)~~ (m) make a representation that:

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

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

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

~~(n)~~ (n) misrepresent that it is authorized or competent to furnish legal advice or perform legal services;

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

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

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

~~(p)~~ (p) take a confession of judgment or power of attorney to confess judgment against an individual;

~~(q)~~ (q) employ an unfair, unconscionable, or deceptive act or practice~~[-including the knowing omission of]~~;

~~(r)~~ (r) knowingly omit any material information~~[-]~~ or material aspect of any provider's service, including:

(i) the amount of money or the percentage of the debt amount that an individual may save by using the provider's service;

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

HB0078S01 compared with HB0078

(iii) the amount of money or the percentage of each outstanding debt that the individual is required to accumulate before the provider will:

(A) initiate an attempt with the individual's creditors or debt collectors to negotiate, settle, or modify the terms of the individual's debt; or

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

(iv) the effect of the service on:

(A) an individual's creditworthiness; or

(B) collection efforts of the individual's creditors or debt collectors;

(v) the percentage or number of individuals who achieve the results that the provider represents are achievable; and

(vi) whether a provider's service is offered or provided by a nonprofit entity; or

~~[(v)]~~ (vii) make or use any untrue or misleading statement:

(i) to the administrator; or

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

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

(a) purchase a debt or obligation of the individual;

(b) receive from or on behalf of the individual:

(i) a promissory note or other negotiable instrument other than a check or a demand draft; or

(ii) a post-dated check or demand draft;

(c) lend money or provide credit to the individual, ~~[except as]~~ unless the loan or credit

is:

(i) a deferral of a settlement fee at no additional expense to the individual; or

(ii) through an affiliate that is licensed separately from the provider;

(d) obtain a mortgage or other security interest from any person in connection with the services provided to the individual;

(e) except as permitted by federal law, disclose the identity or identifying information of the individual or the identity of the individual's creditors, except to:

(i) the administrator, ~~[upon]~~ on proper demand;

HB0078S01 compared with HB0078

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

(iii) the extent necessary to administer the plan;

(f) except as otherwise provided in Subsection 13-42-123~~(f)~~(4)(c), provide the individual less than the full benefit of a compromise of a debt arranged by the provider;

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

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

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

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

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

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

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

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

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

Section ~~(12)~~24. Section **13-42-130** is amended to read:

13-42-130. Advertising.

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

HB0078S01 compared with HB0078

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

- (a) the information specified in Subsections 13-42-117(4)[~~(e)~~](e) and [~~(d)~~] (f); and
- (b) the provider's settlement fee structure, consistent with the limitations of Section 13-42-123.

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

13-42-131. ~~{Liability}~~ Provider liability for the conduct of other persons --

Prohibited conduct of person providing service to provider.

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

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

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

13-42-132. Powers of administrator.

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

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

- (a) charge the person the reasonable expenses necessarily incurred to conduct the examination;
- (b) require or permit a person to file a statement under oath as to all the facts and

HB0078S01 compared with HB0078

circumstances of a matter to be investigated; and

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

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

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

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

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

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

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

13-42-133. Administrative remedies.

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

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

HB0078S01 compared with HB0078

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

(c) subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), imposing on a provider, lead generator, person administering an account pursuant to Subsection 13-42-122(2), or [a] other person that [has caused] violates or causes a violation an administrative fine not exceeding \$10,000 for each violation;

(d) prosecuting a civil action to:

(i) enforce an order; or

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

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

(2) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), if a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under Subsection (1)(a) or (b), the administrator may impose an administrative fine not exceeding \$20,000 for each violation.

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

(4) The administrator may recover the reasonable costs of enforcing the chapter under Subsections (1) through (3), including [attorney's] attorney fees based on the hours reasonably expended and the hourly rates for attorneys of comparable experience in the community.

(5) In determining the amount of an administrative fine to impose under Subsection (1) or (2), the administrator shall consider the seriousness of the violation, the good faith of the violator, any previous violations by the violator, the deleterious effect of the violation on the public, the net worth of the violator, and any other factor the administrator considers relevant to the determination of the administrative fine.

(6) All money received through administrative fines imposed under this chapter shall be deposited in the Consumer Protection Education and Training Fund created by Section 13-2-8.

Section ~~{13}~~28. Section **13-42-134** is amended to read:

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

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

(a) having generally ceased to pay debts in the ordinary course of business other than as

HB0078S01 compared with HB0078

a result of good-faith dispute;

- (b) being unable to pay debts as they become due; or
- (c) being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C.

Section 101 et seq.

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

- (a) a fact or condition exists that, if it had existed when the registrant applied for registration as a provider, would have been a reason for denying registration;
- (b) the provider has committed a material violation of this chapter or a rule or order of the administrator under this chapter;
- (c) the provider is insolvent;
- (d) the provider ~~[or]~~, an employee or affiliate of the provider, a lead generator for the provider, a person administering an account for the provider pursuant to Subsection 13-42-122(2), or a person to whom the provider has delegated its obligations under an agreement or this chapter has refused to permit the administrator to make an examination authorized by this chapter, failed to comply with Subsection 13-42-132(2)(b) ~~[within]~~ no later than 15 days after request, or made a material misrepresentation or omission in complying with Subsection 13-42-132(2)(b); or
- (e) the provider has not responded within a reasonable time and in an appropriate manner to communications from the administrator.

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

- (a) with the administrator's approval, the provider transfers the agreement to another registered provider; or
- (b) the provider returns to the individual all unexpended money that is under the provider's control.

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

~~[(4)]~~ (5) If the administrator suspends, revokes, or denies renewal of the registration of

HB0078S01 compared with HB0078

a provider, the administrator may seek a court order authorizing seizure of any or all of the money in a trust account required by Section 13-42-122, books, records, accounts, and other property of the provider which are located in this state.

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

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Legislative Review Note

~~as of 12-29-11 12:30 PM~~

~~Office of Legislative Research and General Counsel;~~ Section 29. Section 13-42-135 is amended to read:

13-42-135. Private enforcement.

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

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

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

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

(b) except as otherwise provided in Subsection (4) and subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), with respect to a violation of Section

HB0078S01 compared with HB0078

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 13-42-127, or Subsection 13-42-128(1), (2), or (4), the greater of the amount recoverable under Subsection (3)(a) or \$5,000;

(c) punitive damages; and

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

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

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

[(6)] (5) A provider is not liable under this section for a violation of this chapter if the provider proves that the violation was not intentional and resulted from a good-faith error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. An error of legal judgment with respect to a provider's obligations under this chapter is not a good-faith error. If, in connection with a violation, the provider has received more money than authorized by an agreement or this chapter, the defense provided by this Subsection [(6)] (5) is not available unless the provider refunds the excess [within] no later than two business days of learning of the violation.

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

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

13-42-137. Statute of limitations.

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

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

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

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

HB0078S01 compared with HB0078

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

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

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

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

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

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

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

Act.

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