

O-NOTE

2005 BILL

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1 AN ACT *to repeal* subchapter II of chapter 218 [precedes 218.02] and 426.102 (3);
 2 *to amend* 21.72 (1) (a) 12., 49.857 (1) (d) 12., 73.0301 (1) (d) 6. and 220.285 (1);
 3 and *to repeal and recreate* subchapter V of chapter 422 [precedes 422.501]
 4 of the statutes; **relating to:** adopting the Uniform Debt-Management Services
 5 Act, granting rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill regulates persons who provide certain debt-management services. Under current law, the Department of Financial Institutions (DFI) regulates two types of persons who provide such services. The first type is a person engaged in the business of prorating the income of a debtor to a debtor's creditors or assuming a debtor's obligations by purchasing the accounts of the debtor. Such a person must register with DFI as an adjustment service company. The second type is a person engaged in the business of improving credit, arranging for extensions of credit, or advising about the foregoing. Such a person must register with DFI as a credit services organization.

This bill repeals the registration requirements described above and adopts instead the Uniform Debt-Management Services Act (act), which was approved by the National Conference of Commissioners on Uniform State Laws in 2005. Under the bill, with certain exceptions, a person may not provide debt-management services to a resident of this state unless the person is registered with DFI. "Debt-management services" are defined as services as an intermediary between an

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individual and one or more of the individual's creditors for the purpose of obtaining "concessions," which are defined as assents to repayment of debt on terms that are favorable to the individual. Excluded from the definition of "debt-management services" are certain legal and accounting services. Also excluded are financial planning services provided by professionals described in rules promulgated by DFI.

A person is exempt from the registration requirement if the person receives no compensation for providing debt-management services. Also exempt is a person who provides debt-management services to an individual whom the person has no reason to believe resides in this state at the time the person agrees to provide the services. In addition, the bill exempts the following persons: 1) agents and employees of a person who is registered; 2) judicial officers and persons acting under court or administrative orders; 3) assignees for the benefit of creditors; 4) banks and certain bank affiliates; 5) title insurers and escrow companies; and 6) persons whose provision of debt-management services is incidental to their provision of bill paying services.

The bill requires an applicant for registration to do all of the following: 1) pay a registration fee; 2) provide evidence that the applicant has insurance of \$250,000 against risks of dishonesty, fraud, theft, and other misconduct on the part of directors, employees, and agents; 3) if the applicant is a nonprofit or tax-exempt entity, provide evidence of such status; 4) provide specified business, financial, employee, and accreditation information; 5) provide evidence that the applicant's counselors obtain certification as counselors within 12 months of employment; 6) describe criminal, civil, and administrative actions regarding the applicant; 7) describe the applicant's educational programs, financial analyses, and initial budget plans for individuals that the applicant counsels; 8) provide copies of the agreements for providing debt-management services that the applicant will use in this state; and 9) provide the applicant's fee schedule.

In addition, an applicant must file a surety bond, or satisfy alternative requirements for insurance, irrevocable letters of credit, or other bonds, for the purpose of protecting individuals for whom the applicant agrees to provide debt-management services. Also, if the applicant intends to maintain trust accounts for paying creditors on behalf of individuals to whom the applicant provides debt-management services, the applicant must submit the results of criminal background checks on officers and employees who will have access to the trust accounts.

DFI must issue a registration to an applicant, unless any of the following apply: 1) the application contains materially erroneous information or is incomplete; 2) an officer, director, or owner of the applicant has defaulted in the payment of money collected for others or has been convicted of a crime, or suffered a civil judgment, involving dishonesty or the violation of federal or state securities laws; or 3) DFI makes a specified finding regarding the applicant's inability to operate its business in compliance with the bill's requirements. In addition, if the applicant is a nonprofit or tax-exempt entity, DFI must deny the application if the applicant's board of directors is not independent of its employees and agents. The bill includes tests for DFI to determine independence.

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If a person is registered, the bill imposes various requirements on the person's provision of debt-management services, including the following: 1) the person must act in good faith; 2) the person must maintain a toll-free customer service communication system; and 3) before providing services to an individual, the person must provide the individual with an itemized list of goods, services, and charges, educate the individual about personal finance management, and prepare a financial analysis. Additional requirements apply if the person prepares a plan for an individual to make payments to creditors. The bill also imposes requirements on agreements for registered persons to provide debt-management services to individuals, including requirements for terminating such agreements. In addition, the bill does the following: 1) imposes trust requirements on money held by registered persons for payment to creditors; 2) establishes limits on the fees that registered persons may charge; 3) specifies records that registered persons must maintain; and 4) prohibits registered persons from engaging in specified conduct.

The bill creates other requirements, including the following:

1. The bill imposes deadlines on DFI's consideration of an application for registration.
2. The bill requires registered persons to renew their registration annually.
3. The bill allows a person registered in another state to apply for a registration in this state by submitting the other state's application and registration.
4. The bill allows DFI to suspend or revoke a registration if a person is insolvent or violates the bill's requirements.
5. The bill allows DFI to investigate and enforce the bill's requirements, including by ordering persons to take corrective action or by obtaining civil forfeitures.
6. The bill allows an individual to void a debt-management service agreement with a registered person that violates the bill's requirements and allows an individual who is harmed by a registered person's violation of the bill's requirements to bring a civil action against the registered person.

For further information see the *state* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

- 1 **SECTION 1.** 21.72 (1) (a) 12. of the statutes is amended to read:
- 2 21.72 (1) (a) 12. A license or certificate of registration issued by the department
- 3 of financial institutions, or a division of it, under ss. 138.09, 138.12, 217.06, 218.0101
- 4 to 218.0163, 218.02, 218.04, 218.05, 224.72, or 224.93, subch. V of ch. 422, or subch.
- 5 III of ch. 551.

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1 **SECTION 2.** 49.857 (1) (d) 12. of the statutes is amended to read:

2 49.857 (1) (d) 12. A license or certificate of registration issued under ss. 138.09,
3 138.12, 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.93, subch.
4 V of ch. 422, or subch. III of ch. 551.

5 **SECTION 3.** 73.0301 (1) (d) 6. of the statutes is amended to read:

6 73.0301 (1) (d) 6. A license or certificate of registration issued by the
7 department of financial institutions, or a division of it, under ss. 138.09, 138.12,
8 217.06, 218.0101 to 218.0163, 218.02, 218.04, 218.05, 224.72, 224.93 or under subch.
9 V of ch. 422 or subch. III of ch. 551.

10 **SECTION 4.** Subchapter II of chapter 218 [precedes 218.02] of the statutes is
11 repealed.

12 **SECTION 5.** 220.285 (1) of the statutes, as affected by 2005 Wisconsin Act 215,
13 is amended to read:

14 220.285 (1) Any state bank, trust company bank, licensee under ss. 138.09,
15 138.12, 218.0101 to 218.0163, 218.02, 218.04 or 218.05 or ch. 217, or person
16 registered under s. 224.72 or subch. V of ch. 422 may cause any or all records kept
17 by such bank, licensee, or registered person to be recorded, copied or reproduced by
18 any photostatic, photographic or miniature photographic process or by optical
19 imaging if the process employed correctly, accurately and permanently copies,
20 reproduces or forms a medium for copying, reproducing or recording the original
21 record on a film or other durable material. A bank, licensee, or registered person may
22 thereafter dispose of the original record after first obtaining the written consent of
23 the division. This section, excepting that part of it which requires written consent
24 of the division, is applicable to national banking associations insofar as it does not
25 contravene federal law.

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~~SECTION 6.~~ Subchapter V of chapter 422 [precedes 422.501] of the statutes is repealed and recreated to read:

CHAPTER 422
SUBCHAPTER V
UNIFORM DEBT-MANAGEMENT SERVICES ACT

~~422.501 Short title.~~ This subchapter may be cited as the "Uniform Debt-Management Services Act."

~~422.502 Definitions.~~ In this subchapter:

- ~~(1)~~ (a) "Affiliate," with respect to an individual, means any of the following:
 - ¹ a. The spouse of the individual. ✓
 - ² b. A sibling of the individual or the spouse of a sibling. ✓
 - ³ c. An individual or the spouse of an individual who is a lineal ancestor or lineal descendant of the individual or the individual's spouse. ✓
 - ⁴ d. 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. ✓
 - ⁵ e. Any other individual occupying the residence of the individual. ✓
- ~~(b)~~ "Affiliate," with respect to an entity, means any of the following:
 - ¹ a. A person that directly or indirectly controls, is controlled by, or is under common control with the entity. ✓
 - ² b. An officer of, or an individual performing similar functions with respect to, the entity. ✓
 - ³ c. A director of, or an individual performing similar functions with respect to, the entity. ✓

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SECTION 6

sub. (31) (f) ↑

1 nd 4. Subject to adjustment of the dollar amount pursuant to ~~s. 422.532(6)~~ a
2 person that receives or received more than \$25,000 from the entity in either the
3 current year or the preceding year or a person that owns more than 10 percent of, or
4 an individual who is employed by or is a director of, a person that receives or received
5 more than \$25,000 from the entity in either the current year or the preceding year.

6 ^{ref} 5. An officer or director of, or an individual performing similar functions with
7 respect to, a person described in subd. ~~(1)~~ ⁽²⁰⁰⁰⁾

8 ^{ref} 6. The spouse of, or an individual occupying the residence of, an individual
9 described in subds. ~~(1)~~ ⁽¹⁾ through ~~(5)~~ ^(2.a.) ~~(5)~~ ^(2.e)

10 ^{ref} 7. An individual who has the relationship specified in ~~par. (a)~~ ^{par. (a)} to an individual
11 or the spouse of an individual described in subds. ~~(1)~~ ⁽¹⁾ through ~~(5)~~ ⁽⁵⁾ ~~(5)~~ ^(2.e)

subd. 1-d.

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12 ⁽¹²⁾ (c) "Agreement" means an agreement between a provider and an individual for
13 the performance of debt-management services.

14 ⁽³⁾ ~~"Bank"~~ ^(j) "Financial institution" means a financial institution, including a commercial bank, savings
15 bank, savings and loan association, credit union, and trust company, engaged in the
16 business of banking, chartered under federal or state law, and regulated by a federal
17 or state banking regulatory authority. END OF INSEPT

18 ⁽⁴⁾ ^(c) "Business address" means the physical location of a business, including the
19 name and number of a street.

20 ⁽⁵⁾ ^(d) "Certified counselor" means an individual certified by a training program
21 or certifying organization, approved by the ~~administrator~~ ^{division}, that authenticates the
22 competence of individuals providing education and assistance to other individuals
23 in connection with debt-management services. ✓

24 ⁽⁶⁾ ^(e) "Concessions" means assent to repayment of a debt on terms more favorable
25 to an individual than the terms of the contract between the individual and a creditor.

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1 ~~(7)~~ ^(F) "Day" means calendar day.

2 ~~(8)~~ ^(G) "Debt-management services" means services as an intermediary between
3 an individual and one or more creditors of the individual for the purpose of obtaining
4 concessions, but does not include any of the following:

5 ~~(a)~~ ^{1.} Legal services provided in an attorney-client relationship by an attorney
6 licensed or otherwise authorized to practice law in this state.

7 ~~(b)~~ ^{2.} Accounting services provided in an accountant-client relationship by a
8 certified public accountant licensed to provide accounting services in this state.

9 ~~(c)~~ ^{3.} Financial-planning services provided in a financial planner-client
10 relationship by a member of a financial-planning profession whose members the
11 administrator, by rule, determines are all of the following:

- 12 ^a 1. Licensed by this state.
- 13 ^b 2. Subject to a disciplinary mechanism.
- 14 ^c 3. Subject to a code of professional responsibility.
- 15 ^d 4. Subject to a continuing-education requirement.

16 ~~(9)~~ ^(I) "Entity" means a person other than an individual.

17 ~~(10)~~ ^(J) "Good faith" means honesty in fact and the observance of reasonable
18 standards of fair dealing. ✓

19 ~~(11)~~ ^(K) "Person" means an individual, corporation, business trust, estate, trust,
20 partnership, limited liability company, association, joint venture, or any other legal
21 or commercial entity. The term does not include a public corporation, government,
22 or governmental subdivision, agency, or instrumentality. ✓

23 ~~(12)~~ ^(L) "Plan" means a program or strategy in which a provider furnishes debt
24 management services to an individual and which includes a schedule of payments

~~(13)~~ ^(M) "Division" means the division of banking. ✓

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1 to be made by or on behalf of the individual and used to pay debts owed by the
2 individual. ✓

3 ~~(13)~~ ⁽¹¹⁾ "Principal amount of the debt" means the amount of a debt at the time of
4 an agreement. ✓

5 ~~(14)~~ ⁽¹⁰⁾ "Provider" means a person that provides, offers to provide, or agrees to
6 provide debt-management services directly or through others. ✓

7 ~~(15)~~ ⁽⁹⁾ "Record" means information that is inscribed on a tangible medium or that
8 is stored in an electronic or other medium and is retrievable in perceivable form. ✓

9 ~~(16)~~ ⁽⁸⁾ "Settlement fee" means a charge imposed on or paid by an individual in
10 connection with a creditor's assent to accept in full satisfaction of a debt an amount
11 less than the principal amount of the debt. ✓

12 ~~(17)~~ ⁽⁷⁾ "Sign" means, with present intent to authenticate or adopt a record, any
13 of the following: ✓

14 ^{1.} (a) To execute or adopt a tangible symbol. ✓

15 ^{2.} (b) To attach to or logically associate with the record an electronic sound,
16 symbol, or process. ✓

17 ~~(18)~~ ⁽⁵⁾ "State" means a state of the United States, the District of Columbia,
18 Puerto Rico, the United States Virgin Islands, or any territory or insular possession
19 subject to the jurisdiction of the United States. ✓

20 ~~(19)~~ ⁽⁴⁾ "Trust account" means an account held by a provider that is all of the
21 following: ✓

22 ^{1.} (a) Established in an insured ~~bank~~ *financial institution*.

23 ^{2.} (b) Separate from other accounts of the provider or its designee.

24 ^{3.} (c) Designated as a trust account or other account designated to indicate that
25 the money in the account is not the money of the provider or its designee. ✓

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1 ^{4.} (a) Used to hold money of one or more individuals for disbursement to creditors
2 of the individuals. (PI) & (CFS)

(C3)
BF

3 ~~422.503~~ **Exempt agreements and persons.** (1) This ~~subchapter~~ ^{(a) section} does not
4 apply to an agreement with an individual who the provider has no reason to know
5 resides in this state at the time of the agreement. ✓

6 (2) This ~~subchapter~~ ^{(b) section} does not apply to a provider to the extent that the provider
7 does any of the following: ✓

8 (a) Provides or agrees to provide debt-management, educational, or counseling
9 services to an individual who the provider has no reason to know resides in this state
10 at the time the provider agrees to provide the services. ✓

11 (b) Receives no compensation for debt-management services from or on behalf
12 of the individuals to whom it provides the services or from their creditors. INSERT 9-12

13 (3) This ~~subchapter~~ ^{(c) section} does not apply to any of the following persons or their
14 employees when the person or the employee is engaged in the regular course of the
15 person's business or profession: ✓

16 (a) A judicial officer, a person acting under an order of a court or an
17 administrative agency, or an assignee for the benefit of creditors. ✓

18 (b) A ~~bank~~ ^{financial institution}. Sub. (a) 2.a. ✓

19 (c) An affiliate, as defined in ~~§ 422.502 (1) (b) 1~~, of a ~~bank~~ ^{financial institution} if the affiliate is
20 regulated by a federal or state banking regulatory authority. ✓

21 (d) A title insurer, escrow company, or other person that provides bill-paying
22 services if the provision of debt-management services is incidental to the bill-paying
23 services. (4) (BF) (PL & CFS)

24 ~~422.504~~ **Registration required.** (1) Except as otherwise provided in ~~sub. (2)~~ ^(a)
25 a provider may not provide debt-management services to an individual who it

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License

par. (b)

SECTION 6

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1 reasonably should know resides in this state at the time it agrees to provide the
2 services, unless the provider is ^{licensed} registered under this ^{section} subchapter. par. (a)

3 ^(b) If a provider is ^{licensed} registered under this ^{section} subchapter, ^{keep} subchapter does not apply to
4 an employee or agent of the provider. ✓

5 ^(c) The ^{division} administrator shall maintain and publicize a list of the names of all
6 ^{licensed} registered providers. (5) (6) PL & C&S license

7 **422.505 Application for registration: form, fee, and accompanying**

8 **documents.** ^(a) An application for ^{license} registration as a provider must be in a form
9 prescribed by the ^{division} administrator. PL & C&S

10 ^(b) Subject to adjustment of dollar amounts pursuant to ^{license} § 422.532(6), ^{sub. (31)} an
11 application for ^{license} registration as a provider must be accompanied by all of the following: (f)

12 ^{1.} (a) The fee established by the ^{division} administrator.

13 ^{2.} (b) The bond required by ^{sub. (13)} § 422.510. ✓

14 ^{3.} (c) Identification of all trust accounts required by ^{sub. (21)} § 422.522 and an irrevocable
15 consent authorizing the ^{division} administrator to review and examine the trust accounts.

16 ^{4.} (d) Evidence of insurance in the amount of \$250,000 that satisfies all of the
17 following:

18 ^{1.} (a) The insurance is against the risks of dishonesty, fraud, theft, and other
19 misconduct on the part of the applicant or a director, employee, or agent of the
20 applicant.

21 ^{2.} (b) The insurance is issued by an insurance company authorized to do business
22 in this state and rated at least "A" by a nationally recognized rating organization.

23 ^{3.} (c) The insurance has no deductible.

24 ^{4.} (d) The insurance is payable to the applicant, the individuals who have
25 agreements with the applicant, and this state, as their interests may appear.

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1 ~~5.~~ The insurance is not subject to cancellation by the applicant without the
2 approval of the ~~administrator~~ *division*

3 ~~(c)~~ *5.* If applicable, proof of compliance with s. 178.45, 180.1501, 181.1501, or
4 183.1002. *6.*

5 ~~(f)~~ If the applicant is organized as a not-for-profit entity or is exempt from
6 taxation, evidence of not-for-profit and tax-exempt status applicable to the
7 applicant under the Internal Revenue Code, 26 USC 501. *license*

8 *(B#)* *(6)* ~~422.506~~ **Application for ~~registration~~ required information.** An
9 application for ~~registration~~ *keep* must be signed and verified under oath or affirmation
10 and include all of the following: *license*

11 ~~(1)~~ *(a)* The applicant's name, principal business address and telephone number,
12 and all other business addresses in this state, electronic-mail addresses, and
13 Internet Web site addresses. ✓

14 ~~(2)~~ *(b)* All names under which the applicant conducts business. ✓

15 ~~(3)~~ *(c)* The address of each location in this state at which the applicant will provide
16 debt-management services or a statement that the applicant will have no such
17 location. ✓ *(d)* *titles*

18 ~~(4)~~ *(c)* The name ~~and~~ *and* home address of each officer and director of the applicant and
19 each person that owns at least 10 percent of the applicant. *and percentage ownership of the applicant*

20 ~~(5)~~ *(e)* Identification of every jurisdiction in which, during the 5 years immediately
21 preceding the application the applicant or any of its officers or directors has been
22 licensed or registered to provide debt-management services, or in which individuals
23 have resided when they received debt-management services from the applicant. ✓

24 ~~(6)~~ *(f)* A statement describing, to the extent it is known or should be known by the
25 applicant, ~~any material civil or criminal judgment or litigation and any material~~

the name and address home address of

all of the following

the percentage ownerships if any of the applicant held by each officer and director;

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1 ~~administrative or enforcement action by a governmental agency~~ in any jurisdiction
2 against the applicant, any of its officers, directors, owners, or agents, or any person
3 who is authorized to have access to the trust account required by ~~§ 1422.522~~ ^{Sub. (21)} ✓

4 ^(g) ~~(7)~~ The applicant's financial statements, audited by an accountant licensed to
5 conduct audits, for each of the 2 years immediately preceding the application or, if
6 it has not been in operation for the 2 years preceding the application, for the period
7 of its existence. ✓

8 ^(h) ~~(8)~~ Evidence of accreditation by an independent accrediting organization
9 approved by the ~~administrator~~ ^{division}

10 ⁽ⁱ⁾ ~~(9)~~ Evidence that, within 12 months after initial employment, each of the
11 applicant's counselors becomes certified as a certified counselor. ✓

12 ^(j) ~~(10)~~ A description of the 3 most commonly used educational programs that the
13 applicant provides or intends to provide to individuals who reside in this state and
14 a copy of any materials used or to be used in those programs. ✓

15 ^(k) ~~(11)~~ A description of the applicant's financial analysis and initial budget plan,
16 including any form or electronic model, used to evaluate the financial condition of
17 individuals. ✓

18 ^(l) ~~(12)~~ A copy of each form of agreement that the applicant will use with
19 individuals who reside in this state.

20 ^(m) ~~(13)~~ The schedule of fees and charges that the applicant will use with
21 individuals who reside in this state.

22 ⁽ⁿ⁾ ~~(14)~~ At the applicant's expense, the results of a criminal-records check,
23 including fingerprints, conducted within the immediately preceding 12 months,
24 covering every officer of the applicant ^{① 2.} and every employee or agent of the applicant
25 who is authorized to have access to the trust account required by ~~§ 1422.522~~ ^{Sub. (21)} ✓

all of the following: ① 1.

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1 ~~(15)~~^(C) The names and addresses of all employers of each director during the 10
2 years immediately preceding the application.

3 ~~(16)~~^(P) A description of any ownership interest of at least 10 percent by a director,
4 owner, or employee of the applicant in all of the following:

5 ~~(a)~~^{1.} Any affiliate of the applicant.

6 ~~(b)~~^{2.} Any entity that provides products or services to the applicant or any
7 individual relating to the applicant's debt-management services.

8 ~~(17)~~^(a) A statement of the amount of compensation of the applicant's 5 most highly
9 compensated employees for each of the 3 years immediately preceding the
10 application or, if it has not been in operation for the 3 years preceding the application,
11 for the period of its existence. ✓

12 ~~(18)~~^(r) The identity of each director who is an affiliate, as defined in ~~§ 422.502~~
13 ~~(1)(a) or (b) 1, 2, 4, 5, or 6,~~^{Sub. (9)(c)} of the applicant. division

14 ~~(19)~~^(s) Any other information that the ~~administrator~~^{division} reasonably requires to
15 perform the ~~administrator's~~^{division} duties under ~~§ 422.503~~^{license}

16 ~~422.507~~⁽⁷⁾ **Application for registration: obligation to update information.**

17 An applicant or ~~registered~~^{licensed} provider shall notify the ~~administrator~~^{division} within 10 days
18 after a change in the information specified in ~~§ 422.505 (2) (d) or (e) or 422.506 (1)~~^{Sub. (5)(b) 4 or 6}

19 ~~(3), (6), (12), or (13)~~^{license}

20 ~~422.508~~⁽⁸⁾ **Application for registration: public information.** Except for the

21 information required by ~~§ 422.506 (7), (14), and (17)~~^{sub. (6)(g), (n), and (9)} and the addresses required by
22 ~~§ 422.506 (4)~~^{sub. (6)(d)}, the ~~administrator~~^{division} shall make the information in an application for
23 ~~registration~~^{all other} as a provider available to the public.

which the division shall withhold from inspection and copying under 5.19.35(1) ✓

(6)(a), (c), (f), (L), or (m) ✓ ✓ ✓ ✓

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para (b) and (c)

(a) BF

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(a)

422.509 Certificate of registration: issuance or denial.

(1) Except as

otherwise provided in subs. (2) and (3), the administrator shall issue a certificate of registration as a provider to a person that complies with ss. 422.505 and 422.506.

(2) The administrator may deny registration if any of the following apply:

(a) The application contains information that is materially erroneous or incomplete.

(b) An officer, director, or owner of the applicant has been convicted of a crime, or suffered a civil judgment, involving dishonesty or the violation of state or federal securities laws.

(c) The applicant or any of its officers, directors, or owners has defaulted in the payment of money collected for others.

(d) The administrator finds that the financial responsibility, experience, character, or general fitness of the applicant or its owners, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this subchapter.

(3) The administrator shall deny registration if any of the following apply:

(a) The application is not accompanied by the fee established by the administrator.

(b) The application is not accompanied by a bond under s. 422.513 or a bond substitute under s. 422.514.

(c) With respect to an applicant that is organized as a not-for-profit entity or has obtained tax-exempt status under the Internal Revenue Code, 26 USC 501, the applicant's board of directors is not independent of the applicant's employees and agents.

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(d) Subject to adjustment of the dollar amount pursuant to ~~s. 422.532 (6)~~ a board of directors is not independent for purposes of ~~sub. (3)~~ if any of the following apply:

(a) More than one-fourth of its members are affiliates of the applicant, as defined in ~~s. 422.502 (1) (a) or (b) 1, 2., 4., 5., 6., or 7.~~

(b) After the date 10 years before first becoming a director of the applicant, more than one-fourth of its members were employed by or directors of a person that received from the applicant more than \$25,000 in either the current year or the preceding year.

~~422.510~~ **Certificate of registration: timing.** (1) The administrator shall approve or deny an initial registration as a provider within 120 days after an application is filed. In connection with a request pursuant to ~~s. 422.506 (19)~~ for additional information, the administrator may extend the 120-day period for not more than 60 days. Within 7 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 sub. (1), the applicant may appeal and request a hearing pursuant to subch. III of ch. 227.

(3) Subject to ~~ss. 422.511 (4) and 422.534~~, a registration as a provider is valid for one year.

~~422.511~~ **Renewal of registration.** (1) A provider must obtain a renewal of its registration annually.

(2) An application for renewal of registration as a provider must be in a form prescribed by the administrator, signed and verified under oath or affirmation, and must satisfy all of the following:

sub. (31) (F) ↑

sub. (2) (a) 1. or 2. a., 2. b., 2. d., 2. e., or 2. f.

(10) (BF) LICENSE PL'S CES

(a) division

sub. (6) (c)

division

(b) division

sub. (11) (d) and (33) ↑

license

(11) (BF) PL'S CES (a)

license (c)

license

division

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SECTION 6

1 ^{1.} (a) Be filed no fewer than 30 and no more than 60 days before the ~~registration~~ ^{license}
2 expires.

3 ^{2.} (b) Be accompanied by the fee established by the ~~administrator~~ ^{division} and the bond
4 required by ~~s. 422.513~~ ^{sub. (13)}

5 ^{3.} (c) Contain the matter required for initial ~~registration~~ ^{license} as a provider by ~~s.~~
6 ~~422.506 (8) and (9)~~ ^{sub. (b) (h) and (i)} and a financial statement, audited by an accountant licensed to
7 conduct audits, for the applicant's fiscal year immediately preceding the application. ✓

8 ^{4.} (d) Disclose any changes in the information contained in the applicant's
9 application for ~~registration~~ ^{license} or its immediately previous application for renewal, as
10 applicable. ✓

11 ^{5.} (e) Supply evidence of insurance in an amount equal to the larger of \$250,000
12 or the highest daily balance in the trust account required by ~~s. 422.522~~ ^{sub. (21)} during the
13 6 month period immediately preceding the application and that satisfies all of the
14 following: ✓

15 ^{a.} (1) The insurance is against risks of dishonesty, fraud, theft, and other
16 misconduct on the part of the applicant or a director, employee, or agent of the
17 applicant. ✓

18 ^{b.} (2) The insurance is issued by an insurance company authorized to do business
19 in this state and rated at least "A" by a nationally recognized rating organization. ✓

20 ^{c.} (3) The insurance has no deductible. ✓

21 ^{d.} (4) The insurance is payable to the applicant, the individuals who have
22 agreements with the applicant, and this state, as their interests may appear. ✓

23 ^{e.} (5) The insurance is not subject to cancellation by the applicant without the
24 approval of the ~~administrator~~ ^{division}. ✓

BILL

6.

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(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. ✓

(h) Provide any other information that the ~~administrator~~^{division} reasonably requires to perform the ~~administrator's~~^{division} duties under this ~~section~~^{subsection}.

(3) Except for the information required by ~~s. 422.506 (7), (14), and (17)~~^{sub. (6) (g) and (n) and (9)} and the addresses required by ~~s. 422.506 (4)~~^{sub. (6) (d)}, the ~~administrator~~^{division} shall make the information in an application for renewal of ~~registration~~^{license} as a provider available to the public.

(4) If a ~~registered~~^{licensed} provider files a timely and complete application for renewal of ~~registration~~^{license}, the ~~registration~~^{license} remains effective until the ~~administrator~~^{division}, in a record, notifies the applicant of a denial and states the reasons for the denial.

(5) If the ~~administrator~~^{division} denies an application for renewal of ~~registration~~^{license} as a provider, the applicant, within 30 days after receiving notice of the denial, may appeal and request a hearing pursuant to subch. III of ch. 227. Subject to ~~s. 422.534~~^{sub. (33)}

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~~^{division} order and ~~s. 422.534~~^{sub. (33)}, the applicant shall continue to provide debt-management services to individuals with whom it has

agreements until, with the approval of the ~~administrator~~^{division}, it transfers the agreements to another ~~registered~~^{licensed} provider or returns to the individuals all unexpended money that is under the applicant's control.

BILL

LICENSE OR

PL'S C'S

(B) → (C12)

422.512 Registration in another state.

If a provider holds a license or

2 certificate of registration in another state authorizing it to provide
3 debt-management services, the provider may submit a copy of that license or
4 certificate and the application for it instead of an application in the form prescribed
5 by ~~s. 422.505 (1), 422.506, or 422.511 (2)~~ The ~~administrator~~ ^{division} shall accept the

6 application and the license or certificate from the other state as an application for
7 ~~registration~~ ^{license} as a provider or for renewal of ~~registration~~ ^{license} as a provider, as appropriate,
8 in this state if all of the following apply:

9 ^(a) ~~(1)~~ The application in the other state contains information substantially
10 similar to or more comprehensive than that required in an application submitted in
11 this state.

12 ^(b) ~~(2)~~ The applicant provides the information required by ~~s. 422.506 (1), (3), (10),~~ ^{sub. (6) (a), (c), (j), (L), and (m)}
13 ~~(12), and (13).~~

14 ^(c) ~~(3)~~ The applicant, verified under oath or affirmation, certifies that the
15 information contained in the application is current or, to the extent it is not current,
16 supplements the application to make the information current.

422.513 Bond required.

17 ~~(1)~~ ^(a) Except as otherwise provided in s. 422.514, a
18 provider that is required to be ~~registered~~ ^{licensed under this section} under this subchapter shall file a surety
19 bond with the ~~administrator~~ ^{division}, which must satisfy all of the following:

20 ^{1.} ~~(a)~~ Be in effect during the period of ~~registration~~ ^{license} and for 2 years after the
21 provider ceases providing debt-management services to individuals in this state. ✓

22 ^{2.} ~~(b)~~ Run to this state for the benefit of this state and of individuals who reside
23 in this state when they agree to receive debt-management services from the
24 provider, as their interests may appear. ✓

BILL

sub. (31)(f) ↑

(b)

1 ~~(2)~~ Subject to adjustment of the dollar amount pursuant to ~~s. 422.532 (6)~~ a
2 surety bond filed pursuant to ~~sub. (2)~~ ^{par. (a)} must satisfy all of the following:

3 ^{1.} ~~(a)~~ Be in the amount of \$50,000 or other larger or smaller amount that the
4 ~~administrator~~ ^{division} determines is warranted by the financial condition and business
5 experience of the provider, the history of the provider in performing
6 debt-management services, the risk to individuals, and any other factor the
7 ~~administrator~~ ^{division} considers appropriate.

8 ^{2.} ~~(b)~~ Be issued by a bonding, surety, or insurance company authorized to do
9 business in this state and rated at least "A" by a nationally recognized rating
10 organization.

11 ^{3.} ~~(c)~~ Have payment conditioned upon noncompliance of the provider or its agent
12 with this ~~subchapter~~ ^{section}.

13 ~~(3)~~ If the principal amount of a surety bond is reduced by payment of a claim
14 or a judgment, the provider shall immediately notify the ~~administrator~~ ^{division} and, within
15 30 days after notice by the ~~administrator~~ ^{division}, file a new or additional surety bond in an
16 amount set by the ~~administrator~~ ^{division}. The amount of the new or additional bond must
17 be at least the amount of the bond immediately before payment of the claim or
18 judgment. If for any reason a surety terminates a bond, the provider shall
19 immediately file a new surety bond in the amount of \$50,000 or other amount
20 determined pursuant to ~~sub. (2)~~ ^{par. (b)}.

21 ^(d) ~~(4)~~ The ~~administrator~~ ^{division} or an individual may obtain satisfaction out of the surety
22 bond procured pursuant to this ~~section~~ ^{subsection} if any of the following apply:

23 ^{1.} ~~(a)~~ The ~~administrator~~ ^{division} assesses expenses under ~~s. 422.532 (2) (a)~~ ^{sub. (31)(b) b}, issues a final
24 order under ~~s. 422.533 (1) (b)~~, or recovers a final judgment under ~~s. 422.533 (1) (d)~~

25 ~~or (c) or (4)~~

sub. (32) (a) 205

sub. (32) (a) 40 or 50 or (d) 0

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Sub. (34) (a), (b), or (c) 10/5 20/5 or 40

1 (b) An individual recovers a final judgment pursuant to ~~s. 422.535 (1), (2), or~~

2 ~~(3) (a), (b), or (d).~~

3 ~~(a)~~ ^{2.} If claims against a surety bond exceed or are reasonably expected to exceed
4 the amount of the bond, the ~~administrator~~ ^{division}, on the initiative of the ~~administrator~~ ^{division} or
5 on petition of the surety, shall, unless the proceeds are adequate to pay all costs,

6 judgments, and claims, distribute the proceeds in the following order:

7 (a) ^{1.} To satisfaction of a final order or judgment under ~~s. 422.533 (1) (b), (d), or~~

8 ~~(e) or (4).~~

9 (b) ^{2.} To final judgments recovered by individuals pursuant to ~~s. 422.535 (1), (2),~~

10 ~~or (3) (a), (b), or (d),~~ pro rata.

11 (c) ^{3.} To claims of individuals established to the satisfaction of the ~~administrator~~ ^{division},

12 pro rata.

13 (d) ^{4.} If a final order or judgment is issued under ~~s. 422.533 (1),~~ to the expenses

14 charged pursuant to ~~s. 422.532 (2) (a).~~

15 ~~422.514 Bond required: substitute. (1) Instead of the surety bond required~~

16 by s. 422.513, a provider may deliver to the administrator any of the following, in the

17 amount required by s. 422.513 (2), and, except as otherwise provided in par. (b) 1,

18 payable or available to this state and to individuals who reside in this state when

19 they agree to receive debt-management services from the provider, as their interests

20 may appear, if the provider or its agent does not comply with this subchapter:

21 (a) ^{1.} A certificate of insurance issued by an insurance company authorized to do

22 business in this state and rated at least "A" by a nationally recognized rating

23 organization, with no deductible.

24 (b) ^{2.} With the approval of the administrator, any of the following:

Subd. 2.a.

Sub. (31) (b) 1. ✓

Sub. (32) (a) ✓

Sub. (34) (a), (b), or (c) 10/5 20/5 or 40

Sub. (32) (a) 20/5 40/5 or 50/5 or (d) ✓

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1 1. An irrevocable letter of credit, issued or confirmed by a bank approved by the
2 administrator, payable upon presentation of a certificate by the administrator
3 stating that the provider or its agent has not complied with this subchapter.

4 2. Bonds or other obligations of the United States or guaranteed by the United
5 States or bonds or other obligations of this state or a political subdivision of this state,
6 to be deposited and maintained with a bank approved by the administrator for this
7 purpose.

8 ~~(a)~~ If a provider furnishes a substitute pursuant to sub. (1), the provisions of
9 s. 422.513 (1), (3), (4), and (5) apply to the substitute.

10 **(14) 422.515 Requirement of good faith.** A provider shall act in good faith in all
11 matters under this ~~subchapter~~ ^{section}

12 **(15) 422.516 Customer service.** A provider that is required to be ~~registered~~ ^{licensed} under
13 this ~~subchapter~~ ^{section} shall maintain a toll-free communication system, staffed at a level
14 that reasonably permits an individual to speak to a certified counselor or
15 customer-service representative, as appropriate, during ordinary business hours.

16 **(16) 422.517 Prerequisites for providing debt-management services.** ~~(a)~~ ^(a)

17 Before providing debt-management services, a ~~registered~~ ^{licensed} provider shall give the
18 individual an itemized list of goods and services and the charges for each. The list
19 must be clear and conspicuous, be in a record the individual may keep whether or not
20 the individual assents to an agreement, and describe all of the following:

21 (a) The goods and services the provider offers free of additional charge if the
22 individual enters into an agreement. ✓

23 (b) The good and services the provider offers for a charge if the individual does
24 not enter into an agreement. ✓

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1 ~~(3)~~ The provider believes that each creditor of the individual listed as a
2 participating creditor in the plan will accept payment of the individual's debts as
3 provided in the plan.

4 ~~(3)~~ Before an individual assents to an agreement to engage in a plan, a provider
5 shall do all of the following:

6 ~~(a)~~ Provide the individual with a copy of the analysis and plan required by ~~sub~~ ^{par. (b)}
7 ~~(2)~~ in a record that identifies the provider and that the individual may keep whether
8 or not the individual assents to the agreement.

9 ~~(b)~~ Inform the individual of the availability, at the individual's option, of
10 assistance by a toll-free communication system or in person to discuss the financial
11 analysis and plan required by ~~sub (2)~~ ^{par. (b)}.

12 ~~(c)~~ With respect to all creditors identified by the individual or otherwise known
13 by the provider to be creditors of the individual, provide the individual with a list of
14 all of the following:

15 ~~1~~ ^{a.} Creditors that the provider expects to participate in the plan and grant
16 concessions.

17 ~~2~~ ^{b.} Creditors that the provider expects to participate in the plan but not grant
18 concessions.

19 ~~3~~ ^{c.} Creditors that the provider expects not to participate in the plan.

20 ~~4~~ ^{d.} All other creditors.

21 ~~(4)~~ ^(d) Before an individual assents to an agreement to engage in a plan, the
22 provider shall inform the individual, in a record that contains nothing else, that is
23 given separately, and that the individual may keep whether or not the individual
24 assents to the agreement, of all of the following:

25 ~~(a)~~ The name and business address of the provider.

BILL

SECTION 6

1 ^{2.} (b) That plans are not suitable for all individuals and the individual may ask
2 the provider about other ways, including bankruptcy, to deal with indebtedness. ✓

3 ^{3.} (c) That establishment of a plan may adversely affect the individual's credit
4 rating or credit scores. ✓

5 ^{4.} (d) That nonpayment of debt may lead creditors to increase finance and other
6 charges or undertake collection activity, including litigation.

7 ^{5.} (e) Unless it is not true, that the provider may receive compensation from the
8 creditors of the individual.

9 ^{6.} (f) That, unless the individual is insolvent, if a creditor settles for less than the
10 full amount of the debt, the plan may result in the creation of taxable income to the
11 individual, even though the individual does not receive any money. ✓

12 ^(e) (g) If a provider may receive payments from an individual's creditors and the
13 plan contemplates that the individual's creditors will reduce finance charges or fees
14 for late payment, default, or delinquency, the provider may comply with ~~sub. (4)~~ ^{par. (d)} by
15 providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

20 (2) Using a debt-management plan may hurt your credit rating or credit scores.

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

.....

Name and business address of provider

23 ^(f) (h) If a provider will not receive payments from an individual's creditors and
24 the plan contemplates that the individual's creditors will reduce finance charges or
25

BILL

par. (d)
sub. (4)

1 fees for late payment, default, or delinquency, a provider may comply with
2 by providing the following disclosure, surrounded by black lines:

3 IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

7 (2) Using a debt-management plan may hurt your credit rating or credit scores.

8

9 *Name and business address of provider*

10 *(c)* ~~(7)~~ If a plan contemplates that creditors will settle debts for less than the full
11 principal amount of debt owed, a provider may comply with sub. (4) *par. (d)* by providing the
12 following disclosure, surrounded by black lines:

13 IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

16 (2) Nonpayment of your debts under our program may:

- 17 • hurt your credit rating or credit scores;
- 18 • lead your creditors to increase finance and other charges; and
- 19 • lead your creditors to undertake activity, including lawsuits, to collect the
- 20 debts.

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

23

24 *Name and business address of provider*