

BILL

(17) (31)

PL'S CES

(9) (1)

422.518 Communication by electronic or other means.

section: *subsection*

(a) "Federal act" means the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 to 7031. ✓

(b) "Consumer" means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes. ✓ *Sub. (16) (18) or (26)*

(2) A provider may satisfy the requirements of ~~§ 422.517, 422.519, or 422.527~~ by means of the Internet or other electronic means if the provider obtains a consumer's consent in the manner provided by 15 USC 7001 (c) (1). ✓ *Subs. (16) (18) (26)*

(3) The disclosures and materials required by ~~ss. 422.517, 422.519, and 422.527~~ shall be presented in a form that is capable of being accurately reproduced for later reference. ✓ *sub. (26) and (26)*

(4) With respect to disclosure by means of an Internet Web site, the disclosure of the information required by ~~§ 422.517 (4)~~ must appear on one or more screens that contain no other information and that the individual must see before proceeding to assent to formation of a plan. ✓ *sub (16) (d)*

(5) At the time of providing the materials and agreement required by ~~ss. 422.517 (3) and (4), 422.519, and 422.527~~, a provider shall inform the individual that upon 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 ~~sub. (6)~~. ✓ *sub (16) (c) and (d) (18) and (26)*

(6) If a provider is requested, before the expiration of 90 days after a plan is completed or terminated, to send a written copy of the materials required by ~~ss. 422.517 (3) and (4), 422.519, and 422.527~~, the provider shall send them at no charge within 3 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

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1 is made for purposes of harassment. If a request is made more than 90 days after
2 a plan is completed or terminated, the provider shall send within a reasonable time
3 a written copy of the materials requested.

4 ~~(7)~~ ⁽⁹⁾ A provider that maintains an Internet Web site shall disclose all of the
5 following on the home page of its Web site or on a page that is clearly and
6 conspicuously connected to the home page by a link that clearly reveals its contents:

7 ~~(a)~~ ^{1.} Its name and all names under which it does business.

8 ~~(b)~~ ^{2.} Its principal business address, telephone number, and electronic-mail
9 address, if any.

10 ~~(c)~~ ^{3.} The names of its principal officers.

11 ~~(8)~~ ^(h) Subject to ~~sub (9)~~ ^{par. (i)}, if a consumer who has consented to electronic
12 communication in the manner provided by 15 USC 7001 withdraws consent as
13 provided in the federal act, a provider may terminate its agreement with the
14 consumer.

15 ~~(9)~~ ⁽ⁱ⁾ If a provider wishes to terminate an agreement with a consumer pursuant
16 to ~~sub. (8)~~ ^{par. (h)}, it shall notify the consumer that it will terminate the agreement unless
17 the consumer, within 30 days after receiving the notification, consents to electronic
18 communication in the manner provided in 15 USC 7001 (c). If the consumer
19 consents, the provider may terminate the agreement only as permitted by s. 422.519

sub. (18)(a) 6.g.

20 ~~(10)~~ ⁽¹⁸⁾ ^{BF} ^{PL'S C'S} 422.519 Form and contents of agreement. ~~(1)~~ ^(a) An agreement must satisfy
21 all of the following:

22 ~~(a)~~ ^{1.} Be in a record.

23 ~~(b)~~ ^{2.} Be dated and signed by the provider and the individual.
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1 ^{3.} (c) Include the name of the individual and the address where the individual
2 resides.

3 ^{4.} (d) Include the name, business address, and telephone number of the provider.

4 ^{5.} (e) Be delivered to the individual immediately upon formation of the
5 agreement.

6 ^{6.} (f) Disclose all of the following:

7 ^{1.} (1) The services to be provided.

8 ^{2.} (2) The amount, or method of determining the amount, of all fees, individually
9 itemized, to be paid by the individual.

10 ^{3.} (3) The schedule of payments to be made by or on behalf of the individual,
11 including the amount of each payment, the date on which each payment is due, and
12 an estimate of the date of the final payment.

13 ^{4.} (4) If a plan provides for regular periodic payments to creditors, ~~all of the~~ ^{the plan must disclose}
14 ~~following.~~ ^{MORE}

15 ^{NO 9} (a) Each creditor of the individual to which payment will be made, the amount
16 owed to each creditor, and any concessions the provider reasonably believes each
17 creditor will offer ^{and}

18 ^{MORE NO 9} (b) The schedule of expected payments to each creditor, including the amount
19 of each payment and the date on which it will be made.

20 ^{C. 5} (c) Each creditor that the provider believes will not participate in the plan and
21 to which the provider will not direct payment.

22 ^{f. 6} (6) How the provider will comply with its obligations under ~~S. 422.527 (1)~~ ^{sub. (26) (a) or}

23 ^{g. 8} (8) That the provider may terminate the agreement for good cause, upon return
24 of unexpended money of the individual.

25 ^{h. 8} (8) That the individual may cancel the agreement as provided in ~~S. 422.520~~ ^{sub. (19).}

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i 9. That the individual may contact the ~~administrator~~ ^{division} with any questions or complaints regarding the provider.

j 10. The address, telephone number, and Internet address or Web site of the ~~administrator~~ ^{division}.

(b) 11. For purposes of ~~sub. (1) (c)~~ ^{par (c) 50}, 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. ✓

(c) 12. If the ~~administrator~~ ^{division} supplies the provider with any information required under ~~sub. (1) (f) (i)~~ ^{par (a) 6010}, the provider may comply with that requirement only by disclosing the information supplied by the ~~administrator~~ ^{division}.

(d) 13. An agreement must provide all of the following:

(a) 14. That 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 all of the following apply: ✓

(1) 15. The provider will refund all unexpended money that the provider or its agent has received from or on behalf of the individual for the reduction or satisfaction of the individual's debt.

(2) 16. 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 percent of any portion of the set-up fee that has not been credited against the settlement fee.

(3) 17. All powers of attorney granted by the individual to the provider are revoked and ineffective. ✓

(4) 18. That the individual authorizes any ~~bank~~ ^{financial institution} in which the provider or its agent has established a trust account to disclose to the ~~administrator~~ ^{division} any financial records relating to the trust account.

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1 ^{3.}
2 (c) That the provider will notify the individual within 5 days after learning of
3 a creditor's decision to reject or withdraw from a plan and that this notice will include
4 all of the following:

- 4 ^a
5 (1) The identity of the creditor.
- 5 ^b
6 (2) The right of the individual to modify or terminate the agreement.
- 6 ^(e)
7 (5) An agreement may confer on a provider a power of attorney to settle the
8 individual's debt for no more than 50 percent of the principal amount of the debt. An
9 agreement may not confer a power of attorney to settle a debt for more than 50
10 percent of that amount, but may confer a power of attorney to negotiate with
11 creditors of the individual on behalf of the individual. An agreement must provide
12 that the provider will obtain the assent of the individual after a creditor has assented
13 to a settlement for more than 50 percent of the principal amount of the debt. ✓

13 ^{ff}
14 (6) An agreement may not do any of the following:

- 14 ^{1.}
15 (a) Provide for application of the law of any jurisdiction other than the United
16 States and this state.
- 16 ^{2.}
17 (b) Except as permitted by 9 USC 2 or ch. 788, contain a provision that modifies
18 or limits otherwise available forums or procedural rights, including the right to trial
19 by jury, that are generally available to the individual under law other than this

19 ~~subchapter.~~ ^{section}

20 ^{3.}
21 (c) Contain a provision that restricts the individual's remedies under this
22 ~~subchapter~~ ^{section} or law other than this ~~subchapter~~ ^{section}.

22 ^{4.}
23 (d) Contain a provision that does any of the following:

- 23 ^a
24 (1) Limits or releases the liability of any person for not performing the
agreement or for violating this ~~subchapter~~ ^{section}.

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1 Indemnifies any person for liability arising under the agreement or this

2 ~~subchapter~~ ^{section} ~~(19)~~ ^(CG)

3 ~~(7)~~ All rights and obligations specified in ~~sub. (4) and s. 422.520~~ exist even if

4 not provided in the agreement. A provision in an agreement which violates ~~sub. (4),~~

5 ~~(5), or (6)~~ is void.

6 **422.520. Cancellation of agreement; waiver.** ~~(1)~~ An individual may cancel

7 an agreement before midnight of the 3rd business day after the individual assents

8 to it, unless the agreement does not comply with ~~sub. (2) or s. 422.519 or 422.528,~~ in

9 which event the individual may cancel the agreement within 30 days after the

10 individual assents to it. To exercise the right to cancel, the individual must give

11 notice in a record to the provider. Notice by mail is given when mailed. ✓

12 ~~(2)~~ ^(b) An agreement must be accompanied by a form that contains all of the

13 following in bold-face type, surrounded by bold black lines:

Notice of Right to Cancel

15 You may cancel this agreement, without any penalty or obligation, at any time
16 before midnight of the 3rd business day that begins the day after you agree to it by
17 electronic communication or by signing it.

18 To cancel this agreement during this period, send an e-mail to:

19

20 *E-mail address of provider*

21 or mail or deliver a signed, dated copy of this notice, or any other written notice to:

22 at

23 *Name of provider*

Address of provider

24 before midnight on:

25 *Date*

(B+)
(19)

PL 5 C&S (a)

(par. (d) and sub. (19))

par. (d)

par. (b) or sub. (18) or (27)

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

3 You also may terminate this agreement at any later time, but we are not
4 required to refund fees you have paid us.

5 I cancel this agreement,

6

7 *Print your name*

8

9 *Signature*

10

11 *Date*

12 (10) If a personal financial emergency necessitates the disbursement of an
13 individual's money to one or more of the individual's creditors before the expiration
14 of 3 days after an agreement is signed, an individual may waive the right to cancel. ✓

15 To waive the right, the individual must send or deliver a signed, dated statement in
16 the individual's own words describing the circumstances that necessitate a waiver.

17 The waiver must explicitly waive the right to cancel. A waiver by means of a
18 standard-form record is void. ✓

19 (20) **422.521 Required language.** Unless the ~~administrator~~ ^{division}, by rule, provides
20 otherwise, the disclosures and documents required by this ~~subchapter~~ ^{section} must be in
21 English. If a provider communicates with an individual primarily in a language
22 other than English, the provider must furnish a translation into the other language
23 of the disclosures and documents required by this ~~subchapter~~ ^{section}.

24 (21) **422.522 Trust account.** (1) (a) All money paid to a provider by or on behalf of
25 an individual pursuant to a plan for distribution to creditors is held in trust. Within

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1 2 business days after receipt, the provider shall deposit the money in a trust account
2 established for the benefit of individuals to whom the provider is furnishing
3 debt-management services. ✓

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

8 ^(c) (3) A provider shall do all of the following:

9 1. ^(a) (a) Maintain separate records of account for each individual to whom the
10 provider is furnishing debt-management services. ✓

11 ^(b) (b) Disburse money paid by or on behalf of the individual to creditors of the
12 individual as disclosed in the agreement, except that all of the following apply:

13 ^(a) (a) The provider may delay payment to the extent that a payment by the
14 individual is not final. ✓

15 ^(b) (b) If a plan provides for regular periodic payments to creditors, the
16 disbursement must comply with the due dates established by each creditor. ✓

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

21 ^(d) (4) A provider may not commingle money in a trust account established for the
22 benefit of individuals to whom the provider is furnishing debt-management services
23 with money of other persons. ✓

24 ^(e) (5) A trust account must at all times have a cash balance equal to ^{or greater than} the sum of
25 the balances of each individual's account.

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1 ~~(6)~~ ^(f) If a provider has established a trust account pursuant to ~~sub. (1)~~ ^{par. (a)}, the
 2 provider shall reconcile the trust account at least once a month. The reconciliation
 3 must compare the cash balance in the trust account with the sum of the balances in
 4 each individual's account. If the provider or its designee has more than one trust
 5 account, each trust account must be individually reconciled. ✓

6 ~~(7)~~ ^(g) If a provider discovers, or has a reasonable suspicion of, embezzlement or
 7 other unlawful appropriation of money held in trust, the provider immediately shall
 8 notify the ~~administrator~~ ^{division} by a method approved by the ~~administrator~~ ^{division}. Unless the
 9 ~~administrator~~ ^{division} by rule provides otherwise, within 5 days thereafter, the provider
 10 shall give notice to the ~~administrator~~ ^{division} describing the remedial action taken or to be
 11 taken. ✓

12 ~~(8)~~ ^(h) If an individual terminates an agreement or it becomes reasonably
 13 apparent to a provider that a plan has failed, the provider shall promptly refund to
 14 the individual all money paid by or on behalf of the individual which has not been
 15 paid to creditors, less fees that are payable to the provider under ~~§ 422.523~~.

16 ~~(9)~~ ⁽ⁱ⁾ Before relocating a trust account from one ~~bank~~ ^{financial institution} to another, a provider shall
 17 inform the ~~administrator~~ ^{division} of the name, business address, and telephone number of
 18 the new ~~bank~~ ^{financial institution}. As soon as practicable, the provider shall inform the ~~administrator~~ ^{division}
 19 of the account number of the trust account at the new ~~bank~~ ^{financial institution}.

20 ⁽²²⁾ ~~422.523~~ **Fees and other charges.** ^(a) ~~(1)~~ A provider may not impose directly
 21 or indirectly a fee or other charge on an individual or receive money from or on behalf
 22 of an individual for debt-management services except as permitted by this ~~section~~ ^{subsection}.

23 ~~(2)~~ ^(b) A provider may not impose charges or receive payment for
 24 debt-management services until the provider and the individual have signed an
 25 agreement that complies with ~~§§ 422.519 and 422.528~~ ^{subs. (18) and (27)}.

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1 (3) If an individual assents to an agreement, a provider may not impose a fee
 2 or other charge for educational or counseling services, or the like, except as otherwise
 3 provided in this ~~section~~ ^{subsection} and ~~s. 422.528 (4)~~. The ~~Administrator~~ ^{Division} may authorize a
 4 provider to charge a fee based on the nature and extent of the educational or
 5 counseling services furnished by the provider.

6 (4) Subject to adjustment of dollar amounts pursuant to ~~s. 422.532 (6)~~ ^{sub. (3)(f)}, all of
 7 the following rules apply:

8 (a) If an individual assents to a plan that contemplates that creditors will
 9 reduce finance charges or fees for late payment, default, or delinquency, the provider
 10 may charge all of the following:

11 1. A fee not exceeding \$50 for consultation, obtaining a credit report, setting
 12 up an account, and the like.

13 2. A monthly service fee, not to exceed \$10 times the number of creditors
 14 remaining in a plan at the time the fee is assessed, but not more than \$50 in any
 15 month.

16 (b) If an individual assents to a plan that contemplates that creditors will settle
 17 debts for less than the principal amount of the debt, a provider may charge all of the
 18 following:

19 1. Subject to ~~s. 422.519 (4)~~ ^{sub. (18)(d)}, a fee for consultation, obtaining a credit report,
 20 setting up an account, and the like, in an amount not exceeding the lesser of \$400 and
 21 4 percent of the debt in the plan at the inception of the plan.

22 2. A monthly service fee, not to exceed \$10 times the number of creditors
 23 remaining in a plan at the time the fee is assessed, but not more than \$50 in any
 24 month.

25 3. A provider may not impose or receive fees under both ~~pars. (a) and (b)~~ ^{subds. 1. & 2.}.

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4.
 (d) Except as otherwise provided in ~~§ 422.528~~ (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~~ ^{division}, a larger fee. The ~~administrator~~ ^{division} may approve a fee larger than
 \$100 if the nature and extent of the educational and counseling services warrant the
 larger fee.

(e) 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 ~~sub. (4) (d)~~ ^{par (d) 4.}

(f) Except as otherwise provided in ~~subs. (3) and (4)~~ ^{par. (c) (d)}, if a plan contemplates that
 creditors will settle an individual's debts for less than the principal amount of the
 debt, compensation for services in connection with settling a debt may not exceed,
 with respect to each debt, 30 percent of the excess of the principal amount of the debt
 over the amount paid the creditor pursuant to the plan, less the sum of the following,
 to the extent it has not been credited against an earlier settlement fee:

1. (a) The fee charged pursuant to ~~sub. (4) (b) 1.~~ ^{par. (d) 2.a.}
2. (b) The aggregate of fees charged pursuant to ~~sub. (4) (b) 2.~~ ^{par. (d) 2.b}

(g) (7) Subject to adjustment of the dollar amount pursuant to ~~§ 422.532 (6)~~, if a
 payment to a provider by an individual under this ~~subchapter~~ ^{section} 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 ~~subchapter~~ ^{section}.

(23) ~~422.524~~ **Voluntary contributions.** A provider may not solicit a voluntary
 contribution from an individual or an affiliate of the individual for any service
 provided to the individual. A provider may accept voluntary contributions from an
 individual but, until 30 days after completion or termination of a plan, the aggregate

(34) →

sub. (31) (f)

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1 amount of money received from or on behalf of the individual may not exceed the total
2 amount the provider may charge the individual under ~~s. 422.523~~ *sub. (22)*

(BF) (24)

3 ~~422.525~~ **Voidable agreements.** *(a)* (1) If a provider imposes a fee or other charge
4 or receives money or other payments not authorized by ~~s. 422.523~~ *sub. (22) or (23)* or ~~422.524~~ *sub. (34)* the
5 individual may void the agreement and recover as provided in ~~s. 422.535~~ *section*

6 ~~(2)~~ *(b)* If a provider is not ~~registered~~ *licensed* as required by this ~~subchapter~~ when an
7 individual assents to an agreement, the agreement is voidable by the individual.

8 ~~(3)~~ *(c)* If an individual voids an agreement under ~~sub. (2)~~ *par. (b)*, the provider does not
9 have a claim against the individual for breach of contract or for restitution.

(BF) (25)

10 ~~422.526~~ **Termination of agreements.** *(a)* (1) If an individual who has entered
11 into an agreement fails for 60 days to make payments required by the agreement, a
12 provider may terminate the agreement. ✓

13 ~~(2)~~ *(b)* If a provider or an individual terminates an agreement, the provider shall
14 immediately return to the individual all of the following: ✓ *sub. (22)(d)*

- 15 (a) Any money of the individual held in trust for the benefit of the individual.
- 16 (b) Sixty-five percent of any portion of the set-up fee received pursuant to ~~s.~~
17 ~~422.523 (4) (b)~~ *(PL 5 CES)* which has not been credited against settlement fees.

(BF) (26)

18 ~~422.527~~ **Periodic reports and retention of records.** *(a)* (1) A provider shall
19 provide the accounting required by ~~sub. (2)~~ *par. (b)* upon cancellation or termination of an
20 agreement. Before cancellation or termination of any agreement, a provider shall
21 also provide the accounting required by ~~sub. (2)~~ *par. (b)* at least once each month and within
22 5 business days after a request by an individual, but the provider need not comply
23 with more than one request in any calendar month.

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

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- 1 (a) ^{1.} The amount of money received from the individual since the last report.
- 2 (b) ^{2.} The amounts and dates of disbursement made on the individual's behalf,
- 3 or by the individual upon the direction of the provider, since the last report to each
- 4 creditor listed in the plan.
- 5 (c) ^{3.} The amounts deducted from the amount received from the individual.
- 6 (d) ^{4.} The amount held in reserve.
- 7 (e) ^{5.} If, since the last report, a creditor has agreed to accept as payment in full
- 8 an amount less than the principal amount of the debt owed by the individual, all of
- 9 the following:

- 10 ^{ea} 1. The total amount and terms of the settlement.
- 11 ^{ba} 2. The amount of the debt when the individual assented to the plan.
- 12 ^{ca} 3. The amount of the debt when the creditor agreed to the settlement.
- 13 ^{da} 4. The calculation of a settlement fee.

14 ^(c) (3) A provider shall maintain records for each individual for whom it provides

15 debt-management services for 5 years after the final payment made by the

16 individual and produce a copy of them to the individual within a reasonable time

17 after a request for them. The provider may use electronic or other means of storage

18 of the records. ⁽²⁷⁾ ^(BF) ^{ACCESS}

19 **422.528 Prohibited acts and practices.** ^(a) (1) A provider may not, directly

- 20 or indirectly, do any of the following:
- 21 1. ^(a) Misappropriate or misapply money held in trust.
 - 22 2. ^(b) Settle a debt on behalf of an individual for more than 50 percent of the
 - 23 principal amount of the debt owed a creditor, unless the individual assents to the
 - 24 settlement after the creditor has assented.

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1 3. (c) Take a power of attorney that authorizes it to settle a debt, unless the power
2 of attorney expressly limits the provider's authority to settle debts for not more than
3 50 percent of the principal amount of the debt owed a creditor.

4 4. (d) Exercise or attempt to exercise a power of attorney after an individual has
5 terminated an agreement.

6 5. (e) Initiate a transfer from an individual's account at a ~~bank~~ ^{financial institution} or with another
7 person unless the transfer is a return of money to the individual or unless the
8 transfer is before termination of an agreement, properly authorized by the
9 agreement and this ~~subchapter~~ ^{section}, and for payment to one or more creditors pursuant
10 to a plan or payment of a fee.

11 6. (f) Offer a gift or bonus, premium, reward, or other compensation to an
12 individual for executing an agreement.

13 7. (g) Offer, pay, or give a gift or bonus, premium, reward, or other compensation
14 to a person for referring a prospective customer, if the person making the referral has
15 a financial interest in the outcome of debt-management services provided to the
16 customer, unless neither the provider nor the person making the referral
17 communicates to the prospective customer the identity of the source of the referral.

18 8. (h) Receive a bonus, commission, or other benefit for referring an individual to
19 a person.

20 9. (i) Structure a plan in a manner that would result in a negative amortization
21 of any of an individual's debts, unless a creditor that is owed a negatively amortizing
22 debt agrees to refund or waive the finance charge upon payment of the principal
23 amount of the debt.

24 10. (j) Compensate its employees on the basis of a formula that incorporates the
25 number of individuals the employee induces to enter into agreements.

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1 ~~11.~~ (k) Settle a debt or lead an individual to believe that a payment to a creditor
2 is in settlement of a debt to the creditor unless, at the time of settlement, the
3 individual receives a certification by the creditor that the payment is in full
4 settlement of the debt.

5 ~~12.~~ (l) Make a representation of any of the following:

6 ~~a.~~ That the provider will furnish money to pay bills or prevent attachments.

7 ~~b.~~ That payment of a certain amount will permit satisfaction of a certain
8 amount or range of indebtedness.

9 ~~c.~~ That participation in a plan will or may prevent litigation, garnishment,
10 attachment, repossession, foreclosure, eviction, or loss of employment.

11 ~~13.~~ (m) Misrepresent that it is authorized or competent to furnish legal advice or
12 perform legal services.

13 ~~14.~~ (n) Represent that it is a not-for-profit entity unless it is organized and
14 properly operating as a not-for-profit under the law of the state in which it was
15 formed or that it is a tax-exempt entity unless it has received certification of
16 tax-exempt status from the Internal Revenue Service.

17 ~~15.~~ (o) Take a confession of judgment or power of attorney to confess judgment
18 against an individual.

19 ~~16.~~ (p) Employ an unfair, unconscionable, or deceptive act or practice, including the
20 knowing omission of any material information.

21 ~~2.~~ (b) If a provider furnishes debt-management services to an individual, the
22 provider may not, directly or indirectly, do any of the following:

23 ~~1.~~ (a) Purchase a debt or obligation of the individual.

24 ~~2.~~ (b) Receive from or on behalf of the individual any of the following:

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1 ^{a.f.} 1. A promissory note or other negotiable instrument other than a check or a
2 demand draft.

3 ^{b.g.} 2. A post-dated check or demand draft.

4 ^{3.f.} 3. Lend money or provide credit to the individual, except as a deferral of a
5 settlement fee at no additional expense to the individual. ✓

6 ^{4.g.} 4. Obtain a mortgage or other security interest from any person in connection
7 with the services provided to the individual. ✓

8 ^{5.f.} 5. Except as permitted by federal law, disclose the identity or identifying
9 information of the individual or the identity of the individual's creditors, except to
10 any of the following: ✓

11 ^{a.f.} 1. The ~~administrator~~ ^{division}, upon proper demand.

12 ^{b.g.} 2. A creditor of the individual, to the extent necessary to secure the cooperation
13 of the creditor in a plan. ✓

14 ^{c.f.} 3. The extent necessary to administer the plan. ✓

15 ^{6.f.} 6. Except as otherwise provided in ~~§. 422.523 (6)~~ ^{sub. (22) (f)}, provide the individual less
16 than the full benefit of a compromise of a debt arranged by the provider.

17 ^{7.g.} 7. Charge the individual for or provide credit or other insurance, coupons for
18 goods or services, membership in a club, access to computers or the Internet, or any
19 other matter not directly related to debt-management services or educational
20 services concerning personal finance.

21 ^{8.f.} 8. Furnish legal advice or perform legal services, unless the person furnishing
22 that advice to or performing those services for the individual is licensed to practice
23 law.

24 ^(c) 3. This ~~subchapter~~ ^{section} does not authorize any person to engage in the practice of
25 law.

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1 ^(d) (4) A provider may not receive a gift or bonus, premium, reward, or other
 2 compensation, directly or indirectly, for advising, arranging, or assisting an
 3 individual in connection with obtaining, an extension of credit or other service from
 4 a lender or service provider, except for educational or counseling services required
 5 in connection with a government-sponsored program. ✓

6 ^(e) (5) Unless a person supplies goods, services, or facilities generally and supplies
 7 them to the provider at a cost no greater than the cost the person generally charges
 8 to others, a provider may not purchase goods, services, or facilities from the person
 9 if an employee or a person that the provider should reasonably know is an affiliate
 10 of the provider owns more than 10 percent of the person or is an employee or affiliate
 11 of the person. (28) BF ✓ PL § CFS

12 ~~422.529~~ **Notice of litigation.** No later than 30 days after a provider has been
 13 served with notice of a civil action for violation of this ~~subchapter~~ ^{section} by or on behalf of
 14 an individual who resides in this state at either the time of an agreement or the time
 15 the notice is served, the provider shall notify the ~~administrator~~ ^{division} in a record that it has
 16 been sued. (29) BF PL § CFS

17 ~~422.530~~ **Advertising.** A provider that advertises debt-management services
 18 shall disclose, in an easily comprehensible manner, the information specified in ~~§~~

19 ~~422.517 (4) (c) and (d).~~ (30) BF PL § CFS

20 ~~422.531~~ **Liability for the conduct of other persons.** If a provider delegates
 21 any of its duties or obligations under an agreement or this ~~subchapter~~ ^{section} to another
 22 person, including an independent contractor, the provider is liable for conduct of the
 23 person which, if done by the provider, would violate the agreement or this

24 ~~subchapter~~ ^{section}

sub. (16) (d) 30 and 40

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422.532 Powers of administrator.

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(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 subchapter, refer cases to the attorney general, and seek or provide remedies as provided in this subchapter.

(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 subchapter, to determine compliance with this subchapter. Information that identifies individuals who have agreements with the provider shall not be disclosed to the public. In connection with the investigation, the administrator may do any of the following:

(a) Charge the person the reasonable expenses necessarily incurred to conduct the examination.

(b) Require or permit a person to file a statement, verified under oath or affirmation, as to all the facts and circumstances of a matter to be investigated.

(c) Seek a court order authorizing seizure from a bank at which the person maintains a trust account required by 422.522, 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 subchapter in accordance with subch. II of ch. 227.

(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.

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SECTION 6

1 (5) The ~~administrator~~ ^{division}, by rule, shall establish reasonable fees to be paid by
2 providers for the expense of administering this ~~subchapter~~ ^{section}

3 (6) The ~~administrator~~ ^{division}, by rule, shall adopt dollar amounts instead of those
4 specified in ~~ss. 422.502, 422.505, 422.509, 422.513, 422.523, 422.533, and 422.535~~ ^{Subs. (22) (5) (9) (13) (22) (32) and (34)} to
5 reflect inflation, as measured by the United States bureau of labor statistics
6 consumer price index for all urban consumers or, if that index is not available,
7 another index adopted by rule by the ~~administrator~~ ^{division}. The ~~administrator~~ ^{division} shall adopt
8 a base year and adjust the dollar amounts, effective on July 1 of each year, if the
9 change in the index from the base year, as of December 31 of the preceding year, is
10 at least 10 percent. The dollar amount must be rounded to the nearest \$100, except
11 that the amounts in ~~422.523~~ ^{Sub. (22)} must be rounded to the nearest dollar.

12 (7) The ~~administrator~~ ^{division} shall notify ~~registered~~ ^{licensed} providers of any change in dollar
13 amounts made pursuant to ~~sub. (6)~~ ^{par. (f)} and make that information available to the
14 public. ^{(132) BF PL 5000}

15 **422.533 / Administrative remedies.** (1) The ~~administrator~~ ^{division} may enforce this
16 ~~subchapter~~ ^{section} and rules adopted under this ~~subchapter~~ ^{section} by taking one or more of the
17 following actions:

18 (a) ^{1.} Ordering a provider or a director, employee, or other agent of a provider to
19 cease and desist from any violations.

20 (b) ^{2.} Ordering a provider or a person that has caused a violation to correct the
21 violation, including making restitution of money or property to a person aggrieved
22 by a violation.

23 (c) ^{3.} Subject to adjustment of the dollar amount pursuant to ~~§. 422.532 (6)~~ ^{Sub. (31) (f)}
24 recovering in a civil action from a provider or a person that has caused a violation
25 a forfeiture not exceeding \$10,000 for each violation.

BILL

1 (d) Prosecuting a civil action to do any of the following:

2 1. Enforce an order.

3 2. Obtain restitution or an injunction or other equitable relief, or both.

4 (e) Intervening in an action brought under ~~§ 422.535~~.

5 (2) Subject to adjustment of the dollar amount pursuant to ~~§ 422.532 (6)~~, if a

6 person violates or knowingly authorizes, directs, or aids in the violation of a final
7 order issued under ~~sub (1) (a) or (b)~~, the ~~administrator~~ ^{division} may recover in a civil action
8 a forfeiture not exceeding \$20,000 for each violation.

9 (3) The ~~administrator~~ ^{division} may maintain an action to enforce this ~~subchapter~~ ^{section}.

10 (4) The ~~administrator~~ ^{division} may recover the reasonable costs of enforcing the
11 ~~subchapter~~ ^{section} under ~~subs. (1) to (3)~~ ^{par. (a) (c)}, including attorney's fees based on the hours
12 reasonably expended and the hourly rates for attorneys of comparable experience in
13 the community.

14 (5) In determining the amount of a civil penalty to impose under ~~sub. (1) or (2)~~ ^{par. (4) (c)},
15 a court shall consider the seriousness of the violation, the good faith of the violator,
16 any previous violations by the violator, the deleterious effect of the violation on the
17 public, the net worth of the violator, and any other factor the court considers relevant
18 to the determination of the civil penalty.

19 (B+) (33) ~~422.534~~ ^{license} **Suspension, revocation, or nonrenewal of registration.** (1) In
20 this ~~section~~ ^{subsection}, "insolvent" means any of the following:

21 1. (a) Having generally ceased to pay debts in the ordinary course of business
22 other than as a result of a good-faith dispute.

23 2. (b) Being unable to pay debts as they become due.

24 3. (c) Being insolvent within the meaning of the federal bankruptcy law, 11 USC
25 101 to 1532. ✓

BILL

INSERT 46-13

1 (2) The ~~administrator~~ ^{division} may suspend, revoke, or deny renewal of a provider's
2 ~~registration~~ ^{license} if any of the following apply:

3 (a) A fact or condition exists that, if it had existed when the ~~registrant~~ ^{licensee} applied
4 for ~~registration~~ ^{license} as a provider, would have been a reason for denying ~~registration~~ ^{license}.

5 (b) The provider has committed a material violation of this ~~subchapter~~ ^{section} or a rule
6 or order of the ~~administrator~~ ^{division} under this ~~subchapter~~ ^{section}.

7 (c) The provider is insolvent.

8 (d) The provider or an employee, affiliate, or agent of the provider has refused
9 to permit the ~~administrator~~ ^{division} to make an examination authorized by this ~~subchapter~~ ^{section},
10 failed to comply with ~~s. 422.532 (2) (b)~~ ^{sub. (31) (b) 2.} within 15 days after request, or made a
11 material misrepresentation or omission in complying with ~~s. 422.532 (2) (b)~~ ^{sub. (31) (b) 2.}.

12 (e) The provider has not responded within a reasonable time and in an
13 appropriate manner to communications from the ~~administrator~~ ^{division}.

14 (3) If a provider does not comply with ~~s. 422.522 (4)~~ ^{sub. (2) (f)} or if the ~~administrator~~ ^{division}
15 otherwise finds that the public health or safety or general welfare requires
16 emergency action, the ~~administrator~~ ^{division} may order a summary suspension of the
17 provider's ~~registration~~ ^{license}, effective on the date specified in the order.

18 (4) If the ~~administrator~~ ^{division} suspends, revokes, or denies renewal of the
19 ~~registration~~ ^{license} of a provider, the ~~administrator~~ ^{division} may seek a court order authorizing
20 seizure of any or all of the money in a trust account required by ~~s. 422.522~~ ^{sub. (2)}, books,
21 records, accounts, and other property of the provider which are located in this state.

22 (5) If the ~~administrator~~ ^{division} suspends or revokes a provider's ~~registration~~ ^{license}, the
23 provider may appeal and request a hearing pursuant to subch. III of ch. 227.

24 **422.535 Private enforcement.** (1) ^(a) If an individual voids an agreement
25 pursuant to ~~s. 422.525 (2)~~ ^(a), the individual may recover in a civil action all money paid

(34)
BF

PL § CFS

sub. (24) (b) 5

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1 or deposited by or on behalf of the individual pursuant to the agreement, except
2 amounts paid to creditors, in addition to the recovery under ~~sub. (3) (c) and (d)~~ ^{par. (c) 30 8 4}

3 ~~(b)~~ ⁽²⁾ If an individual voids an agreement pursuant to ~~s. 422.525 (1)~~, the
4 individual may recover in a civil action 3 times the total amount of the fees, charges,
5 money, and payments made by the individual to the provider, in addition to the
6 recovery under ~~sub. (3) (d)~~ ^{par. (c) 4}

7 ~~(c)~~ ⁽³⁾ Subject to ~~sub. (4)~~, an individual with respect to whom a provider violates
8 this ~~subchapter~~ ^{section (par. (d))} may recover all of the following in a civil action from the provider and
9 any person that caused the violation:

10 1. ~~(a)~~ ^(a) Compensatory damages for injury, including noneconomic injury, caused by
11 the violation.

12 2. ~~(b)~~ ^(b) Except as otherwise provided in ~~sub. (4)~~ and subject to adjustment of the
13 dollar amount pursuant to ~~s. 422.532 (6)~~ ^{sub. (3) (f) 5} with respect to a violation of ~~s. 422.517~~
14 ~~422.519, 422.520, 422.521, 422.522, 422.523, 422.524, 422.527, or 422.528 (1), (2), or~~
15 ~~(4)~~ ⁽⁴⁾, the greater of the amount recoverable under ~~par. (a)~~ ^{subd. 1.} or \$5,000.

16 3. ~~(c)~~ ^(c) Punitive damages.

17 4. ~~(d)~~ ^(d) Reasonable attorney's fees and costs.

18 ~~(d)~~ ⁽⁴⁾ In a class action, except for a violation of ~~s. 422.528 (1) (e)~~, the minimum
19 damages provided in ~~sub. (3) (b)~~ ^{par. (c) 2.} do not apply.

20 ~~(c)~~ ⁽⁵⁾ In addition to the remedy available under ~~sub. (3)~~, if a provider violates an
21 individual's rights under ~~s. 422.520~~ ^{sub. (19)}, the individual may recover in a civil action all
22 money paid or deposited by or on behalf of the individual pursuant to the agreement,
23 except for amounts paid to creditors. ✓

24 ~~(f)~~ ⁽⁶⁾ A provider is not liable under this ~~section~~ ^{subsection} for a violation of this ~~subchapter~~ ^{section}
25 if the provider proves that the violation was not intentional and resulted from a

sub. (24)
(a)
par. (d)
sub. (16), (18), (19), (20), (21), (22), (23), (26), (27)(a), (b), or (d)
sub. (27)(a) 5.
par. (c)
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BILL

SECTION 6

1 good-faith error notwithstanding the maintenance of procedures reasonably
 2 adapted to avoid the error. An error of legal judgment with respect to a provider's
 3 obligations under this ~~subchapter~~ ^{section} is not a good-faith error. If, in connection with a
 4 violation, the provider has received more money than authorized by an agreement
 5 or this ~~subchapter~~ ^{section}, the defense provided by this ~~subsection~~ ^{paragraph} is not available unless the
 6 provider refunds the excess within 2 business days of learning of the violation.

7 (g) ~~(7)~~ The ~~administrator~~ ^{division} shall assist an individual in enforcing a judgment
 8 against the surety bond or ~~other security~~ provided under ~~s. 422.513 or 422.514~~ ^{422.513}

Sub. (13)

9 (35) **422.536 Violation of unfair or deceptive practices.** If an act or practice
 10 of a provider violates both this ~~subchapter~~ ^{section} and ch. 100, an individual may not recover
 11 under both for the same act or practice.

12 (36) **422.537 Statute of limitations.** (1) An action or proceeding brought
 13 pursuant to s. 422.533 (1), (2), or (3) must be commenced within 4 years after the
 14 conduct that is the basis of the ~~administrator~~ ^{division}'s complaint.

15 (2) An action brought pursuant to ~~s. 422.533~~ ^(b) must be commenced within 2
 16 years after the latest of the following:

- 17 1. (a) The individual's last transmission of money to a provider.
- 18 2. (b) The individual's last transmission of money to a creditor at the direction of
 19 the provider.
- 20 3. (c) The provider's last disbursement to a creditor of the individual.
- 21 4. (d) The provider's last accounting to the individual pursuant to ~~s. 422.527 (1)~~ ^{sub. (26) (a)}.
- 22 5. (e) The date on which the individual discovered or reasonably should have
 23 discovered the facts giving rise to the individual's claim.
- 24 6. (f) Termination of actions or proceedings by the ~~administrator~~ ^{division} with respect to
 25 a violation of the ~~subchapter~~ ^{section}.

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1 ^{par. (b) 5} (C) (3) The period prescribed in ~~sub. (2) (c)~~ is tolled during any period during which
 2 the provider or, if different, the defendant has materially and willfully
 3 misrepresented information required by this ~~subchapter~~ ^{section} to be disclosed to the
 4 individual, if the information so misrepresented is material to the establishment of
 5 the liability of the defendant under this ~~subchapter~~ ^{section}.

6 (37) **422.538 Uniformity of application and construction.** In applying and
 7 construing this uniform act, consideration must be given to the need to promote
 8 uniformity of the law with respect to its subject matter among states that enact it.

9 (38) **422.539 Relation to Electronic Signatures in Global and National
 10 Commerce Act.** This ~~subchapter~~ ^{section} modifies, limits, and supersedes the federal
 11 Electronic Signatures in Global and National Commerce Act (15 USC 7001 to 7031)
 12 but does not modify, limit, or supersede 15 USC 7001 (c) or authorize electronic
 13 delivery of any of the notices described in 15 USC 7003 (b).

14 **SECTION 7.** 426.102 (3) of the statutes is repealed.

15 **SECTION 8. Initial applicability.**

16 (1) This act first applies to agreements for the performance of
 17 debt-management services that are entered into, extended, modified, or renewed on
 18 the effective date of this subsection.

19 **SECTION 9. Effective date.**

20 (1) This act takes effect on the first day of the 13th month beginning after
 21 publication.

22 (END)

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INSERT 1A:

This is a preliminary draft. An analysis will be prepared for a subsequent version of this draft.

INSERT 5-9:

SECTION 1. Chapter 218 (title) of the statutes is amended to read:

CHAPTER 218
FINANCE COMPANIES, AUTO DEALERS,
~~ADJUSTMENT COMPANIES~~ ~~DEBT-MANAGEMENT~~
~~SERVICE PROVIDERS~~ ~~AND~~
COLLECTION AGENCIES

SECTION 2. Subchapter II (title) of chapter 218 [precedes 218.02] of the statutes is repealed and recreated to read:

CHAPTER 218
UNIFORM DEBT-MANAGEMENT
SERVICES ACT

✓
A SUBCHAPTER II caps, no bold

SECTION 3. 218.02 (title) of the statutes is repealed and recreated to read:

218.02 (title) Uniform debt-management services act.

SECTION 4. 218.02 (1) to (8) of the statutes are repealed and recreated to read:

218.02 (1) SHORT TITLE. This section may be cited as the "Uniform Debt-Management Services Act."

(2) DEFINITIONS. In this section:

INSERT 9-12:

, unless the services are provided free of charge with the intent of evading the provisions of this section ✓

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INSERT 9-23:

5. An attorney licensed or otherwise authorized to practice law in this state who provides legal services in an attorney-client relationship, if the provision of debt-management services is incidental to the provision of legal services. ✓

6. A certified public accountant licensed to provide accounting services in this state who provides accounting services in an accountant-client relationship, if the provision of debt-management services is incidental to the provision of accounting services. ✓

INSERT 11-7:

7. If the applicant is a corporation or limited liability company organized under the laws of another state, a certificate of good standing issued by the other state. ✓

INSERT 12-3:

1. All criminal convictions. ✓

2. All actions by governmental agencies, and all judgments, relevant to the provision of debt-management services. ✓

3. All pending charges, actions, suits, and claims, relevant to the provision of debt-management services. ✓

INSERT 14-24:

4. The applicant has been certified under s. 73.0301 by the department of revenue as being liable for delinquent taxes. ✓

5. If the applicant is an individual, the applicant has failed to comply, after appropriate notice, with a subpoena or warrant issued by the department of workforce development or a county child support agency under s. 59.53 (5) and related to paternity or child support proceedings and is ~~not~~ delinquent in making court-ordered payments of child or family support, maintenance, birth expenses,

1 medical expenses or other expenses related to the support of a child or former spouse,
2 as provided in a memorandum of understanding entered into under s. 49.857. ✓

3 **INSERT 46-13:**

4 6. The provider fails to pay any fee required under this section or to maintain
5 in effect the surety bond required under sub. (13). ✓

6 (c) In accordance with a memorandum of understanding entered into under s.
7 49.857, the division shall restrict or suspend a license if the licensee is an individual
8 who fails to comply, after appropriate notice, with a subpoena or warrant issued by
9 the department of workforce development or a county child support agency under s.
10 59.53 (5) and related to paternity or child support proceedings or who is delinquent
11 in making court-ordered payments of child or family support, maintenance, birth
12 expenses, medical expenses or other expenses related to the support of a child or
13 former spouse. ✓

14 (d) In accordance with s. 73.0301, the division shall revoke a license if the
15 department of revenue has certified under s. 73.0301 that the licensee is liable for
16 delinquent taxes. ✓

17 **INSERT 49-13:**

18 **SECTION 5.** 218.02 (9) of the statutes is renumbered 218.02 (39). ✓

19 **SECTION 6.** 218.02 (10) of the statutes is renumbered 218.02 (40). ✓

20 **SECTION 7.** 220.02 (2) (b) of the statutes is amended to read:

21 220.02 (2) (b) The lending of money under s. 138.09 or those relating to finance
22 companies, motor vehicle dealers, ~~adjustment service companies~~ debt-management ✓

1 service providers, community currency exchanges, and collection agencies under ch.
2 218.

History: 1971 c. 239, 307; 1973 c. 3, 243; 1975 c. 65; 1977 c. 196 s. 131; 1977 c. 418; 1981 c. 390; 1985 a. 127; 1987 a. 399; 1989 a. 31; 1991 a. 221, 316; 1995 a. 27 ss. 52c, 5979 to 5984; 1995 a. 55, 216; 1997 a. 27; 2003 a. 33; 2005 a. 158, 215; s. 13.93 (1) (b).

3 **SECTION 8. 220.02 (3)** of the statutes is amended to read:

4 220.02 (3) It is the intent of sub. (2) to give the division jurisdiction to enforce
5 and carry out all laws relating to banks or banking in this state, including those
6 relating to state banks, savings banks, savings and loan associations, and trust
7 company banks, and also all laws relating to small loan companies or other loan
8 companies or agencies, finance companies, insurance premium finance companies,
9 motor vehicle dealers, ~~adjustment service companies~~ debt-management service
10 providers, community currency exchanges, mortgage bankers, loan originators,
11 mortgage brokers, and collection agencies and those relating to sellers of checks
12 under ch. 217, whether doing business as corporations, individuals, or otherwise, but
13 to exclude laws relating to credit unions.

History: 1971 c. 239, 307; 1973 c. 3, 243; 1975 c. 65; 1977 c. 196 s. 131; 1977 c. 418; 1981 c. 390; 1985 a. 127; 1987 a. 399; 1989 a. 31; 1991 a. 221, 316; 1995 a. 27 ss. 52c, 5979 to 5984; 1995 a. 55, 216; 1997 a. 27; 2003 a. 33; 2005 a. 158, 215; s. 13.93 (1) (b).

14 **SECTION 9. 422.501 (2) (b) 4.** of the statutes is amended to read:

15 422.501 (2) (b) 4. A person licensed as an ~~adjustment service company~~
16 ^a debt-management service provider under s. 218.02 if the person is acting within the
17 course and scope of that license.

History: 1991 a. 244; 1995 a. 27; 1997 a. 145, 302.

DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0917/P1dn
MDK:.....

mk

(date)

✓
Rep. Wieckert:

This draft makes changes to 2005 ^{the} LRB-5042/1 set forth in the Legislative Council memo dated November 30, 2006, and DFI e-mail dated December 18, 2006. Please note the following about this draft: ^{about}

1. I changed the uniform act's references to "administrator" to the Division of Banking. ✓
2. In proposed s. 218.02 (3) (c) 5. and 6., I created exceptions that refer to providing debt-management services that are incidental to providing the exempted services. I think this accomplishes your intent without using the "intent to evade" language suggested by DFI. ✓ Also, I'm concerned ^{about} the "intent to evade" language in proposed s. 218.02 (b) 2. Under that exemption, a person is exempt if he or she provides services for free, but not if he or she provided the services for free with the intent of evading application of the bill's requirements. ✓ Why should intent matter? ✓ And how would one determine whether a person had the requisite intent? ✓ Is there a better way to accomplish DFI's purpose? ✓
3. I revised proposed s. 218.02 (8) to refer to s. 19.35 (1) of the open records law. ✓
4. The draft renumbers s. 218.02 (9) and (10) to s. 218.02 (39) and (40). ✓ Note that s. 218.02 (9) (b) and (c) refer to "this chapter" instead of to subch. II of ch. 218. Is that okay, or should these provisions go into a new subchapter? ✓

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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-0917/P1dn
MDK:lmk:nwn

February 2, 2007

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