

1 1. "Federal act" means the Electronic Signatures in Global and National
2 Commerce Act, 15 USC 7001 to 7031.

3 2. "Consumer" means an individual who seeks or obtains goods or services that
4 are used primarily for personal, family, or household purposes.

5 (b) A provider may satisfy the requirements of sub. (16), (18), or (26) by means
6 of the Internet or other electronic means if the provider obtains a consumer's consent
7 in the manner provided by 15 USC 7001 (c) (1).

8 (c) The disclosures and materials required by subs. (16), (18), and (26) shall be
9 presented in a form that is capable of being accurately reproduced for later reference.

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

14 (e) At the time of providing the materials and agreement required by subs. (16)
15 (c) and (d), (18), and (26), a provider shall inform the individual that upon electronic,
16 telephonic, or written request, it will send the individual a written copy of the
17 materials, and shall comply with a request as provided in par. (f).

18 (f) If a provider is requested, before the expiration of 90 days after a plan is
19 completed or terminated, to send a written copy of the materials required by subs.
20 (16) (c) and (d), (18), and (26), the provider shall send them at no charge within 3
21 business days after the request, but the provider need not comply with a request
22 more than once per calendar month or if it reasonably believes the request is made
23 for purposes of harassment. If a request is made more than 90 days after a plan is
24 completed or terminated, the provider shall send within a reasonable time a written
25 copy of the materials requested.

1 (g) A provider that maintains an Internet Web site shall disclose all of the
2 following on the home page of its Web site or on a page that is clearly and
3 conspicuously connected to the home page by a link that clearly reveals its contents:

4 1. Its name and all names under which it does business.

5 2. Its principal business address, telephone number, and electronic-mail
6 address, if any.

7 3. The names of its principal officers.

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

12 (i) If a provider wishes to terminate an agreement with a consumer pursuant
13 to par. (h), it shall notify the consumer that it will terminate the agreement unless
14 the consumer, within 30 days after receiving the notification, consents to electronic
15 communication in the manner provided in 15 USC 7001 (c). If the consumer
16 consents, the provider may terminate the agreement only as permitted by sub. (18)

17 (a) 6. g.

18 **(18) FORM AND CONTENTS OF AGREEMENT.** (a) An agreement must satisfy all of
19 the following:

20 1. Be in a record.

21 2. Be dated and signed by the provider and the individual.

22 3. Include the name of the individual and the address where the individual
23 resides.

24 4. Include the name, business address, and telephone number of the provider.

25 5. Be delivered to the individual immediately upon formation of the agreement.

- 1 6. Disclose all of the following:
- 2 a. The services to be provided.
- 3 b. The amount, or method of determining the amount, of all fees, individually
- 4 itemized, to be paid by the individual.
- 5 c. The schedule of payments to be made by or on behalf of the individual,
- 6 including the amount of each payment, the date on which each payment is due, and
- 7 an estimate of the date of the final payment.
- 8 d. If a plan provides for regular periodic payments to creditors, the plan must
- 9 disclose each creditor of the individual to which payment will be made, the amount
- 10 owed to each creditor, and any concessions the provider reasonably believes each
- 11 creditor will offer; and the schedule of expected payments to each creditor, including
- 12 the amount of each payment and the date on which it will be made.
- 13 e. Each creditor that the provider believes will not participate in the plan and
- 14 to which the provider will not direct payment.
- 15 f. How the provider will comply with its obligations under sub. (26) (a).
- 16 g. That the provider may terminate the agreement for good cause, upon return
- 17 of unexpended money of the individual.
- 18 h. That the individual may cancel the agreement as provided in sub. (19).
- 19 i. That the individual may contact the division with any questions or
- 20 complaints regarding the provider.
- 21 j. The address, telephone number, and Internet address or Web site of the
- 22 division.
- 23 (b) For purposes of par. (a) 5., delivery of an electronic record occurs when it is
- 24 made available in a format in which the individual may retrieve, save, and print it
- 25 and the individual is notified that it is available.

1 (c) If the division supplies the provider with any information required under
2 par. (a) 6. j., the provider may comply with that requirement only by disclosing the
3 information supplied by the division.

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

5 1. That the individual has a right to terminate the agreement at any time,
6 without penalty or obligation, by giving the provider written or electronic notice, in
7 which event all of the following apply:

8 a. The provider will refund all unexpended money that the provider or its agent
9 has received from or on behalf of the individual for the reduction or satisfaction of
10 the individual's debt.

11 b. With respect to an agreement that contemplates that creditors will settle
12 debts for less than the principal amount of debt, the provider will refund 65 percent
13 of any portion of the set-up fee that has not been credited against the settlement fee.

14 c. All powers of attorney granted by the individual to the provider are revoked
15 and ineffective.

16 2. That the individual authorizes any financial institution in which the
17 provider or its agent has established a trust account to disclose to the division any
18 financial records relating to the trust account.

19 3. That the provider will notify the individual within 5 days after learning of
20 a creditor's decision to reject or withdraw from a plan and that this notice will include
21 all of the following:

22 a. The identity of the creditor.

23 b. The right of the individual to modify or terminate the agreement.

24 (e) An agreement may confer on a provider a power of attorney to settle the
25 individual's debt for no more than 50 percent of the principal amount of the debt. An

1 agreement may not confer a power of attorney to settle a debt for more than 50
2 percent of that amount, but may confer a power of attorney to negotiate with
3 creditors of the individual on behalf of the individual. An agreement must provide
4 that the provider will obtain the assent of the individual after a creditor has assented
5 to a settlement for more than 50 percent of the principal amount of the debt.

6 (f) An agreement may not do any of the following:

7 1. Provide for application of the law of any jurisdiction other than the United
8 States and this state.

9 2. Except as permitted by 9 USC 2 or ch. 788, contain a provision that modifies
10 or limits otherwise available forums or procedural rights, including the right to trial
11 by jury, that are generally available to the individual under law other than this
12 section.

13 3. Contain a provision that restricts the individual's remedies under this
14 section or law other than this section.

15 4. Contain a provision that does any of the following:

16 a. Limits or releases the liability of any person for not performing the
17 agreement or for violating this section.

18 b. Indemnifies any person for liability arising under the agreement or this
19 section.

20 (g) All rights and obligations specified in par. (d) and sub. (19) exist even if not
21 provided in the agreement. A provision in an agreement which violates par. (d), (e),
22 or (f) is void.

23 **(19) CANCELLATION OF AGREEMENT; WAIVER.** (a) An individual may cancel an
24 agreement before midnight of the 3rd business day after the individual assents to it,
25 unless the agreement does not comply with par. (b) or sub. (18) or (27), in which event

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1 the individual may cancel the agreement within 30 days after the individual assents
2 to it. To exercise the right to cancel, the individual must give notice in a record to the
3 provider. Notice by mail is given when mailed.

4 (b) An agreement must be accompanied by a form that contains all of the
5 following in bold-face type, surrounded by bold black lines:

6 Notice of Right to Cancel

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

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

11

12 *E-mail address of provider*

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

14 at

15 *Name of provider*

Address of provider

16 before midnight on:

17 *Date*

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

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

22 I cancel this agreement,

23

24 *Print your name*

25

Signature

.....

Date

(c) If a personal financial emergency necessitates the disbursement of an individual's money to one or more of the individual's creditors before the expiration of 3 days after an agreement is signed, an individual may waive the right to cancel. To waive the right, the individual must send or deliver a signed, dated statement in the individual's own words describing the circumstances that necessitate a waiver. The waiver must explicitly waive the right to cancel. A waiver by means of a standard-form record is void.

(20) REQUIRED LANGUAGE. Unless the division, by rule, provides otherwise, the disclosures and documents required by this section must be in English. If a provider communicates with an individual primarily in a language other than English, the provider must furnish a translation into the other language of the disclosures and documents required by this section.

(21) TRUST ACCOUNT. (a) All money paid to a provider by or on behalf of an individual pursuant to a plan for distribution to creditors is held in trust. Within 2 business days after receipt, the provider shall deposit the money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services.

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

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

1 1. Maintain separate records of account for each individual to whom the
2 provider is furnishing debt-management services.

3 2. Disburse money paid by or on behalf of the individual to creditors of the
4 individual as disclosed in the agreement, except that all of the following apply:

5 a. The provider may delay payment to the extent that a payment by the
6 individual is not final.

7 b. If a plan provides for regular periodic payments to creditors, the
8 disbursement must comply with the due dates established by each creditor.

9 3. Promptly correct any payments that are not made or that are misdirected
10 as a result of an error by the provider or other person in control of the trust account
11 and reimburse the individual for any costs or fees imposed by a creditor as a result
12 of the failure to pay or misdirection.

13 (d) A provider may not commingle money in a trust account established for the
14 benefit of individuals to whom the provider is furnishing debt-management services
15 with money of other persons.

16 (e) A trust account must at all times have a cash balance equal to or greater
17 than the sum of the positive balances of each individual's account.

18 (f) If a provider has established a trust account pursuant to par. (a), the
19 provider shall reconcile the trust account at least once a month. The reconciliation
20 must compare the cash balance in the trust account with the sum of the balances in
21 each individual's account. If the provider or its designee has more than one trust
22 account, each trust account must be individually reconciled.

23 (g) If a provider discovers, or has a reasonable suspicion of, embezzlement or
24 other unlawful appropriation of money held in trust, the provider immediately shall
25 notify the division by a method approved by the division. Unless the division by rule

1 provides otherwise, within 5 days thereafter, the provider shall give notice to the
2 division describing the remedial action taken or to be taken.

3 (h) If an individual terminates an agreement or it becomes reasonably
4 apparent to a provider that a plan has failed, the provider shall promptly refund to
5 the individual all money paid by or on behalf of the individual which has not been
6 paid to creditors, less fees that are payable to the provider under sub. (22).

7 (i) Before relocating a trust account from one financial institution to another,
8 a provider shall inform the division of the name, business address, and telephone
9 number of the new financial institution. As soon as practicable, the provider shall
10 inform the administrator of the account number of the trust account at the new
11 financial institution.

12 **(22) FEES AND OTHER CHARGES.** (a) A provider may not impose directly or
13 indirectly a fee or other charge on an individual or receive money from or on behalf
14 of an individual for debt-management services except as permitted by this
15 subsection.

16 (b) A provider may not impose charges or receive payment for
17 debt-management services until the provider and the individual have signed an
18 agreement that complies with subs. (18) and (27).

19 (c) If an individual assents to an agreement, a provider may not impose a fee
20 or other charge for educational or counseling services, or the like, except as otherwise
21 provided in this subsection and sub. (27) (d). The division may authorize a provider
22 to charge a fee based on the nature and extent of the educational or counseling
23 services furnished by the provider.

24 (d) Subject to adjustment of dollar amounts pursuant to sub. (31) (f), all of the
25 following rules apply:

1 1. If an individual assents to a plan that contemplates that creditors will reduce
2 finance charges or fees for late payment, default, or delinquency, the provider may
3 charge all of the following:

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

6 b. A monthly service fee, not to exceed \$10 times the number of creditors
7 remaining in a plan at the time the fee is assessed, but not more than \$50 in any
8 month.

9 2. If an individual assents to a plan that contemplates that creditors will settle
10 debts for less than the principal amount of the debt, a provider may charge all of the
11 following:

12 a. Subject to sub. sub. (18) (d), a fee for consultation, obtaining a credit report,
13 setting up an account, and the like, in an amount not exceeding the lesser of \$400 and
14 4 percent of the debt in the plan at the inception of the plan.

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

18 3. A provider may not impose or receive fees under both subds. 1. and 2.

19 4. Except as otherwise provided in sub. (27) (d), if an individual does not assent
20 to an agreement, a provider may receive for educational and counseling services it
21 provides to the individual a fee not exceeding \$100 or, with the approval of the
22 division, a larger fee. The division may approve a fee larger than \$100 if the nature
23 and extent of the educational and counseling services warrant the larger fee.

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

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

10 1. The fee charged pursuant to par. (d) 2. a.

11 2. The aggregate of fees charged pursuant to par. (d) 2. b.

12 (g) Subject to adjustment of the dollar amount pursuant to sub. (31) (f), if a
13 payment to a provider by an individual under this section is dishonored, a provider
14 may impose a reasonable charge on the individual, not to exceed the lesser of \$25 and
15 the amount permitted by law other than this section.

16 **(23) VOLUNTARY CONTRIBUTIONS.** A provider may not solicit a voluntary
17 contribution from an individual or an affiliate of the individual for any service
18 provided to the individual. A provider may accept voluntary contributions from an
19 individual but, until 30 days after completion or termination of a plan, the aggregate
20 amount of money received from or on behalf of the individual may not exceed the total
21 amount the provider may charge the individual under sub. (22).

22 **(24) VOIDABLE AGREEMENTS.** (a) If a provider imposes a fee or other charge or
23 receives money or other payments not authorized by sub. (22) or (23), the individual
24 may void the agreement and recover as provided in sub. (34).

1 (b) If a provider is not licensed as required by this section when an individual
2 assents to an agreement, the agreement is voidable by the individual.

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

5 **(25) TERMINATION OF AGREEMENTS.** (a) If an individual who has entered into an
6 agreement fails for 60 days to make payments required by the agreement, a provider
7 may terminate the agreement.

8 (b) If a provider or an individual terminates an agreement, the provider shall
9 immediately return to the individual all of the following:

10 1. Any money of the individual held in trust for the benefit of the individual.

11 2. Sixty-five percent of any portion of the set-up fee received pursuant to sub.

12 (22) (d) 2. which has not been credited against settlement fees.

13 **(26) PERIODIC REPORTS AND RETENTION OF RECORDS.** (a) A provider shall provide
14 the accounting required by par. (b) upon cancellation or termination of an agreement.
15 Before cancellation or termination of any agreement, a provider shall also provide
16 the accounting required by par. (b) at least once each month and within 5 business
17 days after a request by an individual, but the provider need not comply with more
18 than one request in any calendar month.

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

21 1. The amount of money received from the individual since the last report.

22 2. The amounts and dates of disbursement made on the individual's behalf, or
23 by the individual upon the direction of the provider, since the last report to each
24 creditor listed in the plan.

25 3. The amounts deducted from the amount received from the individual.

1 4. The amount held in reserve.

2 5. If, since the last report, a creditor has agreed to accept as payment in full an
3 amount less than the principal amount of the debt owed by the individual, all of the
4 following:

5 a. The total amount and terms of the settlement.

6 b. The amount of the debt when the individual assented to the plan.

7 c. The amount of the debt when the creditor agreed to the settlement.

8 d. The calculation of a settlement fee.

9 (c) A provider shall maintain records for each individual for whom it provides
10 debt-management services for 5 years after the final payment made by the
11 individual and produce a copy of them to the individual within a reasonable time
12 after a request for them. The provider may use electronic or other means of storage
13 of the records.

14 **(27) PROHIBITED ACTS AND PRACTICES.** (a) A provider may not, directly or
15 indirectly, do any of the following:

16 1. Misappropriate or misapply money held in trust.

17 2. Settle a debt on behalf of an individual for more than 50 percent of the
18 principal amount of the debt owed a creditor, unless the individual assents to the
19 settlement after the creditor has assented.

20 3. Take a power of attorney that authorizes it to settle a debt, unless the power
21 of attorney expressly limits the provider's authority to settle debts for not more than
22 50 percent of the principal amount of the debt owed a creditor.

23 4. Exercise or attempt to exercise a power of attorney after an individual has
24 terminated an agreement.

1 5. Initiate a transfer from an individual's account at a financial institution or
2 with another person unless the transfer is a return of money to the individual or
3 unless the transfer is before termination of an agreement, properly authorized by the
4 agreement and this section, and for payment to one or more creditors pursuant to a
5 plan or payment of a fee.

6 6. Offer a gift or bonus, premium, reward, or other compensation to an
7 individual for executing an agreement.

8 7. Offer, pay, or give a gift or bonus, premium, reward, or other compensation
9 to a person for referring a prospective customer, if the person making the referral has
10 a financial interest in the outcome of debt-management services provided to the
11 customer, unless neither the provider nor the person making the referral
12 communicates to the prospective customer the identity of the source of the referral.

13 8. Receive a bonus, commission, or other benefit for referring an individual to
14 a person.

15 9. Structure a plan in a manner that would result in a negative amortization
16 of any of an individual's debts, unless a creditor that is owed a negatively amortizing
17 debt agrees to refund or waive the finance charge upon payment of the principal
18 amount of the debt.

19 10. Compensate its employees on the basis of a formula that incorporates the
20 number of individuals the employee induces to enter into agreements.

21 11. Settle a debt or lead an individual to believe that a payment to a creditor
22 is in settlement of a debt to the creditor unless, at the time of settlement, the
23 individual receives a certification by the creditor that the payment is in full
24 settlement of the debt.

25 12. Make a representation of any of the following:

- 1 a. That the provider will furnish money to pay bills or prevent attachments.
- 2 b. That payment of a certain amount will permit satisfaction of a certain
- 3 amount or range of indebtedness.
- 4 c. That participation in a plan will or may prevent litigation, garnishment,
- 5 attachment, repossession, foreclosure, eviction, or loss of employment.
- 6 13. Misrepresent that it is authorized or competent to furnish legal advice or
- 7 perform legal services.
- 8 14. Represent that it is a not-for-profit entity unless it is organized and
- 9 properly operating as a not-for-profit under the law of the state in which it was
- 10 formed or that it is a tax-exempt entity unless it has received certification of
- 11 tax-exempt status from the Internal Revenue Service.
- 12 15. Take a confession of judgment or power of attorney to confess judgment
- 13 against an individual.
- 14 16. Employ an unfair, unconscionable, or deceptive act or practice, including
- 15 the knowing omission of any material information.
- 16 (b) If a provider furnishes debt-management services to an individual, the
- 17 provider may not, directly or indirectly, do any of the following:
- 18 1. Purchase a debt or obligation of the individual.
- 19 2. Receive from or on behalf of the individual any of the following:
- 20 a. A promissory note or other negotiable instrument other than a check or a
- 21 demand draft.
- 22 b. A post-dated check or demand draft.
- 23 3. Lend money or provide credit to the individual, except as a deferral of a
- 24 settlement fee at no additional expense to the individual.

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1 4. Obtain a mortgage or other security interest from any person in connection
2 with the services provided to the individual.

3 5. Except as permitted by federal law, disclose the identity or identifying
4 information of the individual or the identity of the individual's creditors, except to
5 any of the following:

6 a. The division, upon proper demand.

7 b. A creditor of the individual, to the extent necessary to secure the cooperation
8 of the creditor in a plan.

9 c. The extent necessary to administer the plan.

10 6. Except as otherwise provided in sub. (22) (f), provide the individual less than
11 the full benefit of a compromise of a debt arranged by the provider.

12 7. Charge the individual for or provide credit or other insurance, coupons for
13 goods or services, membership in a club, access to computers or the Internet, or any
14 other matter not directly related to debt-management services or educational
15 services concerning personal finance.

16 8. Furnish legal advice or perform legal services, unless the person furnishing
17 that advice to or performing those services for the individual is licensed to practice
18 law.

19 (c) This section does not authorize any person to engage in the practice of law.

20 (d) A provider may not receive a gift or bonus, premium, reward, or other
21 compensation, directly or indirectly, for advising, arranging, or assisting an
22 individual in connection with obtaining, an extension of credit or other service from
23 a lender or service provider, except for educational or counseling services required
24 in connection with a government-sponsored program.

1 (e) Unless a person supplies goods, services, or facilities generally and supplies
2 them to the provider at a cost no greater than the cost the person generally charges
3 to others, a provider may not purchase goods, services, or facilities from the person
4 if an employee or a person that the provider should reasonably know is an affiliate
5 of the provider owns more than 10 percent of the person or is an employee or affiliate
6 of the person.

7 **(28) NOTICE OF LITIGATION.** No later than 30 days after a provider has been
8 served with notice of a civil action for violation of this section by or on behalf of an
9 individual who resides in this state at either the time of an agreement or the time
10 the notice is served, the provider shall notify the division in a record that it has been
11 sued.

12 **(29) ADVERTISING.** A provider that advertises debt-management services shall
13 disclose, in an easily comprehensible manner, the information specified in sub. (16)
14 (d) 3. and 4.

15 **(30) LIABILITY FOR THE CONDUCT OF OTHER PERSONS.** If a provider delegates any
16 of its duties or obligations under an agreement or this section to another person,
17 including an independent contractor, the provider is liable for conduct of the person
18 which, if done by the provider, would violate the agreement or this section.

19 **(31) Powers of division.** (a) The division may act on its own initiative or in
20 response to complaints and may receive complaints, take action to obtain voluntary
21 compliance with this section, refer cases to the attorney general, and seek or provide
22 remedies as provided in this section.

23 (b) The division may investigate and examine, in this state or elsewhere, by
24 subpoena or otherwise, the activities, books, accounts, and records of a person that
25 provides or offers to provide debt-management services, or a person to which a

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1 provider has delegated its obligations under an agreement or this section, to
2 determine compliance with this section. Information that identifies individuals who
3 have agreements with the provider shall not be disclosed to the public. In connection
4 with the investigation, the division may do any of the following:

5 1. Charge the person the reasonable costs necessarily incurred to conduct the
6 examination.

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

9 3. Seek a court order authorizing seizure from a financial institution at which
10 the person maintains a trust account required by sub. (21), any or all money, books,
11 records, accounts, and other property of the provider that is in the control of the
12 financial institution and relates to individuals who reside in this state.

13 (c) The division may adopt rules to implement the provisions of this section in
14 accordance with subch. II of ch. 227.

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

19 (e) The division, by rule, shall establish reasonable fees to be paid by providers
20 for the expense of administering this section.

21 (f) The division, by rule, shall adopt dollar amounts instead of those specified
22 in subs. (2), (5), (9), (13), (22), (32), and (34) to reflect inflation, as measured by the
23 United States bureau of labor statistics consumer price index for all urban
24 consumers or, if that index is not available, another index adopted by rule by the
25 division. The division shall adopt a base year and adjust the dollar amounts,

1 effective on July 1 of each year, if the change in the index from the base year, as of
2 December 31 of the preceding year, is at least 10 percent. The dollar amount must
3 be rounded to the nearest \$100, except that the amounts in sub. (22) must be rounded
4 to the nearest dollar.

5 (g) The division shall notify licensed providers of any change in dollar amounts
6 made pursuant to par. (f) and make that information available to the public.

7 **(32) ADMINISTRATIVE REMEDIES.** (a) The division may enforce this section and
8 rules adopted under this section by taking one or more of the following actions:

9 1. Ordering a provider or a director, employee, or other agent of a provider to
10 cease and desist from any violations.

11 2. Ordering a provider or a person that has caused a violation to correct the
12 violation, including making restitution of money or property to a person aggrieved
13 by a violation.

14 3. Subject to adjustment of the dollar amount pursuant to sub. (31) (f),
15 recovering in a civil action from a provider or a person that has caused a violation
16 a forfeiture not exceeding \$10,000 for each violation.

17 4. Prosecuting a civil action to do any of the following:

18 a. Enforce an order.

19 b. Obtain restitution or an injunction or other equitable relief, or both.

20 5. Intervening in an action brought under sub. (34).

21 (b) Subject to adjustment of the dollar amount pursuant to sub. (31) (f), if a
22 person violates or knowingly authorizes, directs, or aids in the violation of a final
23 order issued under par. (a) 1. or 2., the division may recover in a civil action a
24 forfeiture not exceeding \$20,000 for each violation.

25 (c) The division may maintain an action to enforce this section.

1 (d) The division may recover the reasonable costs of enforcing the section under
2 pars. (a) to (c), including attorney's fees based on the hours reasonably expended and
3 the hourly rates for attorneys of comparable experience in the community.

4 (e) In determining the amount of a civil penalty to impose under par. (a) or (b),
5 a court shall consider the seriousness of the violation, the good faith of the violator,
6 any previous violations by the violator, the deleterious effect of the violation on the
7 public, the net worth of the violator, and any other factor the court considers relevant
8 to the determination of the civil penalty.

9 **(33) SUSPENSION, REVOCATION, OR NONRENEWAL OF LICENSE.** (a) In this subsection,
10 "insolvent" means any of the following:

11 1. Having generally ceased to pay debts in the ordinary course of business other
12 than as a result of a good-faith dispute.

13 2. Being unable to pay debts as they become due.

14 3. Being insolvent within the meaning of the federal bankruptcy law, 11 USC
15 101 to 1532.

16 (b) The division may suspend, revoke, or deny renewal of a provider's license
17 if any of the following apply:

18 1. A fact or condition exists that, if it had existed when the licensee applied for
19 licensure as a provider, would have been a reason for denying licensure.

20 2. The provider has committed a material violation of this section or a rule or
21 order of the division under this section.

22 3. The provider is insolvent.

23 4. The provider or an employee, affiliate, or agent of the provider has refused
24 to permit the division to make an examination authorized by this section, failed to

1 comply with sub. (31) (b) 2. within 15 days after request, or made a material
2 misrepresentation or omission in complying with sub. (31) (b) 2.

3 5. The provider has not responded within a reasonable time and in an
4 appropriate manner to communications from the division.

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

7 (c) In accordance with s. 73.0301, the division shall revoke a license if the
8 department of revenue has certified under s. 73.0301 that the licensee is liable for
9 delinquent taxes.

10 (d) In accordance with a memorandum of understanding entered into under s.
11 49.857, the division shall restrict or suspend a license if the licensee is an individual
12 who fails to comply, after appropriate notice, with a subpoena or warrant issued by
13 the department of workforce development or a county child support agency under s.
14 59.53 (5) and related to paternity or child support proceedings or who is delinquent
15 in making court-ordered payments of child or family support, maintenance, birth
16 expenses, medical expenses or other expenses related to the support of a child or
17 former spouse.

18 (e) If a provider does not comply with sub. (21) (f) or if the division otherwise
19 finds that the public health or safety or general welfare requires emergency action,
20 the division may order a summary suspension of the provider's license, effective on
21 the date specified in the order.

22 (f) If the division suspends, revokes, or denies renewal of the license of a
23 provider, the division may seek a court order authorizing seizure of any or all of the
24 money in a trust account required by sub. (21), books, records, accounts, and other
25 property of the provider which are located in this state.

1 (g) If the division suspends or revokes a provider's license, the provider may
2 appeal and request a hearing pursuant to subch. III of ch. 227.

3 (34) PRIVATE ENFORCEMENT. (a) If an individual voids an agreement pursuant
4 to sub. (24) (b), the individual may recover in a civil action all money paid or deposited
5 by or on behalf of the individual pursuant to the agreement, except amounts paid to
6 creditors, in addition to the recovery under par. (c) 3. and 4.

7 (b) If an individual voids an agreement pursuant to sub. (24) (a), the individual
8 may recover in a civil action 3 times the total amount of the fees, charges, money, and
9 payments made by the individual to the provider, in addition to the recovery under
10 par. (c) 4.

11 (c) Subject to par. (d), an individual with respect to whom a provider violates
12 this section may recover all of the following in a civil action from the provider and
13 any person that caused the violation:

14 1. Compensatory damages for injury, including noneconomic injury, caused by
15 the violation.

16 2. Except as otherwise provided in par. (d) and subject to adjustment of the
17 dollar amount pursuant to sub. (31) (f), with respect to a violation of sub. (16), (18),
18 (19), (20), (21), (22), (23), (26), or (27) (a), (b), or (d), the greater of the amount
19 recoverable under subd. 1. or \$5,000.

20 3. Punitive damages.

21 4. Reasonable attorney's fees and costs.

22 (d) In a class action, except for a violation of sub. (27) (a) 5., the minimum
23 damages provided in par. (c) 2. do not apply.

24 (e) In addition to the remedy available under par. (c), if a provider violates an
25 individual's rights under sub. (19), the individual may recover in a civil action all

1 money paid or deposited by or on behalf of the individual pursuant to the agreement,
2 except for amounts paid to creditors.

3 (f) A provider is not liable under this subsection for a violation of this section
4 if the provider proves that the violation was not intentional and resulted from a
5 good-faith error notwithstanding the maintenance of procedures reasonably
6 adapted to avoid the error. An error of legal judgment with respect to a provider's
7 obligations under this section is not a good-faith error. If, in connection with a
8 violation, the provider has received more money than authorized by an agreement
9 or this section, the defense provided by this paragraph is not available unless the
10 provider refunds the excess within 2 business days of learning of the violation.

11 (g) The division shall assist an individual in enforcing a judgment against the
12 surety bond provided under sub. (13).

13 **(35) VIOLATION OF UNFAIR OR DECEPTIVE PRACTICES.** If an act or practice of a
14 provider violates both this section and ch. 100, an individual may not recover under
15 both for the same act or practice.

16 **(36) STATUTE OF LIMITATIONS.** (a) An action or proceeding brought pursuant to
17 sub. (32) (a), (b), or (c) must be commenced within 4 years after the conduct that is
18 the basis of the division's complaint.

19 (b) An action brought pursuant to sub. (34) must be commenced within 2 years
20 after the latest of the following:

- 21 1. The individual's last transmission of money to a provider.
- 22 2. The individual's last transmission of money to a creditor at the direction of
23 the provider.
- 24 3. The provider's last disbursement to a creditor of the individual.
- 25 4. The provider's last accounting to the individual pursuant to sub. (26) (a).

1 5. The date on which the individual discovered or reasonably should have
2 discovered the facts giving rise to the individual's claim.

3 6. Termination of actions or proceedings by the division with respect to a
4 violation of the section.

5 (c) The period prescribed in par. (b) 5. is tolled during any period during which
6 the provider or, if different, the defendant has materially and willfully
7 misrepresented information required by this section to be disclosed to the individual,
8 if the information so misrepresented is material to the establishment of the liability
9 of the defendant under this section.

10 **(37) UNIFORMITY OF APPLICATION AND CONSTRUCTION.** In applying and construing
11 this uniform act, consideration must be given to the need to promote uniformity of
12 the law with respect to its subject matter among states that enact it.

13 **(38) Relation to Electronic Signatures in Global and National Commerce Act.**
14 This section modifies, limits, and supersedes the federal Electronic Signatures in
15 Global and National Commerce Act (15 USC 7001 to 7031) but does not modify, limit,
16 or supersede 15 USC 7001 (c) or authorize electronic delivery of any of the notices
17 described in 15 USC 7003 (b).

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
23 service providers, community currency exchanges, and collection agencies under ch.
24 218.

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

INSERT ANALYSIS:

This bill regulates persons who provide certain debt-management services. Under current law, the Division of Banking (division) of the Department of Financial Institutions regulates persons 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 obtain a license as an adjustment service company from the division. The bill repeals this licensure requirement 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 obtains a license from the division. "Debt-management services" are defined as services as an intermediary between an 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.

A person is exempt from the licensure requirement if the person receives no compensation for providing debt-management services, but this exemption does not apply if the services are provided without charge for the purpose of evading the bill's requirements. 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 all of the following persons:

- (1) Agents and employees of a person who is licensed under the bill.
- (2) Judicial officers and persons acting under court or administrative orders.
- (3) Assignees for the benefit of creditors.
- (4) Financial institutions and certain of their affiliates.
- (5) Title insurers, escrow companies, and other persons whose provision of debt-management services is incidental to their provision of bill-paying services.
- (6) Attorneys and certified public accountants whose provision of debt-management services is incidental to their provision of legal or accounting services.

The bill requires an applicant for a license to pay a license fee and do all of the following:

- (1) 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.
- (2) If the applicant is a nonprofit or tax-exempt entity, provide evidence of such status.
- (3) If the applicant is an out-of-state corporation or limited liability company, provide a certificate of good standing issued by the other state.
- (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 convictions and certain governmental and other actions, charges, suits, or claims regarding the applicant.
- (7) Submit the results of criminal background checks on the applicant's officers.
- (8) Describe the applicant's educational programs, financial analyses, and initial budget plans for individuals ^{whom} ~~that~~ the applicant counsels.
- (9) Provide copies of the agreements for providing debt-management services that the applicant will use in this state.
- (10) Provide the applicant's fee schedule.

In addition, an applicant must file a surety bond 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 all employees and agents who will have access to the trust accounts.

The division must issue a license to an applicant, unless any of the following apply: 1) the application is incomplete or contains erroneous information; 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) the division 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, the division must deny the application if the applicant's board of directors is not independent of its employees and agents. The bill includes tests for the division to determine independence. The bill also requires the division to deny a license if the applicant is liable for delinquent taxes or is delinquent in making court-ordered child or family support payments.

If a person is licensed under the bill, 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 licensed 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 licensed persons for payment to creditors; 2) establishes limits on the fees that licensed persons may charge; 3) specifies records that licensed persons must maintain; and 4) prohibits licensed persons from engaging in specified conduct.

The bill creates other requirements, including the following:

1. The bill imposes deadlines on the division's consideration of an application for a license.

2. The bill requires licensed persons to renew their licenses annually.
3. The bill allows a person licensed or registered in another state to apply for a license in this state by submitting the other state's application and license or registration.
4. The bill allows the division to suspend or revoke a license if a person is insolvent, violates the bill's requirements, or is liable for delinquent taxes or is delinquent in making court-ordered child or family support payments.
5. The bill allows the division 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 licensed person ~~that~~ violates the bill's requirements and allows an individual who is harmed by a licensed person's violation of the bill's requirements to bring a civil action against the licensed person.

Who

**DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU**

LRB-0917/1dn

MDK:/:...

wly

Dan Schmidt and Mary Matthias:

This version is identical to the previous version, except for the inclusion of an analysis.

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FROM THE
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MDK:wlj:jf

February 13, 2007

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Kunkel, Mark

From: Schmidt, Dan
Sent: Tuesday, March 20, 2007 2:20 PM
To: Kunkel, Mark
Subject: 0917 Jacket

Importance: High

For Assembly introduction please. Thanks.

Dan

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