

1 **422.525 Voidable agreements.** (1) If a provider imposes a fee or other charge
2 or receives money or other payments not authorized by s. 422.523 or 422.524, the
3 individual may void the agreement and recover as provided in s. 422.535.

4 (2) If a provider is not registered as required by this subchapter when an
5 individual assents to an agreement, the agreement is voidable by the individual.

6 (3) If an individual voids an agreement under sub. (2), the provider does not
7 have a claim against the individual for breach of contract or for restitution.

8 **422.526 Termination of agreements.** (1) If an individual who has entered
9 into an agreement fails for 60 days to make payments required by the agreement, a
10 provider may terminate the agreement.

11 (2) If a provider or an individual terminates an agreement, the provider shall
12 immediately return to the individual all of the following:

****NOTE: I added "all of the following" to the above.

13 (a) Any money of the individual held in trust for the benefit of the individual.

14 (b) Sixty-five percent of any portion of the set-up fee received pursuant to s.
15 422.523 (4) (b) which has not been credited against settlement fees.

16 **422.527 Periodic reports and retention of records.** (1) A provider shall
17 provide the accounting required by sub. (2) upon cancellation or termination of an
18 agreement. Before cancellation or termination of any agreement, a provider shall
19 also provide the accounting required by sub. (2) at least once each month and within
20 50 five business days after a request by an individual, but the provider need not comply
21 with more than one request in any calendar month.

****NOTE: I combined s. 27 (a) (1) and (2) (a) and (b) of the uniform act into the above
subsubsection.

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

★ ***NOTE: I added "all of" before "the following information" ✓

- 1 (a) The amount of money received from the individual since the last report. ✓
2 (b) 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) The amounts deducted from the amount received from the individual. ✓
6 (d) The amount held in reserve. ✓
7 (e) 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: ✓

***NOTE: I added "all of the following" to the above. ✓

- 10 1. The total amount and terms of the settlement. ✓
11 2. The amount of the debt when the individual assented to the plan. ✓
12 3. The amount of the debt when the creditor agreed to the settlement. ✓
13 4. The calculation of a settlement fee. ✓
14 (3) A provider shall maintain records for each individual for whom it provides
15 debt-management services for five^{or 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. ✓

19 **422.528 Prohibited acts and practices.** (1) A provider may not, directly
20 or indirectly, do any of the following: ✓

***NOTE: I added "do any of the following" to the above. ✓

- 21 (a) Misappropriate or misapply money held in trust. ✓

1 (b) Settle a debt on behalf of an individual for more than 50 percent of the
2 principal amount of the debt owed a creditor, unless the individual assents to the
3 settlement after the creditor has assented. ✓

4 (c) Take a power of attorney that authorizes it to settle a debt, unless the power
5 of attorney expressly limits the provider's authority to settle debts for not more than
6 50 percent of the principal amount of the debt owed a creditor. ✓

7 (d) Exercise or attempt to exercise a power of attorney after an individual has
8 terminated an agreement. ✓

9 (e) Initiate a transfer from an individual's account at a bank or with another
10 person unless the transfer is a return of money to the individual or unless the
11 transfer is before termination of an agreement, properly authorized by the
12 agreement and this subchapter, and for payment to one or more creditors pursuant
13 to a plan or payment of a fee. ✓ *rejection*

****NOTE: I combined s~~o~~ 28 (a) (5) (A) and (B) of the uniform act into the above
paragraph.

14 (f) Offer a gift or bonus, premium, reward, or other compensation to an
15 individual for executing an agreement. ✓

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

21 (h) Receive a bonus, commission, or other benefit for referring an individual to
22 a person. ✓

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

5 (j) Compensate its employees on the basis of a formula that incorporates the
6 number of individuals the employee induces to enter into agreements. ✓

7 (k) Settle a debt or lead an individual to believe that a payment to a creditor
8 is in settlement of a debt to the creditor unless, at the time of settlement, the
9 individual receives a certification by the creditor that the payment is in full
10 settlement of the debt. ✓

11 (L) Make a representation of any of the following: ✓

****NOTE: I added "of any of the following to the above" and "that" to the beginning
of the following subdivisions. ✓

★

12 1. That the provider will furnish money to pay bills or prevent attachments. ✓

13 2. That payment of a certain amount will permit satisfaction of a certain
14 amount or range of indebtedness. ✓

15 3. That participation in a plan will or may prevent litigation, garnishment,
16 attachment, repossession, foreclosure, eviction, or loss of employment. ✓

17 (m) Misrepresent that it is authorized or competent to furnish legal advice or
18 perform legal services. ✓

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

1 (o) Take a confession of judgment or power of attorney to confess judgment
2 against an individual. ✓

3 (p) Employ an unfair, unconscionable, or deceptive act or practice, including the
4 knowing omission of any material information. ✓

5 (2) If a provider furnishes debt-management services to an individual, the
6 provider may not, directly or indirectly, do any of the following: ✓

****NOTE: I added "do any of the following" to the above. ✓

7 (a) Purchase a debt or obligation of the individual. ✓

8 (b) Receive from or on behalf of the individual any of the following: ✓

9 1. A promissory note or other negotiable instrument other than a check or a
10 demand draft. ✓

11 2. A post-dated check or demand draft. ✓

12 (c) Lend money or provide credit to the individual, except as a deferral of a
13 settlement fee at no additional expense to the individual. ✓

14 (d) Obtain a mortgage or other security interest from any person in connection
15 with the services provided to the individual. ✓

16 (e) Except as permitted by federal law, disclose the identity or identifying
17 information of the individual or the identity of the individual's creditors, except to
18 any of the following: ✓

****NOTE: I added "any of the following" to the above. ✓

19 1. The administrator, upon proper demand. ✓

20 2. A creditor of the individual, to the extent necessary to secure the cooperation
21 of the creditor in a plan. ✓

22 3. The extent necessary to administer the plan. ✓

1 (f) Except as otherwise provided in s. 422.523 (6), provide the individual less
2 than the full benefit of a compromise of a debt arranged by the provider. ✓

3 (g) Charge the individual for or provide credit or other insurance, coupons for
4 goods or services, membership in a club, access to computers or the Internet, or any
5 other matter not directly related to debt-management services or educational
6 services concerning personal finance. ✓

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

10 (3) This subchapter does not authorize any person to engage in the practice of
11 law. ✓

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

17 (5) Unless a person supplies goods, services, or facilities generally and supplies
18 them to the provider at a cost no greater than the cost the person generally charges
19 to others, a provider may not purchase goods, services, or facilities from the person
20 if an employee or a person that the provider should reasonably know is an affiliate
21 of the provider owns more than 10 percent of the person or is an employee or affiliate
22 of the person. ✓

***NOTE: I combined s^o 28 (e) (1) and (2) of the uniform act into the above
subsection.

1 **422.529 Notice of litigation.** No later than 30 days after a provider has been
2 served with notice of a civil action for violation of this subchapter by or on behalf of
3 an individual who resides in this state at either the time of an agreement or the time
4 the notice is served, the provider shall notify the administrator in a record that it has
5 been sued. ✓

6 **422.530 Advertising.** A provider that advertises debt-management services
7 shall disclose, in an easily comprehensible manner, the information specified in s.
8 422.517 (4) (c) and (d). ✓

9 **422.531 Liability for the conduct of other persons.** If a provider delegates
10 any of its duties or obligations under an agreement or this subchapter to another
11 person, including an independent contractor, the provider is liable for conduct of the
12 person which, if done by the provider, would violate the agreement or this
13 subchapter. ✓

14 **422.532 Powers of administrator.** (1) The administrator may act on its own
15 initiative or in response to complaints and may receive complaints, take action to
16 obtain voluntary compliance with this subchapter, refer cases to the attorney
17 general, and seek or provide remedies as provided in this subchapter. ✓

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

****NOTE: I added "do any of the following" to the above. ✓

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

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

★ *****NOTE:** The uniform act refers only to "oath" I added a reference to
"affirmation" ✓

5 (c) Seek a court order authorizing seizure from a bank at which the person
6 maintains a trust account required by s. 422.522, any or all money, books, records,
7 accounts, and other property of the provider that is in the control of the bank and
8 relates to individuals who reside in this state. ✓

9 (3) The administrator may adopt rules to implement the provisions of this
10 subchapter in accordance with subch. II of ch. 227. ✓

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

15 (5) The administrator, by rule, shall establish reasonable fees to be paid by
16 providers for the expense of administering this subchapter. ✓

17 (6) The administrator, by rule, shall adopt dollar amounts instead of those
18 specified in ss. 422.502, 422.505, 422.509, 422.513, 422.523, 422.533, and 422.535 to
19 reflect inflation, as measured by the United States Bureau of Labor Statistics
20 Consumer Price Index for All Urban Consumers or, if that index is not available,
21 another index adopted by rule by the administrator. The administrator shall adopt
22 a base year and adjust the dollar amounts, effective on July 1 of each year, if the
23 change in the index from the base year, as of December 31 of the preceding year, is

1 at least 10 percent. The dollar amount must be rounded to the nearest \$100, except
2 that the amounts in s. 422.523 must be rounded to the nearest dollar.

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

6 **422.533 Administrative remedies.** (1) The administrator may enforce this
7 subchapter and rules adopted under this subchapter by taking one or more of the
8 following actions:

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

11 (b) 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 (c) Subject to adjustment of the dollar amount pursuant to s. 422.532 (6),
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.

***NOTE: The uniform act allows the administrator to impose a civil penalty, which
is referred to as a forfeiture under Wisconsin law. Also under Wisconsin law, the usual
practice is for a court, rather than an agency, to impose a forfeiture. Therefore, I made
revisions to the above.

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

***NOTE: I added "do any of the following" to the above.

18 1. Enforce an order.

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

20 (e) Intervening in an action brought under s. 422.535.

21 (2) Subject to adjustment of the dollar amount pursuant to s. 422.532 (6), if a
22 person violates or knowingly authorizes, directs, or aids in the violation of a final

1 order issued under sub. (1) (a) or (b), the administrator may recover in a civil action
2 a forfeiture not exceeding \$20,000 for each violation. ✓

***NOTE: The uniform act allows the administrator to impose a civil penalty, which is called a forfeiture under Wisconsin law. Also, as noted above, under Wisconsin law, the usual practice is for a court to impose a forfeiture. Therefore, I revised the above to allow the administrator to recover a forfeiture in a civil action. ✓

3 (3) The administrator may maintain an action to enforce this subchapter. ✓

***NOTE: The uniform act's reference to maintaining an action "in any county" is not necessary. ✓

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

8 (5) In determining the amount of a civil penalty to impose under sub. (1) or (2),
9 a court shall consider the seriousness of the violation, the good faith of the violator,
10 any previous violations by the violator, the deleterious effect of the violation on the
11 public, the net worth of the violator, and any other factor the court considers relevant
12 to the determination of the civil penalty. ✓

***NOTE: The uniform act requires the administrator to consider the above factors. I revised the above to require a court to consider the factors. ✓

13 **422.534 Suspension, revocation, or nonrenewal of registration.** (1) In
14 this section, "insolvent" means any of the following: ✓

***NOTE: I added "any of the following" to the above. ✓

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

17 (b) Being unable to pay debts as they become due. ✓

18 (c) Being insolvent within the meaning of the federal bankruptcy law, 11 USC

19 101 to 1532. ✓

NOTE:
I added "a" before "good-faith dispute."

1 (2) The administrator may suspend, revoke, or deny renewal of a provider's
2 registration if any of the following apply: ✓

 ***NOTE: I added "any of the following apply" to the above.

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

5 (b) The provider has committed a material violation of this subchapter or a rule
6 or order of the administrator under this subchapter. ✓

7 (c) The provider is insolvent. ✓

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

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

14 (3) If a provider does not comply with s. 422.522 (6) or if the administrator
15 otherwise finds that the public health or safety or general welfare requires
16 emergency action, the administrator may order a summary suspension of the
17 provider's registration, effective on the date specified in the order. ✓

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

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

* * * * * NOTE: Should the above also refer to
an agent of a provider?

1 **422.535 Private enforcement.** (1) If an individual voids an agreement
2 pursuant to s. 422.525 (2), the individual may recover in a civil action all money paid
3 or deposited by or on behalf of the individual pursuant to the agreement, except
4 amounts paid to creditors, in addition to the recovery under sub. (3) (c) and (d). ✓

5 (2) If an individual voids an agreement pursuant to s. 422.525 (1), the
6 individual may recover in a civil action ³three times the total amount of the fees,
7 charges, money, and payments made by the individual to the provider, in addition to
8 the recovery under sub. (3) (d). ✓

9 (3) Subject to sub. (4), an individual with respect to whom a provider violates
10 this subchapter may recover all of the following in a civil action from the provider and
11 any person that caused the violation: ✓

****NOTE: I added "all of the following" after "may recover". ✓

12 (a) Compensatory damages for injury, including noneconomic injury, caused by
13 the violation. ✓

14 (b) Except as otherwise provided in sub. (4) and subject to adjustment of the
15 dollar amount pursuant to s. 422.532 (6), with respect to a violation of s. 422.517,
16 422.519, 422.520, 422.521, 422.522, 422.523, 422.524, 422.527, or 422.528 (1), (2), or
17 (4), the greater of the amount recoverable under par. (a) or \$5,000. ✓

18 (c) Punitive damages. ✓

19 (d) Reasonable attorney's fees and costs. ✓

20 (4) In a class action, except for a violation of s. 422.528 (1) (e), the minimum
21 damages provided in sub. (3) (b) do not apply. ✓

22 (5) In addition to the remedy available under sub. (3), if a provider violates an
23 individual's rights under s. 422.520, 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 (6) A provider is not liable under this section for a violation of this subchapter
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 subchapter 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 subchapter, the defense provided by this subsection is not available unless the
10 provider refunds the excess within ^{2 e}two business days of learning of the violation. ✓

11 (7) The administrator shall assist an individual in enforcing a judgment
12 against the surety bond or other security provided under s. 422.513 or 422.514. ✓

13 **422.536 Violation of unfair or deceptive practices.** If an act or practice
14 of a provider violates both this subchapter and ch. 100, an individual may not recover
15 under both for the same act or practice. ✓

***NOTE: I added the reference to ch. 100. ✓

16 **422.537 Statute of limitations.** (1) An action or proceeding brought
17 pursuant to s. 422.533 (1), (2), or (3) ✓ must be commenced within ^{e4}four years after the
18 conduct that is the basis of the administrator's complaint. ✓

19 (2) An action brought pursuant to s. 422.535 must be commenced within ^{o 2}two
20 years after the latest of the following:

* ***NOTE: I added "the following" after "the latest of" ✓

- 21 (a) The individual's last transmission of money to a provider. ✓
- 22 (b) The individual's last transmission of money to a creditor at the direction of
23 the provider. ✓

- 1 (c) The provider's last disbursement to a creditor of the individual. ✓
2 (d) The provider's last accounting to the individual pursuant to s. 422.527 (1). ✓
3 (e) The date on which the individual discovered or reasonably should have
4 discovered the facts giving rise to the individual's claim. ✓
5 (f) Termination of actions or proceedings by the administrator with respect to
6 a violation of the subchapter. ✓

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

12 **422.538 Uniformity of application and construction.** In applying and
13 construing this uniform act, consideration must be given to the need to promote
14 uniformity of the law with respect to its subject matter among states that enact it. ✓

15 **422.539 Relation to Electronic Signatures in Global and National**
16 **Commerce Act.** This subchapter modifies, limits, and supersedes the federal
17 Electronic Signatures in Global and National Commerce Act (15 USC 7001 to 7031)
18 but does not modify, limit, or supersede 15 USC 7001 (c) or authorize electronic
19 delivery of any of the notices described in 15 USC 7003 (b). ✓

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

****NOTE: The above provision makes credit services agencies subject to ch. 426,
which deals with general administrative authority for the Wisconsin Consumer Act. I'm
assuming that there is sufficient administrative authority in the Uniform
Debt-Management Act. If that is not the case, s. 426.102 (3) should be amended, rather
than repealed. ✓

21 **SECTION 8. Initial applicability.**

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

section

 ****NOTE: I think the above accomplishes the same thing as s. 40 of the uniform act,
4 ★ which is a transitional provision.

5 **SECTION 9. Effective date.**

6 (1) This act takes effect on the first day of the 13th month beginning after
7 publication. ✓

(END)

d-n

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

LRB-5042/P1dn

MDK:.....

mk

(date)

✓
Rep. Wieckert:

✓
Please note the following about this draft:

1. The changes that I made to the uniform act are disclosed in NOTES that I included in the text. In general, the changes are limited to making the grammatical structure of the act's provisions consistent with our drafting style. ✓
2. The uniform act is drafted with the following alternatives: 1) only nonprofits may provide services; 2) both nonprofits and for-profit entities may provide services, and for-profit entities may provide all kinds of services; or 3) both nonprofits and for-profit entities may provide services, but for-profit entities are limited to providing debt-settlement or credit-counseling services, but not both. ✓ I'm not sure what alternative you prefer. Therefore, I drafted the bill to implement the 2nd alternative. Please let me know if you want any changes. ✓
3. I assume that the uniform act should replace both subch. II of ch. 218 (adjustment service companies) and subch. V of ch. 422 (credit service organizations). ✓
4. I did not include the uniform act's severability provision because it is not necessary under Wisconsin law. See s. 990.001 (11). ✓

Mark D. Kunkel
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DRAFTER'S NOTE
FROM THE
LEGISLATIVE REFERENCE BUREAU

LRB-5042/P1dn
MDK:lmk:rs

July 14, 2006

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Mark D. Kunkel
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Phone: (608) 266-0131
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Kunkel, Mark

From: Matthias, Mary
Sent: Wednesday, July 26, 2006 2:50 PM
To: Kunkel, Mark
Cc: Schmidt, Dan
Subject: LRB 5042/P1-debt management

Hi Mark-

I have been assigned to staff the Leg. Council Committee on Debt Management along with Dan Schmidt. Dan and I have reviewed the draft that you prepared and it looks great. We did notice there are a few "musts" in the draft that should probably be changed to "shall's"-- for example- pg. 9, line 9 and pg. 46, lines 8 and 9. There may be other places that we didn't catch.

Here are the answers to the questions you posed in Notes:

Pg 14, after line 9. Yes- failure to provide a bond or a bond substitute (see s. 422.514) should be grounds for registration denial. ✓

Page 48, after line 18: Yes-- please add a reference to the agent of the provider. ✓

Pg 52, after SECTION 7- the repeal that you have in the draft is correct.

We are fine with all other items that you mentioned in Notes, and those notes can be removed from the draft for the final version that we will give to the Committee.

I will be on vacation starting tomorrow, returning August 7. If you have any questions about the draft please contact Dan.

Thank you!

Mary Matthias