

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

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

- 4 • hurt your credit rating or credit scores;
- 5 • lead your creditors to increase finance and other charges; and
- 6 • lead your creditors to undertake activity, including lawsuits, to collect the
- 7 debts.

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

10

11 *Name and business address of provider*

12 **422.518 Communication by electronic or other means.** (1) In this
13 section:

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

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

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

21 (3) The disclosures and materials required by ss. 422.517, 422.519, and
22 422.527 shall be presented in a form that is capable of being accurately reproduced
23 for later reference.

24 (4) With respect to disclosure by means of an Internet Web site, the disclosure
25 of the information required by s. 422.517 (4) must appear on one or more screens that

1 contain no other information and that the individual must see before proceeding to
2 assent to formation of a plan.

***NOTE: I combined section 18 (d) (1) and (2) of the uniform act into the above
subsection.

3 (5) At the time of providing the materials and agreement required by ss.
4 422.517 (3) and (4), 422.519, and 422.527, a provider shall inform the individual that
5 upon electronic, telephonic, or written request, it will send the individual a written
6 copy of the materials, and shall comply with a request as provided in sub. (6).

7 (6) If a provider is requested, before the expiration of 90 days after a plan is
8 completed or terminated, to send a written copy of the materials required by s.
9 422.517 (3) and (4), 422.519, and 422.527, the provider shall send them at no charge
10 within 3 business days after the request, but the provider need not comply with a
11 request more than once per calendar month or if it reasonably believes the request
12 is made for purposes of harassment. If a request is made more than 90 days after
13 a plan is completed or terminated, the provider shall send within a reasonable time
14 a written copy of the materials requested.

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

***NOTE: I added "all of the following" after "disclose."

18 (a) Its name and all names under which it does business.

19 (b) Its principal business address, telephone number, and electronic-mail
20 address, if any.

21 (c) The names of its principal officers.

22 (8) Subject to sub. (9), if a consumer who has consented to electronic
23 communication in the manner provided by 15 USC 7001 withdraws consent as

1 provided in the federal act, a provider may terminate its agreement with the
2 consumer.

3 (9) If a provider wishes to terminate an agreement with a consumer pursuant
4 to sub. (8), it shall notify the consumer that it will terminate the agreement unless
5 the consumer, within 30 days after receiving the notification, consents to electronic
6 communication in the manner provided in 15 USC 7001 (c). If the consumer
7 consents, the provider may terminate the agreement only as permitted by s. 422.519
8 (1) (f) 7.

9 **422.519 Form and contents of agreement. (1)** An agreement must satisfy
10 all of the following:

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

- 11 (a) Be in a record.
- 12 (b) Be dated and signed by the provider and the individual.
- 13 (c) Include the name of the individual and the address where the individual
14 resides.
- 15 (d) Include the name, business address, and telephone number of the provider.
- 16 (e) Be delivered to the individual immediately upon formation of the
17 agreement.
- 18 (f) Disclose all of the following:

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

- 19 1. The services to be provided.
- 20 2. The amount, or method of determining the amount, of all fees, individually
21 itemized, to be paid by the individual.

1 3. The schedule of payments to be made by or on behalf of the individual,
2 including the amount of each payment, the date on which each payment is due, and
3 an estimate of the date of the final payment.

4 4. If a plan provides for regular periodic payments to creditors, all of the
5 following:

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

6 a. Each creditor of the individual to which payment will be made, the amount
7 owed to each creditor, and any concessions the provider reasonably believes each
8 creditor will offer.

9 b. The schedule of expected payments to each creditor, including the amount
10 of each payment and the date on which it will be made.

11 5. Each creditor that the provider believes will not participate in the plan and
12 to which the provider will not direct payment.

13 6. How the provider will comply with its obligations under s. 422.527 (1).

14 7. That the provider may terminate the agreement for good cause, upon return
15 of unexpended money of the individual.

16 8. That the individual may cancel the agreement as provided in s. 422.520.

17 9. That the individual may contact the administrator with any questions or
18 complaints regarding the provider.

19 10. The address, telephone number, and Internet address or Web site of the
20 administrator.

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

1 (3) If the administrator supplies the provider with any information required
2 under sub. (1) (f) 10., the provider may comply with that requirement only by
3 disclosing the information supplied by the administrator.

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

****NOTE: I added "all of the following" to the above and added "that" at the beginning of the following paragraphs.*

5 (a) 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:

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

8 1. 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 2. 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 3. All powers of attorney granted by the individual to the provider are revoked
15 and ineffective.

16 (b) That the individual authorizes any bank in which the provider or its agent
17 has established a trust account to disclose to the administrator any financial records
18 relating to the trust account.

19 (c) 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:

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

22 1. The identity of the creditor.

1 2. The right of the individual to modify or terminate the agreement.

2 **(5)** An agreement may confer on a provider a power of attorney to settle the
3 individual's debt for no more than 50 percent of the principal amount of the debt. An
4 agreement may not confer a power of attorney to settle a debt for more than 50
5 percent of that amount, but may confer a power of attorney to negotiate with
6 creditors of the individual on behalf of the individual. An agreement must provide
7 that the provider will obtain the assent of the individual after a creditor has assented
8 to a settlement for more than 50 percent of the principal amount of the debt.

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

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

10 (a) Provide for application of the law of any jurisdiction other than the United
11 States and this state.

12 (b) Except as permitted by 9 USC 2 or ch. 788, contain a provision that modifies
13 or limits otherwise available forums or procedural rights, including the right to trial
14 by jury, that are generally available to the individual under law other than this
15 subchapter.

****NOTE: I added the reference to Wisconsin's arbitration law in ch. 788.*

16 (c) Contain a provision that restricts the individual's remedies under this
17 subchapter or law other than this subchapter.

18 (d) Contain a provision that does any of the following:

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

19 1. Limits or releases the liability of any person for not performing the
20 agreement or for violating this subchapter.

21 2. Indemnifies any person for liability arising under the agreement or this
22 subchapter.

1 (7) All rights and obligations specified in sub. (4) and s. 422.520 exist even if
2 not provided in the agreement. A provision in an agreement which violates sub. (4),
3 (5), or (6) is void.

4 **422.520 Cancellation of agreement; waiver.** (1) An individual may cancel
5 an agreement before midnight of the 3rd business day after the individual assents
6 to it, unless the agreement does not comply with sub. (2) or s. 422.519 or 422.528, in
7 which event the individual may cancel the agreement within 30 days after the
8 individual assents to it. To exercise the right to cancel, the individual must give
9 notice in a record to the provider. Notice by mail is given when mailed.

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

***NOTE: I added "all of the following" after "contains." 

12 Notice of Right to Cancel

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

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

17

18 *E-mail address of provider*

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

20 at

21 *Name of provider*

Address of provider

22 before midnight on:

23 *Date*

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 **(3)** 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 **422.521 Required language.** Unless the administrator, by rule, provides
20 otherwise, the disclosures and documents required by this subchapter 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.

24 **422.522 Trust account. (1)** 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

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

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

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

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

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

15 1. The provider may delay payment to the extent that a payment by the
16 individual is not final.

17 2. If a plan provides for regular periodic payments to creditors, the
18 disbursement must comply with the due dates established by each creditor.

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

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

1 (5) A trust account must at all times have a cash balance equal to the sum of
2 the balances of each individual's account.

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

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

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

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

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

1 (2) A provider may not impose charges or receive payment for
2 debt-management services until the provider and the individual have signed an
3 agreement that complies with ss. 422.519 and 422.528.

4 (3) If an individual assents to an agreement, a provider may not impose a fee
5 or other charge for educational or counseling services, or the like, except as otherwise
6 provided in this section and s. 422.528 (4). The administrator may authorize a
7 provider to charge a fee based on the nature and extent of the educational or
8 counseling services furnished by the provider.

9 (4) Subject to adjustment of dollar amounts pursuant to s. 422.532 (6), all of
10 the following rules apply:

****NOTE: I added "all of" before "the following."*

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

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

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

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

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

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

1 1. Subject to s. 422.519 (4), a fee for consultation, obtaining a credit report,
2 setting up an account, and the like, in an amount not exceeding the lesser of \$400 and
3 4 percent of the debt in the plan at the inception of the plan.

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

7 (c) A provider may not impose or receive fees under both pars. (a) and (b).

8 (d) Except as otherwise provided in s. 422.528 (4), if an individual does not
9 assent to an agreement, a provider may receive for educational and counseling
10 services it provides to the individual a fee not exceeding \$100 or, with the approval
11 of the administrator, a larger fee. The administrator may approve a fee larger than
12 \$100 if the nature and extent of the educational and counseling services warrant the
13 larger fee.

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

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

***NOTE: I added "the sum of the following" after "less."*

23 (a) The fee charged pursuant to sub. (4) (b) 1.

24 (b) The aggregate of fees charged pursuant to sub. (4) (b) 2.

1 (7) Subject to adjustment of the dollar amount pursuant to s. 422.532 (6), if a
2 payment to a provider by an individual under this subchapter is dishonored, a
3 provider may impose a reasonable charge on the individual, not to exceed the lesser
4 of \$25 and the amount permitted by law other than this subchapter.

5 **422.524 Voluntary contributions.** A provider may not solicit a voluntary
6 contribution from an individual or an affiliate of the individual for any service
7 provided to the individual. A provider may accept voluntary contributions from an
8 individual but, until 30 days after completion or termination of a plan, the aggregate
9 amount of money received from or on behalf of the individual may not exceed the total
10 amount the provider may charge the individual under s. 422.523.

11 **422.525 Voidable agreements. (1)** If a provider imposes a fee or other charge
12 or receives money or other payments not authorized by s. 422.523 or 422.524, the
13 individual may void the agreement and recover as provided in s. 422.535.

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

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

18 **422.526 Termination of agreements. (1)** If an individual who has entered
19 into an agreement fails for 60 days to make payments required by the agreement, a
20 provider may terminate the agreement.

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

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

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

1 (b) Sixty-five percent of any portion of the set-up fee received pursuant to s.
2 422.523 (4) (b) which has not been credited against settlement fees.

3 **422.527 Periodic reports and retention of records.** (1) A provider shall
4 provide the accounting required by sub. (2) upon cancellation or termination of an
5 agreement. Before cancellation or termination of any agreement, a provider shall
6 also provide the accounting required by sub. (2) at least once each month and within
7 5 business days after a request by an individual, but the provider need not comply
8 with more than one request in any calendar month.

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

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

~~***NOTE: I added "all of" before "the following information."~~

11 (a) The amount of money received from the individual since the last report.

12 (b) The amounts and dates of disbursement made on the individual's behalf,
13 or by the individual upon the direction of the provider, since the last report to each
14 creditor listed in the plan.

15 (c) The amounts deducted from the amount received from the individual.

16 (d) The amount held in reserve.

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

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

20 1. The total amount and terms of the settlement.

21 2. The amount of the debt when the individual assented to the plan.

22 3. The amount of the debt when the creditor agreed to the settlement.

1 4. The calculation of a settlement fee.

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

7 **422.528 Prohibited acts and practices.** (1) A provider may not, directly
8 or indirectly, do any of the following:

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

10 (a) Misappropriate or misapply money held in trust.

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

14 (c) Take a power of attorney that authorizes it to settle a debt, unless the power
15 of attorney expressly limits the provider's authority to settle debts for not more than
16 50 percent of the principal amount of the debt owed a creditor.

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

19 (e) Initiate a transfer from an individual's account at a bank or with another
20 person unless the transfer is a return of money to the individual or unless the
21 transfer is before termination of an agreement, properly authorized by the
22 agreement and this subchapter, and for payment to one or more creditors pursuant
to a plan or payment of a fee.

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

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

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

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

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

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

16 (k) Settle a debt or lead an individual to believe that a payment to a creditor
17 is in settlement of a debt to the creditor unless, at the time of settlement, the
18 individual receives a certification by the creditor that the payment is in full
19 settlement of the debt.

20 (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.

- 21 1. That the provider will furnish money to pay bills or prevent attachments.
22 2. That payment of a certain amount will permit satisfaction of a certain
23 amount or range of indebtedness.

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

3 (m) Misrepresent that it is authorized or competent to furnish legal advice or
4 perform legal services.

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

9 (o) Take a confession of judgment or power of attorney to confess judgment
10 against an individual.

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

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

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

15 (a) Purchase a debt or obligation of the individual.

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

17 1. A promissory note or other negotiable instrument other than a check or a
18 demand draft.

19 2. A post-dated check or demand draft.

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

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

1 (e) Except as permitted by federal law, disclose the identity or identifying
2 information of the individual or the identity of the individual's creditors, except to
3 any of the following:

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

- 4 1. The administrator, upon proper demand.
5 2. A creditor of the individual, to the extent necessary to secure the cooperation
6 of the creditor in a plan.
7 3. The extent necessary to administer the plan.

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

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

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

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

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

1 (5) 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.

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

7 **422.529 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 subchapter by or on behalf of
9 an 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 administrator in a record that it has
11 been sued.

12 **422.530 Advertising.** A provider that advertises debt-management services
13 shall disclose, in an easily comprehensible manner, the information specified in s.
14 422.517 (4) (c) and (d).

15 **422.531 Liability for the conduct of other persons.** If a provider delegates
16 any of its duties or obligations under an agreement or this subchapter to another
17 person, including an independent contractor, the provider is liable for conduct of the
18 person which, if done by the provider, would violate the agreement or this
19 subchapter.

20 **422.532 Powers of administrator. (1)** The administrator may act on its own
21 initiative or in response to complaints and may receive complaints, take action to
22 obtain voluntary compliance with this subchapter, refer cases to the attorney
23 general, and seek or provide remedies as provided in this subchapter.

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

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

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

10 (b) Require or permit a person to file a statement, verified under oath or
11 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"*

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

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

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

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

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

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

13 **422.533 Administrative remedies.** (1) The administrator may enforce this
14 subchapter and rules adopted under this subchapter by taking one or more of the
15 following actions:

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

18 (b) Ordering a provider or a person that has caused a violation to correct the
19 violation, including making restitution of money or property to a person aggrieved
20 by a violation.

21 (c) Subject to adjustment of the dollar amount pursuant to s. 422.532 (6),
22 recovering in a civil action from a provider or a person that has caused a violation
23 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.

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

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

- 1. Enforce an order.
- 2. Obtain restitution or an injunction or other equitable relief, or both.

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

(2) Subject to adjustment of the dollar amount pursuant to s. 422.532 (6), if a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under sub. (1) (a) or (b), the administrator may recover in a civil action 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) 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) The administrator may recover the reasonable costs of enforcing the subchapter under subs. (1) to (3), including attorney's fees based on the hours reasonably expended and the hourly rates for attorneys of comparable experience in the community.

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

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

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

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

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

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

6 (c) Being insolvent within the meaning of the federal bankruptcy law, 11 USC
7 101 to 1532.

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

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

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

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

14 (c) The provider is insolvent.

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

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

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

21 **(3)** If a provider does not comply with s. 422.522 (6) or if the administrator
22 otherwise finds that the public health or safety or general welfare requires

1 emergency action, the administrator may order a summary suspension of the
2 provider's registration, effective on the date specified in the order.

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

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

9 **422.535 Private enforcement.** (1) If an individual voids an agreement
10 pursuant to s. 422.525 (2), the individual may recover in a civil action all money paid
11 or deposited by or on behalf of the individual pursuant to the agreement, except
12 amounts paid to creditors, in addition to the recovery under sub. (3) (c) and (d).

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

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

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

20 (a) Compensatory damages for injury, including noneconomic injury, caused by
21 the violation.

22 (b) Except as otherwise provided in sub. (4) and subject to adjustment of the
23 dollar amount pursuant to s. 422.532 (6), with respect to a violation of s. 422.517,

1 422.519, 422.520, 422.521, 422.522, 422.523, 422.524, 422.527, or 422.528 (1), (2), or
2 (4), the greater of the amount recoverable under par. (a) or \$5,000.

3 (c) Punitive damages.

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

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

7 (5) In addition to the remedy available under sub. (3), if a provider violates an
8 individual's rights under s. 422.520, the individual may recover in a civil action all
9 money paid or deposited by or on behalf of the individual pursuant to the agreement,
10 except for amounts paid to creditors.

11 (6) A provider is not liable under this section for a violation of this subchapter
12 if the provider proves that the violation was not intentional and resulted from a
13 good-faith error notwithstanding the maintenance of procedures reasonably
14 adapted to avoid the error. An error of legal judgment with respect to a provider's
15 obligations under this subchapter is not a good-faith error. If, in connection with a
16 violation, the provider has received more money than authorized by an agreement
17 or this subchapter, the defense provided by this subsection is not available unless the
18 provider refunds the excess within 2 business days of learning of the violation.

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

21 **422.536 Violation of unfair or deceptive practices.** If an act or practice
22 of a provider violates both this subchapter and ch. 100, an individual may not recover
23 under both for the same act or practice.

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



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

4 (2) An action brought pursuant to s. 422.535 must be commenced within 2
5 years after the latest of the following:

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

6 (a) The individual's last transmission of money to a provider.

7 (b) The individual's last transmission of money to a creditor at the direction of
8 the provider.

9 (c) The provider's last disbursement to a creditor of the individual.

10 (d) The provider's last accounting to the individual pursuant to s. 422.527 (1).

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

13 (f) Termination of actions or proceedings by the administrator with respect to
14 a violation of the subchapter.

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

20 **422.538 Uniformity of application and construction.** In applying and
21 construing this uniform act, consideration must be given to the need to promote
22 uniformity of the law with respect to its subject matter among states that enact it.

23 **422.539 Relation to Electronic Signatures in Global and National**
24 **Commerce Act.** This subchapter modifies, limits, and supersedes the federal

1 Electronic Signatures in Global and National Commerce Act (15 USC 7001 to 7031)
2 but does not modify, limit, or supersede 15 USC 7001 (c) or authorize electronic
3 delivery of any of the notices described in 15 USC 7003 (b).

4 **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.

5 **SECTION 8. Initial applicability.**

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

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

9 **SECTION 9. Effective date.**

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

12 (END)

1

INSERT A:

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

This bill repeals the registration requirements described above and adopts instead the Uniform Debt-Management Services Act (act), which was approved by the National Conference of Commissioners on Uniform State Laws in 2005. Under the bill, with certain exceptions, a person may not provide debt-management services to a resident of this state unless the person is registered with DFI. "Debt-management services" are defined as services as an intermediary between an individual and ^{one} or more of the individual's creditors for the purpose of obtaining "concessions", which are defined as assents to repayment of debt on terms that are favorable to the individual. Excluded from the definition of "debt-management services" are certain legal and accounting services. Also excluded are financial planning services provided by professionals described in rules promulgated by DFI.

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

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

(f)

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

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

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

The bill creates other requirements, including the following:

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

individual who is harmed by a registered person's violation of the bill's requirements to bring a civil action against the registered person.

1

INSERT 14-9:

2

(b) The application is not accompanied by a bond under s. 422.5[✓]13 or a bond

3

substitute under s. 422.5[✓]14.