



2007 ASSEMBLY BILL 902

March 4, 2008 – Introduced by Representatives NEWCOMER, TOWNSEND and WOOD, cosponsored by Senator DARLING. Referred to Committee on Financial Institutions.

1 **AN ACT** *to amend* 49.857 (1) (d) 12., 73.0301 (1) (d) 6., chapter 218 (title),
2 subchapter II (title) of chapter 218 [precedes 218.02], 218.02 (1) (a), 220.02 (2)
3 (b) and 220.02 (3); and *to create* 218.03 of the statutes; **relating to:** regulating
4 the provision of debt-settlement services, granting rule-making authority, and
5 providing a penalty.

Analysis by the Legislative Reference Bureau

Under this bill, with certain exceptions, a person may not provide debt-settlement services to a resident of this state unless the person obtains a license from the Division of Banking (division) of the Department of Financial Institutions (DFI). “Debt-settlement services” is defined as services as an intermediary between an individual and one or more of the individual’s creditors for the purpose of obtaining concessions, but without receiving from the individual money that is intended to be distributed to the creditors. “Concessions” is defined as assents to repayment of debt on terms that are more favorable to the individual than the terms of a contract between the individual and a creditor.

A person is exempt from the licensure requirement if the person receives no compensation for providing debt-settlement services. Also exempt is a person who provides debt-settlement services to an individual who 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.

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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-settlement services is incidental to their provision of bill-paying services.
6. Attorneys, certified public accountants, or financial-planning professionals whose provision of debt-settlement services is incidental to their provision of legal, accounting, or financial-planning services. The bill requires the division to promulgate rules for determining the financial-planning professionals that are subject to the exemption.

7. Persons licensed by DFI as adjustment service companies under current law who act within the course and scope of that license.

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

1. Provide evidence that the applicant has aggregate umbrella insurance, or has obtained a surety bond, that satisfies requirements specified in the bill.
2. If the applicant is an out-of-state corporation or limited liability company, provide a certificate of good standing issued by the other state.
3. Provide specified business, financial, officer, director, accreditation, and certification information.
4. Describe certain criminal convictions, civil judgments, litigation, and governmental actions regarding the applicant.
5. Submit the results of fingerprint-based criminal history checks on the applicant's officers.
6. Describe the applicant's educational programs, financial analyses, and initial budget programs for individuals whom the applicant counsels.
7. Provide copies of the agreements for providing debt-settlement services that the applicant will use in this state.
8. Provide the applicant's fee schedule.

The division must issue a license to an applicant, unless any of the following applies: 1) the application is incomplete or contains materially erroneous information; or 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. 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-settlement 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; make certain disclosures; and prepare a financial analysis and debt program for the individual. The bill also imposes requirements on agreements for licensed persons to provide

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debt-settlement services to individuals, including requirements for terminating such agreements. In addition, the bill specifies records that licensed persons must maintain and 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, revoke, or deny renewal of a license if a person is insolvent; commits a material violation of the bill's requirements; fails to cooperate with certain investigations by the division; 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-settlement service agreement with a person who violates the requirement to be licensed and, with certain exceptions, 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.

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

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

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

2 49.857 (1) (d) 12. A license or certificate of registration issued under ss. 138.09,
3 138.12, 217.06, 218.0101 to 218.0163, 218.02, 218.03, 218.04, 218.05, 224.72, 224.93
4 or subch. III of ch. 551.

5 **SECTION 2.** 73.0301 (1) (d) 6. of the statutes is amended to read:

6 73.0301 (1) (d) 6. A license or certificate of registration issued by the
7 department of financial institutions, or a division of it, under ss. 138.09, 138.12,
8 217.06, 218.0101 to 218.0163, 218.02, 218.03, 218.04, 218.05, 224.72, 224.93 or under
9 subch. III of ch. 551.

10 **SECTION 3.** Chapter 218 (title) of the statutes is amended to read:

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CHAPTER 218

FINANCE COMPANIES, AUTO DEALERS,

ADJUSTMENT COMPANIES, DEBT-

SETTLEMENT SERVICE PROVIDERS,

AND COLLECTION AGENCIES

SECTION 4. Subchapter II (title) of chapter 218 [precedes 218.02] of the statutes is amended to read:

CHAPTER 218

SUBCHAPTER II

ADJUSTMENT SERVICE COMPANIES AND

DEBT-SETTLEMENT SERVICE PROVIDERS

SECTION 5. 218.02 (1) (a) of the statutes is amended to read:

218.02 (1) (a) “Adjustment service company,” hereinafter called company, shall mean a corporation, limited liability company, association, partnership or individual engaged as principal in the business of prorating the income of a debtor to the debtor’s creditor or creditors, or of assuming the obligations of any debtor by purchasing the accounts the debtor may have with the debtor’s several creditors, in return for which the principal receives a service charge or other consideration. “Adjustment service company” does not include a person licensed as a provider of debt-settlement services under s. 218.03 if the person is acting within the course and scope of that license.

SECTION 6. 218.03 of the statutes is created to read:

218.03 Debt-settlement service providers.

(1) DEFINITIONS. In this section:

(a) 1. “Affiliate,” with respect to an individual, means any of the following:

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- 1 a. The spouse of the individual.
- 2 b. A sibling of the individual or the spouse of a sibling.
- 3 c. An individual or the spouse of an individual who is a lineal ancestor or lineal
4 descendant of the individual or the individual's spouse.
- 5 d. An aunt, uncle, great aunt, great uncle, first cousin, niece, nephew,
6 grandniece, or grandnephew, whether related by the whole or the half blood or
7 adoption, or the spouse of any of them.
- 8 e. Any other individual occupying the residence of the individual.
- 9 2. "Affiliate," with respect to an entity, means any of the following:
 - 10 a. A person that directly or indirectly controls, is controlled by, or is under
11 common control with the entity.
 - 12 b. An officer of, or an individual performing similar functions with respect to,
13 the entity.
 - 14 c. A director of, or an individual performing similar functions with respect to,
15 the entity.
 - 16 d. Subject to adjustment of the dollar amount pursuant to sub. (28) (f), a person
17 that receives or received more than \$25,000 from the entity in either the current year
18 or the preceding year or a person that owns more than 10 percent of, or an individual
19 who is employed by or is a director of, a person that receives or received more than
20 \$25,000 from the entity in either the current year or the preceding year.
 - 21 e. An officer or director of, or an individual performing similar functions with
22 respect to, a person described in subd. 2. a.
 - 23 f. The spouse of, or an individual occupying the residence of, an individual
24 described in subd. 2. a. to e.

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1 g. An individual who has the relationship specified in subd. 1. d. to an
2 individual or the spouse of an individual described in subd. 2. a. to e.

3 (b) “Agreement” means an agreement between a provider and an individual for
4 the performance of debt–settlement services.

5 (c) “Business address” means the physical location of a business, including the
6 name and number of a street.

7 (d) “Certified debt specialist” means an individual certified by a training
8 program or certifying organization that authenticates the competence of individuals
9 providing assistance to other individuals in connection with debt–settlement
10 services.

11 (e) “Concessions” means assent to repayment of a debt on terms more favorable
12 to an individual than the terms of the contract between the individual and a creditor.

13 (f) “Day” means calendar day.

14 (g) “Debt–settlement services” means services as an intermediary between an
15 individual and one or more creditors of the individual for the purpose of obtaining
16 concessions without receiving money from the individual with the intent to
17 distribute money to the individual’s creditors.

18 (h) “Division” means the division of banking.

19 (i) “Entity” means a person other than an individual.

20 (j) “Financial institution” means a financial institution, including a commercial
21 bank, savings bank, savings and loan association, credit union, and trust company,
22 engaged in the business of banking, chartered under federal or state law, and
23 regulated by a federal or state banking regulatory authority.

24 (k) “Good faith” means honesty in fact and the observance of reasonable
25 standards of fair dealing.

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1 (L) “Person” means an individual, corporation, business trust, estate, trust,
2 partnership, limited liability company, association, joint venture, or any other legal
3 or commercial entity. “Person” does not include a public corporation, government,
4 or governmental subdivision, agency, or instrumentality.

5 (m) “Principal amount of the debt” means the amount of a debt at the time of
6 the execution of an agreement.

7 (n) “Program” means a program or strategy in which a provider furnishes
8 debt-settlement services, which contemplates that creditors will settle debts for less
9 than the full principal amount of the debt owed by an individual, and under which
10 the individual makes payments directly to the creditors.

11 (o) “Provider” means a person that provides, offers to provide, or agrees to
12 provide debt-settlement services directly or through others.

13 (p) “Record” means information that is inscribed on a tangible medium or that
14 is stored in an electronic or other medium and is retrievable in perceivable form.

15 (q) “Settlement fee” means a fee charged pursuant to a fee agreement between
16 an individual and debt settlement provider under which the fee is calculated using
17 a percentage of savings the individual realizes from a settled debt in connection with
18 a creditor’s assent to accept in full satisfaction of a debt an amount less than the
19 principal amount of the debt.

20 (r) “Sign” means, with present intent to authenticate or adopt a record, any of
21 the following:

22 1. To execute or adopt a tangible symbol.

23 2. To attach to or logically associate with the record an electronic sound, symbol,
24 or process.

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1 (s) “State” means a state of the United States, the District of Columbia, Puerto
2 Rico, the United States Virgin Islands, or any territory or insular possession subject
3 to the jurisdiction of the United States.

4 **(2) EXEMPT AGREEMENTS AND PERSONS.** (a) This section does not apply to an
5 agreement with an individual who the provider has no reason to know resides in this
6 state at the time of the agreement.

7 (b) This section does not apply to a provider to the extent that the provider does
8 any of the following:

9 1. Provides or agrees to provide debt–settlement, educational, or counseling
10 services to an individual who the provider has no reason to know resides in this state
11 at the time the provider agrees to provide the services.

12 2. Receives no compensation for debt–settlement services from or on behalf of
13 the individuals to whom it provides the services or from their creditors.

14 (c) This section does not apply to any of the following persons or their employees
15 when the person or the employee is engaged in the regular course of the person’s
16 business or profession:

17 1. A judicial officer, a person acting under an order of a court or an
18 administrative agency, or an assignee for the benefit of creditors.

19 2. A financial institution.

20 3. An affiliate, as defined in sub. (1) (a) 2. a., of a financial institution if the
21 affiliate is regulated by a federal or state banking regulatory authority.

22 4. A title insurer, escrow company, or other person, that provides bill–paying
23 services, if the provision of debt–settlement services is incidental to the bill–paying
24 services.

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

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

8 7. A member of a financial-planning profession whose members the division,
9 by rule, determines are licensed by this state and subject to a disciplinary
10 mechanism, code of professional responsibility, and continuing education
11 requirement, if the member's provision of debt-settlement services is incidental to
12 the provision of financial-planning services.

13 8. A person licensed as an adjustment service company under s. 218.02 if the
14 person is acting within the course and scope of that license.

15 **(3) LICENSE REQUIRED.** (a) Except as otherwise provided in par. (b), a provider
16 may not provide debt-settlement services to an individual who it reasonably should
17 know resides in this state at the time it agrees to provide the services, unless the
18 provider is licensed under this section.

19 (b) If a provider is licensed under this section, par. (a) does not apply to an
20 employee or agent of the provider.

21 (c) The division shall maintain and publicize a list of the names of all licensed
22 providers.

23 **(4) APPLICATION FOR LICENSE: FORM, FEE, AND ACCOMPANYING DOCUMENTS.** (a) An
24 application for licensure as a provider shall be in a form prescribed by the division.

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1 (b) Subject to adjustment of dollar amounts pursuant to sub. (28) (f), an
2 application for licensure as a provider shall be accompanied by the fee established
3 by the division; if applicable, proof of compliance with s. 178.45, 180.1501, 181.1501,
4 or 183.1002; and one of the following:

5 1. Evidence of aggregate umbrella insurance in the amount of at least
6 \$1,000,000 that satisfies all of the following:

7 a. The insurance is against the risks of dishonesty, fraud, theft, and other
8 misconduct on the part of the applicant or a director, employee, or agent of the
9 applicant.

10 b. The insurance is issued by an insurance company authorized to do business
11 in this state and rated at least “A” by a nationally recognized rating organization.

12 c. The insurance has a maximum deductible of \$10,000.

13 d. The insurance insures against claims made by individuals in this or any
14 other state, as their interests may appear.

15 e. The insurance is not subject to cancellation by the applicant without an
16 effective policy in place to cover the cancelled insurance.

17 2. Evidence that the applicant has obtained a surety bond that satisfies all of
18 the following:

19 a. The surety bond is in a form approved by the division and is for a term no
20 less than the expiration of the license.

21 b. The surety bond runs to this state for the benefit of this state and of
22 individuals who reside in this state when they agree to receive debt-settlement
23 services from the applicant, as their interests may appear.

24 c. Payment of the surety bond is conditioned upon noncompliance with this
25 section by the applicant or an agent of the applicant.

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1 d. The surety bond is in an amount of not less than \$20,000 or a greater amount
2 that the division determines is warranted by the financial condition and business
3 experience of the applicant, the history of the applicant in providing debt-settlement
4 services, the risk to individuals, or any other factor the division considers
5 appropriate.

6 **(5) APPLICATION FOR LICENSE: REQUIRED INFORMATION.** An application for
7 licensure shall be signed and verified under oath or affirmation and include all of the
8 following:

9 (a) The applicant's name, principal business address and telephone number,
10 and all other business addresses in this state, electronic mail addresses, and Internet
11 Web site addresses.

12 (b) All names under which the applicant conducts business.

13 (c) The address of each location in this state at which the applicant will provide
14 debt-settlement services or a statement that the applicant will have no such
15 location.

16 (d) The name and home address of each officer and director of the applicant and
17 each person that owns at least 10 percent of the applicant.

18 (e) Identification of every jurisdiction in which, during the 5 years immediately
19 preceding the application the applicant or any of its officers or directors have been
20 licensed or registered to provide debt-settlement services.

21 (f) A statement describing, to the extent it is known or should be known by the
22 applicant, any material civil or criminal judgment or litigation and any material
23 administrative or enforcement action by a governmental agency in any jurisdiction
24 against the applicant, any of its officers, directors, owners, or agents.

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1 (g) Evidence of accreditation or certification by an independent accrediting or
2 certifying organization approved by the division.

3 (h) A description of the most commonly used educational programs that the
4 applicant provides or intends to provide to individuals who reside in this state and
5 a copy of any materials used or to be used in those programs.

6 (i) A description of the applicant's financial analysis and initial budget
7 program, including any form or electronic model, used to evaluate the financial
8 condition of individuals.

9 (j) A copy of each form of agreement that the applicant will use with individuals
10 who reside in this state.

11 (k) The schedule of fees and charges that the applicant will use with individuals
12 who reside in this state.

13 (L) At the applicant's expense, the results of a state and national
14 fingerprint-based criminal history records check, covering every officer of the
15 applicant, conducted within the immediately preceding 12 months. For purposes of
16 28 USC 534 (a) (4), the division is the state agency authorized to receive the results
17 of the check.

18 (m) A description of any ownership interest of at least 10 percent by a director,
19 owner, or employee of the applicant in all of the following:

20 1. Any affiliate of the applicant.

21 2. Any entity that provides products or services to the applicant or any
22 individual relating to the applicant's debt-settlement services.

23 (n) The identity of each director who is an affiliate, as defined in sub. (1) (a) 1.
24 or 2. a., b., d., e., f., or g., of the applicant.

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1 (o) Any other information that the division reasonably requires to perform the
2 division's duties under sub. (8).

3 **(6) APPLICATION FOR LICENSE: OBLIGATION TO UPDATE INFORMATION.** An applicant
4 or licensed provider shall notify the division within 10 days after a change in the
5 information specified in sub. (4) (b) 1. or 2. or (5) (a), (c), (f), or (k).

6 **(7) APPLICATION FOR LICENSE: PUBLIC INFORMATION.** Except for the information
7 required by sub. (5) (i), (L), and (m) and the addresses required by sub. (5) (d), which
8 the division shall withhold from inspection and copying under s. 19.35 (1), the
9 division shall make all other information in an application for licensure, or renewal
10 of licensure, as a provider available to the public.

11 **(8) LICENSE: ISSUANCE OR DENIAL.** (a) Except as otherwise provided in pars. (b)
12 and (c), the division shall issue a license as a provider to a person that complies with
13 subs. (4) and (5).

14 (b) The division may deny licensure if any of the following apply:

15 1. The application is incomplete or contains materially erroneous information.

16 2. An officer, director, or owner of the applicant has been convicted of a crime,
17 or suffered a civil judgment, involving dishonesty or the violation of state or federal
18 securities laws.

19 3. The applicant or any of its officers, directors, or owners have defaulted in the
20 payment of money collected for others.

21 (c) The division shall deny licensure if any of the following apply:

22 1. The application is not accompanied by the fee established by the division.

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

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1 3. If the applicant is an individual, the applicant has failed to comply, after
2 appropriate notice, with a subpoena or warrant issued by the department of children
3 and families or a county child support agency under s. 59.53 (5) and related to
4 paternity or child support proceedings and is delinquent in making court-ordered
5 payments of child or family support, maintenance, birth expenses, medical expenses,
6 or other expenses related to the support of a child or former spouse, as provided in
7 a memorandum of understanding entered into under s. 49.857.

8 **(9) LICENSE: TIMING.** (a) The division shall approve or deny an initial license
9 as a provider within 90 days after an application is filed. In connection with a request
10 pursuant to sub. (5) (o) for additional information, the division may extend the
11 90-day period for not more than 45 days. Within 7 days after denying an application,
12 the division, in a record, shall inform the applicant of the reasons for the denial.

13 (b) If the division denies an application for licensure as a provider or does not
14 act on an application within the time prescribed in par. (a), the applicant may appeal
15 and request a hearing pursuant to subch. III of ch. 227.

16 (c) Subject to subs. (10) (d) and (30), a license as a provider is valid for one year.

17 **(10) RENEWAL OF LICENSE.** (a) A provider shall obtain a renewal of its license
18 annually.

19 (b) An application for renewal of licensure as a provider shall be in a form
20 prescribed by the division, signed and verified under oath or affirmation, and shall
21 satisfy all of the following:

22 1. Be filed no fewer than 30 and no more than 60 days before the license expires.

23 2. Be accompanied by the fee established by the division.

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1 3. Contain the matter required by sub. (5) (g) for initial licensure as a provider
2 and a financial statement, reviewed by a certified public accountant, for the
3 applicant's fiscal year immediately preceding the application for renewal.

4 4. Disclose any changes in the information contained in the applicant's
5 application for licensure or its immediately previous application for renewal, as
6 applicable.

7 5. Except as provided in subd. 6., supply evidence of aggregate umbrella
8 insurance that is in an amount of at least \$1,000,000 and that satisfies all of the
9 following:

10 a. The insurance is against risks of dishonesty, fraud, theft, and other
11 misconduct on the part of the applicant or a director, employee, or agent of the
12 applicant.

13 b. The insurance is issued by an insurance company authorized to do business
14 in this state and rated at least "A" by a nationally recognized rating organization.

15 c. The insurance has a maximum deductible of \$10,000.

16 d. The insurance insures against claims made by individuals in this or any
17 other state as their interests may appear.

18 e. The insurance is not subject to cancellation by the applicant without an
19 effective policy in place to cover the cancelled insurance.

20 6. In lieu of the requirement under subd. 5., supply evidence that the applicant
21 has obtained a surety bond that satisfies the requirements specified in sub. (4) (b)

22 2.

23 7. Provide any other information that the division reasonably requires to
24 perform the division's duties under this subsection.

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1 (c) Except for the information required by sub. (5) (i) and (L) and the addresses
2 required by sub. (5) (d), the division shall make the information in an application for
3 renewal of licensure as a provider available to the public.

4 (d) If a licensed provider files a timely and complete application for renewal of
5 licensure, the license remains effective until the division, in a record, notifies the
6 applicant of a denial and states the reasons for the denial.

7 (e) If the division denies an application for renewal of licensure as a provider,
8 the applicant, within 30 days after receiving notice of the denial, may appeal and
9 request a hearing pursuant to subch. III of ch. 227. Subject to sub. (30), while the
10 appeal is pending the applicant shall continue to provide debt-settlement services
11 to individuals with whom it has agreements. If the denial is affirmed, subject to the
12 division's order and sub. (30), the applicant shall continue to provide
13 debt-settlement services to individuals with whom it has agreements until, with the
14 approval of the division, it transfers the agreements to another licensed provider.

15 **(11) LICENSE OR REGISTRATION IN ANOTHER STATE.** If a provider holds a license or
16 certificate of registration in another state authorizing it to provide debt-settlement
17 services, the provider may submit a copy of that license or certificate and the
18 application for it instead of an application in the form prescribed by sub. (4) (a), (5),
19 or (10) (b). The division shall accept the application and the license or certificate from
20 the other state as an application for licensure as a provider or for renewal of licensure
21 as a provider, as appropriate, in this state if all of the following apply:

22 (a) The application in the other state contains information substantially
23 similar to or more comprehensive than that required in an application submitted in
24 this state.

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1 (b) The applicant provides the information required by sub. (5) (a), (c), (h), (j),
2 and (k).

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

6 **(12) REQUIREMENT OF GOOD FAITH.** A provider shall act in good faith in all
7 matters under this section.

8 **(13) CUSTOMER SERVICE.** A provider that is required to be licensed under this
9 section shall maintain a toll-free communication system, staffed at a level that
10 reasonably permits an individual to speak to a certified debt specialist or
11 customer-service representative, as appropriate, during ordinary business hours.

12 **(14) PREREQUISITES FOR PROVIDING DEBT-SETTLEMENT SERVICES.** (a) Before
13 providing debt-settlement services, a licensed provider shall give the individual an
14 itemized list of goods and services and the charges for each. The list shall be clear
15 and conspicuous, be in a record the individual may keep whether or not the
16 individual assents to an agreement, and describe all of the following:

17 1. The goods and services the provider offers free of additional charge if the
18 individual enters into an agreement.

19 2. The goods and services the provider offers for a charge if the individual does
20 not enter into an agreement.

21 (b) A provider may not furnish debt-settlement services unless the provider,
22 through the services of a certified debt specialist, has satisfied all of the following:

23 1. The provider provides the individual with reasonable education about the
24 management of personal finance.

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1 2. The provider has prepared a financial analysis and program for the
2 individual.

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

5 1. Provide the individual with a copy of the analysis and program required by
6 par. (b) in a record that identifies the provider and that the individual may keep
7 whether or not the individual assents to the agreement.

8 2. Inform the individual of the availability, at the individual's option, of
9 assistance by a toll-free communication system or in person to discuss the financial
10 analysis and program required by par. (b).

11 (d) Before an individual assents to an agreement to engage in a program, the
12 provider shall inform the individual of all of the following:

13 1. The name and business address of the provider.

14 2. That programs are not suitable for all individuals and the individual may
15 ask the provider about other ways, including bankruptcy, to deal with indebtedness.

16 3. That establishment of a program may adversely affect the individual's credit
17 rating or credit scores.

18 4. That nonpayment of debt may lead creditors to increase finance and other
19 charges or undertake collection activity, including litigation.

20 5. That, unless the individual is insolvent, if a creditor settles for less than the
21 full amount of the debt, the program may result in the creation of taxable income to
22 the individual, even though the individual does not receive any money.

23 6. That specific results cannot be predicted or guaranteed and the provider
24 cannot force negotiations or settlements with creditors but will advocate solely on
25 behalf of the individual.

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1 7. That programs require that individuals meet a certain savings goal in order
2 to maximize settlement results.

3 8. That the provider does not provide accounting or legal advice to individuals.

4 9. That the provider is the individual's advocate and does not receive
5 compensation from creditors, financial institutions, or 3rd-party collection agencies.

6 10. That the provider is not responsible for distribution of any payments to the
7 individual's creditors.

8 **(15) COMMUNICATION BY ELECTRONIC OR OTHER MEANS.** (a) In this subsection:

9 1. "Consumer" means an individual who seeks or obtains goods or services that
10 are used primarily for personal, family, or household purposes.

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

13 (b) A provider may satisfy the requirements of sub. (14), (16), or (23) by means
14 of the Internet or other electronic means if the provider obtains a consumer's consent
15 in the manner provided by 15 USC 7001 (c) (1).

16 (c) The disclosures and materials required by subs. (14), (16), and (23) shall be
17 presented in a form that is capable of being accurately reproduced for later reference.

18 (d) With respect to disclosure by means of an Internet Web site, the disclosure
19 of the information required by sub. (14) (d) shall appear on one or more screens that
20 contain no other information and that the individual shall see before proceeding to
21 assent to formation of a program.

22 (e) At the time of providing the materials and agreement required by subs. (14)
23 (c) and (d), (16), and (23), a provider shall inform the individual that upon electronic,
24 telephonic, or written request, it will send the individual a written copy of the
25 materials, and shall comply with a request as provided in par. (f).

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1 (f) If a provider is requested, before the expiration of 90 days after a program
2 is completed or terminated, to send a written copy of the materials required by subs.
3 (14) (c) and (d), (16), and (23), the provider shall send them at no charge within 3
4 business days after the request, but the provider need not comply with a request
5 more than once per calendar month or if it reasonably believes the request is made
6 for purposes of harassment. If a request is made more than 90 days after a program
7 is completed or terminated, the provider shall send within a reasonable time a
8 written copy of the materials requested.

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

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

13 2. Its principal business address, telephone number, and electronic mail
14 address, if any.

15 (h) Subject to par. (i), if a consumer who has consented to electronic
16 communication in the manner provided by 15 USC 7001 withdraws consent as
17 provided in 15 USC 7001, a provider may terminate its agreement with the
18 consumer.

19 (i) If a provider wishes to terminate an agreement with a consumer pursuant
20 to par. (h), it shall notify the consumer that it will terminate the agreement unless
21 the consumer, within 30 days after receiving the notification, consents to electronic
22 communication in the manner provided in 15 USC 7001 (c).

23 **(16) FORM AND CONTENTS OF AGREEMENT.** (a) An agreement shall satisfy all of
24 the following:

25 1. Be in a record.

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- 1 2. Be dated and signed by the individual.
- 2 3. Include the name of the individual and the address where the individual
- 3 resides.
- 4 4. Include the name, business address, and telephone number of the provider.
- 5 5. Be delivered to the individual immediately upon formation of the agreement.
- 6 6. Disclose all of the following:
- 7 a. The services to be provided.
- 8 b. The amount, or method of determining the amount, of all fees, individually
- 9 itemized, to be paid by the individual.
- 10 c. How the provider will comply with its obligations under sub. (23) (b).
- 11 d. That the individual may cancel the agreement as provided in sub. (17).
- 12 e. That the individual may contact the division with any questions or
- 13 complaints regarding the provider.
- 14 f. The address, telephone number, and Internet address or Web site of the
- 15 division.
- 16 (b) For purposes of par. (a) 5., delivery of an electronic record occurs when it is
- 17 made available in a format in which the individual may retrieve, save, and print it
- 18 and the individual is notified that it is available.
- 19 (c) If the division supplies the provider with any information required under
- 20 par. (a) 6. f., the provider may comply with that requirement only by disclosing the
- 21 information supplied by the division.
- 22 (d) An agreement shall provide all of the following:
- 23 1. That the individual has a right to terminate the agreement at any time,
- 24 without penalty or obligation, by giving the provider written or electronic notice, in

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1 which event all powers of attorney granted by the individual to the provider are
2 revoked and ineffective.

3 2. That the provider will notify the individual within 5 days after learning of
4 a creditor's decision to cease negotiations with the provider and that this notice will
5 include all of the following:

6 a. The identity of the creditor.

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

8 (e) An agreement may confer on a provider a power of attorney to settle the
9 individual's debt for no more than 50 percent of the amount of the debt. An
10 agreement may not confer a power of attorney to settle a debt for more than 50
11 percent of that amount, but may confer a power of attorney to negotiate with
12 creditors of the individual on behalf of the individual. An agreement shall provide
13 that the provider will obtain the assent of the individual after a creditor has assented
14 to a settlement for more than 50 percent of the amount of the debt.

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

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

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

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

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

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

3 b. Indemnifies any person for liability arising under the agreement or this
4 section.

5 (g) All rights and obligations specified in par. (d) and sub. (17) exist even if not
6 provided in the agreement. A provision in an agreement which violates par. (d), (e),
7 or (f) is void.

8 **(17) CANCELLATION OF AGREEMENT; WAIVER.** (a) An individual may cancel an
9 agreement before midnight of the 3rd business day after the individual assents to it,
10 unless the agreement does not comply with par. (b) or sub. (16) or (24), in which event
11 the individual may cancel the agreement within 30 days after the individual assents
12 to it. To exercise the right of cancellation, the individual shall give notice in a record
13 to the provider. Notice by mail is given when mailed.

14 (b) An agreement shall be accompanied by a form that contains all of the
15 following in boldface type, surrounded by bold black lines:

16 Notice of Right of Cancellation

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

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

21

22 *E-mail address of provider*

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

24 at

25 *Name of provider*

Address of provider

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1 before midnight on:

2 *Date*

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

5 I cancel this agreement,

6

7 *Print your name*

8

9 *Signature*

10

11 *Date*

12 (c) If an individual terminates an agreement that is not otherwise subject to
13 par (a), and the individual has fulfilled his or her obligations under the agreement,
14 the provider shall refund 65 percent of any collected fees, excluding enrollment or
15 setup fees and fees earned on debt settled at the time of the termination of the
16 contract.

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

22 **(19) FEES AND OTHER CHARGES.** (a) A provider may not impose charges or receive
23 payment for debt-settlement services until the provider and the individual have
24 signed an agreement that complies with subs. (16) and (24).

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1 (b) If an individual assents to an agreement, a provider may not impose a fee
2 or other charge for educational or counseling services, or the like, that is not provided
3 for in writing in the agreement. If a payment to a provider by an individual under
4 this section is dishonored, a provider may impose a reasonable charge on the
5 individual.

6 **(20) VOLUNTARY CONTRIBUTIONS.** A provider may not solicit a voluntary
7 contribution from an individual or an affiliate of the individual for any service
8 provided to the individual.

9 **(21) VOIDABLE AGREEMENTS.** (a) If a provider imposes a fee or other charge or
10 receives money or other payments not authorized by sub. (19) or (20), the individual
11 may void the agreement and recover as provided in sub. (31).

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

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

16 **(22) TERMINATION OF AGREEMENTS.** If an individual who has entered into a fee
17 agreement fails for 60 days to make payments required by the agreement, a provider
18 may terminate the agreement.

19 **(23) PERIODIC REPORTS AND RETENTION OF RECORDS.** (a) If a creditor has agreed
20 to accept as payment in full an amount less than the principal amount of the debt
21 owed by an individual, a provider who has established a program for the individual
22 shall document, in a record, an accounting of all of the following:

- 23 1. The total amount and terms of the settlement.
- 24 2. The amount of the debt when the individual assented to the program.
- 25 3. The amount of the debt when the creditor agreed to the settlement.

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1 4. If the provider uses a fee agreement that calculates any portion of the fee
2 based on a percentage of savings the individual realized from a settled debt, the
3 calculation of a settlement fee.

4 (b) A provider shall provide the accounting required by par. (a) upon
5 cancellation or termination of an agreement. Before cancellation or termination of
6 any agreement, a provider shall also provide the accounting required by par. (a) after
7 each settlement of a debt with a creditor on behalf of the individual, and within 5
8 business days after a request by an individual, except that the provider need not
9 comply with more than one such request in any calendar month.

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

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

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

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

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

24 4. Initiate a transfer from an individual's account at a financial institution or
25 with another person unless any of the following apply:

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- 1 a. The transfer is a return of money to the individual.
- 2 b. The transfer occurs before termination of an agreement, is properly
3 authorized by the agreement and this section, and is for payment of a fee.
- 4 c. The transfer is in payment of a creditor to fund a negotiated settlement of
5 which both the settlement and transfer of money has been authorized by the debtor.
- 6 5. Offer a gift or bonus, premium, reward, or other compensation to an
7 individual for executing an agreement.
- 8 6. Structure a program in a manner that would result in a negative
9 amortization of any of an individual's debts, unless a creditor that is owed a
10 negatively amortizing debt agrees to refund or waive the finance charge upon
11 payment of the principal amount of the debt.
- 12 7. Settle a debt or lead an individual to believe that a payment to a creditor is
13 in settlement of a debt to the creditor unless, at the time of settlement, the individual
14 receives a certification or confirmation by the creditor that the payment is in full
15 settlement of the debt or is part of a payment plan that is in full settlement of the
16 debt.
- 17 8. Make a representation of any of the following:
 - 18 a. That the provider will furnish money to pay bills or prevent attachments.
 - 19 b. That payment of a certain amount will guarantee satisfaction of a certain
20 amount or range of indebtedness.
 - 21 c. That participation in a program will or may prevent litigation, garnishment,
22 attachment, repossession, foreclosure, eviction, or loss of employment.
- 23 9. Misrepresent that it is authorized or competent to furnish legal advice or
24 perform legal services.

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1 10. Represent that it is a not-for-profit entity unless it is organized and
2 properly operating as a not-for-profit under the law of the state in which it was
3 formed or that it is a tax-exempt entity unless it has received certification of
4 tax-exempt status from the Internal Revenue Service.

5 11. Take a confession of judgment or power of attorney to confess judgment
6 against an individual.

7 12. Employ an unfair, unconscionable, or deceptive act or practice, including
8 the knowing omission of any material information.

9 (b) If a provider furnishes debt-settlement services to an individual, the
10 provider may not, directly or indirectly, do any of the following:

11 1. Purchase a debt or obligation of the individual.

12 2. Receive from or on behalf of the individual any of the following:

13 a. A promissory note or other negotiable instrument other than a check or a
14 demand draft.

15 b. A post-dated check or demand draft.

16 3. Lend money or provide credit to the individual, except as a deferral of a
17 settlement fee at no additional expense to the individual.

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

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

23 a. The division, upon proper demand.

24 b. A creditor of the individual, to the extent necessary to secure the cooperation
25 of the creditor in a program.

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1 c. The extent necessary to administer the program.

2 6. Except for a settlement fee, if any, provide the individual less than the full
3 benefit of a compromise of a debt arranged by the provider.

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

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

11 9. Advise individuals to stop payment on any of the accounts being handled by
12 the provider.

13 10. Receive compensation from creditors of the individual, financial
14 institutions of which the individual is a customer, or 3rd-party collection agencies
15 acting on behalf of creditors of the individual.

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

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

22 **(25)** NOTICE OF LITIGATION. No later than 30 days after a provider has been
23 served with notice of a civil action for violation of this section by or on behalf of an
24 individual who resides in this state at either the time of an agreement or the time

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1 the notice is served, the provider shall notify the division in a record that it has been
2 sued.

3 **(26) ADVERTISING.** A provider that advertises debt–settlement services shall
4 disclose no information in conflict with the information specified in sub. (14) (d) 3.
5 and 4.

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

10 **(28) POWERS OF DIVISION.** (a) The division may act on its own initiative or in
11 response to complaints and may receive complaints, take action to obtain voluntary
12 compliance with this section, refer cases to the attorney general, and seek or provide
13 remedies as provided in this section.

14 (b) The division may investigate and examine, in this state or elsewhere, by
15 subpoena or otherwise, the activities, books, accounts, and records of a person that
16 provides or offers to provide debt–settlement services, or a person to which a provider
17 has delegated its obligations under an agreement or this section, to determine
18 compliance with this section. Information that identifies individuals who have
19 agreements with the provider shall not be disclosed to the public. In connection with
20 the investigation, the division may do any of the following:

21 1. Charge the person the reasonable costs necessarily incurred to conduct the
22 examination.

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

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

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

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

9 (f) The division, by rule, shall adopt dollar amounts instead of those specified
10 in subs. (1), (4), (8), (19), (29), and (31) to reflect inflation, as measured by the United
11 States bureau of labor statistics consumer price index for all urban consumers or, if
12 that index is not available, another index adopted by rule by the division. The
13 division shall adopt a base year and adjust the dollar amounts, effective on July 1 of
14 each year, if the change in the index from the base year, as of December 31 of the
15 preceding year, is at least 10 percent. The dollar amount shall be rounded to the
16 nearest \$100, except that the amounts in sub. (19) shall be rounded to the nearest
17 dollar.

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

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

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

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

4 3. Subject to adjustment of the dollar amount pursuant to sub. (28) (f),
5 recovering in a civil action from a provider or a person that has caused a violation
6 a forfeiture not exceeding \$10,000 for each violation.

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

8 a. Enforce an order.

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

10 5. Intervening in an action brought under sub. (31).

11 (b) Subject to adjustment of the dollar amount pursuant to sub. (28) (f), if a
12 person violates or knowingly authorizes, directs, or aids in the violation of a final
13 order issued under par. (a) 1. or 2., the division may recover in a civil action a
14 forfeiture not exceeding \$20,000 for each violation.

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

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

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

24 **(30) SUSPENSION, REVOCATION, OR NONRENEWAL OF LICENSE.** (a) In this subsection,
25 “insolvent” means any of the following:

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

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

4 3. Being insolvent within the meaning of the federal bankruptcy law, 11 USC
5 101 to 1532.

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

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

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

12 3. The provider is insolvent.

13 4. The provider or an employee, affiliate, or agent of the provider has refused
14 to permit the division to make an examination authorized by this section, failed to
15 comply with sub. (28) (b) 2. within 15 days after request, or made a material
16 misrepresentation or omission in complying with sub. (28) (b) 2.

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

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

22 (d) In accordance with a memorandum of understanding entered into under s.
23 49.857, the division shall restrict or suspend a license if the licensee is an individual
24 who fails to comply, after appropriate notice, with a subpoena or warrant issued by
25 the department of children and families or a county child support agency under s.

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1 59.53 (5) and related to paternity or child support proceedings or who is delinquent
2 in making court-ordered payments of child or family support, maintenance, birth
3 expenses, medical expenses or other expenses related to the support of a child or
4 former spouse.

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

7 **(31) PRIVATE ENFORCEMENT.** (a) If an individual voids an agreement pursuant
8 to sub. (21) (b), the individual may recover in a civil action all money paid by or on
9 behalf of the individual pursuant to the agreement, in addition to the recovery under
10 par. (c) 3. and 4.

11 (b) If an individual voids an agreement pursuant to sub. (21) (a), the individual
12 may recover in a civil action 3 times the total amount of the fees, charges, money, and
13 payments made by the individual to the provider, in addition to the recovery under
14 par. (c) 4.

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

18 1. Compensatory damages for injury, including noneconomic injury, caused by
19 the violation.

20 2. Except as otherwise provided in par. (d) and subject to adjustment of the
21 dollar amount pursuant to sub. (28) (f), with respect to a violation of sub. (14), (16),
22 (17), (18), (19), (20), (23), or (24) (a), (b), or (d), the greater of the amount recoverable
23 under subd. 1. or \$5,000.

24 3. Punitive damages.

25 4. Reasonable attorney fees and costs.

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1 (d) In a class action, except for a violation of sub. (24) (a) 4., the minimum
2 damages provided in par. (c) 2. do not apply.

3 (e) In addition to the remedy available under par. (c), if a provider violates an
4 individual's rights under sub. (17), the individual may recover in a civil action all
5 money paid or deposited by or on behalf of the individual pursuant to the agreement,
6 except for amounts paid to creditors.

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

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

18 **(33) STATUTE OF LIMITATIONS.** (a) An action or proceeding brought pursuant to
19 sub. (29) (a), (b), or (c) shall be commenced within 4 years after the conduct that is
20 the basis of the division's complaint.

21 (b) An action brought pursuant to sub. (31) shall be commenced within 2 years
22 after the latest of the following:

- 23 1. The individual's last transmission of money to a provider.
- 24 2. The date on which the individual discovered or reasonably should have
25 discovered the facts giving rise to the individual's claim.

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

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

8 **(34) RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE**
9 **ACT.** This section modifies, limits, and supersedes the federal Electronic Signatures
10 in Global and National Commerce Act (15 USC 7001 to 7031) but does not modify,
11 limit, or supersede 15 USC 7001 (c) or authorize electronic delivery of any of the
12 notices described in 15 USC 7003 (b).

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

14 220.02 (2) (b) The lending of money under s. 138.09 or those relating to finance
15 companies, motor vehicle dealers, adjustment service companies, providers of
16 debt-settlement services, community currency exchanges, and collection agencies
17 under ch. 218.

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

19 220.02 (3) It is the intent of sub. (2) to give the division jurisdiction to enforce
20 and carry out all laws relating to banks or banking in this state, including those
21 relating to state banks, savings banks, savings and loan associations, and trust
22 company banks, and also all laws relating to small loan companies or other loan
23 companies or agencies, finance companies, insurance premium finance companies,
24 motor vehicle dealers, adjustment service companies, providers of debt-settlement
25 services, community currency exchanges, mortgage bankers, loan originators,

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1 mortgage brokers, and collection agencies and those relating to sellers of checks
2 under ch. 217, whether doing business as corporations, individuals, or otherwise, but
3 to exclude laws relating to credit unions.

4 **SECTION 9. Nonstatutory provisions.**

5 (1) If a person is affected by a contract that is in effect on the effective date of
6 this subsection and that contains provisions that are inconsistent with section
7 218.03 of the statutes, as created by this act, but that are not inconsistent with any
8 applicable law in effect immediately before the effective date of this subsection, then,
9 notwithstanding section 218.03 of the statutes, as created by this act, the person may
10 perform its obligations, and exercise its rights, under those provisions of the contract
11 until the contract expires or is extended, modified, or renewed, whichever occurs
12 first.

13 **SECTION 10. Effective date.**

14 (1) This act takes effect on the first day of the 7th month beginning after
15 publication.

16 (END)