

2005 BILL

1 **AN ACT** *to repeal* subchapter II of chapter 218 [precedes 218.02] and 426.102 (3);
2 *to amend* 21.72 (1) (a) 12., 49.857 (1) (d) 12., 73.0301 (1) (d) 6. and 220.285 (1);
3 and *to repeal and recreate* subchapter V of chapter 422 [precedes 422.501]
4 of the statutes; **relating to:** adopting the Uniform Debt-Management Services
5 Act, granting rule-making authority, and providing a penalty.

Analysis by the Legislative Reference Bureau

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

BILL

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 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.

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.

BILL

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 by 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.

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.** 21.72 (1) (a) 12. of the statutes is amended to read:
- 2 21.72 (1) (a) 12. A license or certificate of registration issued by the department
- 3 of financial institutions, or a division of it, under ss. 138.09, 138.12, 217.06, 218.0101
- 4 to 218.0163, 218.02, 218.04, 218.05, 224.72, or 224.93, subch. V of ch. 422, or subch.
- 5 III of ch. 551.

BILL

1 **SECTION 2.** 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~~, 218.04, 218.05, 224.72, 224.93, subch.
4 V of ch. 422, or subch. III of ch. 551.

5 **SECTION 3.** 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~~, 218.04, 218.05, 224.72, 224.93 or under subch.
9 V of ch. 422 or subch. III of ch. 551.

10 **SECTION 4.** Subchapter II of chapter 218 [precedes 218.02] of the statutes is
11 repealed.

12 **SECTION 5.** 220.285 (1) of the statutes, as affected by 2005 Wisconsin Act 215,
13 is amended to read:

14 220.285 **(1)** Any state bank, trust company bank, licensee under ss. 138.09,
15 138.12, 218.0101 to 218.0163, ~~218.02~~, 218.04 or 218.05 or ch. 217, or person
16 registered under s. 224.72 or subch. V of ch. 422 may cause any or all records kept
17 by such bank, licensee, or registered person to be recorded, copied or reproduced by
18 any photostatic, photographic or miniature photographic process or by optical
19 imaging if the process employed correctly, accurately and permanently copies,
20 reproduces or forms a medium for copying, reproducing or recording the original
21 record on a film or other durable material. A bank, licensee, or registered person may
22 thereafter dispose of the original record after first obtaining the written consent of
23 the division. This section, excepting that part of it which requires written consent
24 of the division, is applicable to national banking associations insofar as it does not
25 contravene federal law.

BILL

1 **SECTION 6.** Subchapter V of chapter 422 [precedes 422.501] of the statutes is
2 repealed and recreated to read:

CHAPTER 422**SUBCHAPTER V****UNIFORM DEBT-MANAGEMENT****SERVICES ACT**

7 **422.501 Short title.** This subchapter may be cited as the “Uniform
8 Debt-Management Services Act.”

9 **422.502 Definitions.** In this subchapter:

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

11 1. The spouse of the individual.

12 2. A sibling of the individual or the spouse of a sibling.

13 3. An individual or the spouse of an individual who is a lineal ancestor or lineal
14 descendant of the individual or the individual’s spouse.

15 4. An aunt, uncle, great aunt, great uncle, first cousin, niece, nephew,
16 grandniece, or grandnephew, whether related by the whole or the half blood or
17 adoption, or the spouse of any of them.

18 5. Any other individual occupying the residence of the individual.

19 **(b)** “Affiliate,” with respect to an entity, means any of the following:

20 1. A person that directly or indirectly controls, is controlled by, or is under
21 common control with the entity.

22 2. An officer of, or an individual performing similar functions with respect to,
23 the entity.

24 3. A director of, or an individual performing similar functions with respect to,
25 the entity.

BILL

1 4. Subject to adjustment of the dollar amount pursuant to s. 422.532 (6), a
2 person that receives or received more than \$25,000 from the entity in either the
3 current year or the preceding year or a person that owns more than 10 percent of, or
4 an individual who is employed by or is a director of, a person that receives or received
5 more than \$25,000 from the entity in either the current year or the preceding year.

6 5. An officer or director of, or an individual performing similar functions with
7 respect to, a person described in subd. 1.

8 6. The spouse of, or an individual occupying the residence of, an individual
9 described in subds. 1. through 5.

10 7. An individual who has the relationship specified in par. (a) 4. to an individual
11 or the spouse of an individual described in subds. 1. through 5.

12 **(2)** “Agreement” means an agreement between a provider and an individual for
13 the performance of debt–management services.

14 **(3)** “Bank” means a financial institution, including a commercial bank, savings
15 bank, savings and loan association, credit union, and trust company, engaged in the
16 business of banking, chartered under federal or state law, and regulated by a federal
17 or state banking regulatory authority.

18 **(4)** “Business address” means the physical location of a business, including the
19 name and number of a street.

20 **(5)** “Certified counselor” means an individual certified by a training program
21 or certifying organization, approved by the administrator, that authenticates the
22 competence of individuals providing education and assistance to other individuals
23 in connection with debt–management services.

24 **(6)** “Concessions” means assent to repayment of a debt on terms more favorable
25 to an individual than the terms of the contract between the individual and a creditor.

BILL

1 **(7)** “Day” means calendar day.

2 **(8)** “Debt–management services” means services as an intermediary between
3 an individual and one or more creditors of the individual for the purpose of obtaining
4 concessions, but does not include any of the following:

5 (a) Legal services provided in an attorney–client relationship by an attorney
6 licensed or otherwise authorized to practice law in this state.

7 (b) Accounting services provided in an accountant–client relationship by a
8 certified public accountant licensed to provide accounting services in this state.

9 (c) Financial–planning services provided in a financial planner–client
10 relationship by a member of a financial–planning profession whose members the
11 administrator, by rule, determines are all of the following:

12 1. Licensed by this state.

13 2. Subject to a disciplinary mechanism.

14 3. Subject to a code of professional responsibility.

15 4. Subject to a continuing–education requirement.

16 **(9)** “Entity” means a person other than an individual.

17 **(10)** “Good faith” means honesty in fact and the observance of reasonable
18 standards of fair dealing.

19 **(11)** “Person” means an individual, corporation, business trust, estate, trust,
20 partnership, limited liability company, association, joint venture, or any other legal
21 or commercial entity. The term does not include a public corporation, government,
22 or governmental subdivision, agency, or instrumentality.

23 **(12)** “Plan” means a program or strategy in which a provider furnishes debt
24 management services to an individual and which includes a schedule of payments

BILL

1 to be made by or on behalf of the individual and used to pay debts owed by the
2 individual.

3 **(13)** “Principal amount of the debt” means the amount of a debt at the time of
4 an agreement.

5 **(14)** “Provider” means a person that provides, offers to provide, or agrees to
6 provide debt-management services directly or through others.

7 **(15)** “Record” means information that is inscribed on a tangible medium or that
8 is stored in an electronic or other medium and is retrievable in perceivable form.

9 **(16)** “Settlement fee” means a charge imposed on or paid by an individual in
10 connection with a creditor’s assent to accept in full satisfaction of a debt an amount
11 less than the principal amount of the debt.

12 **(17)** “Sign” means, with present intent to authenticate or adopt a record, any
13 of the following:

14 (a) To execute or adopt a tangible symbol.

15 (b) To attach to or logically associate with the record an electronic sound,
16 symbol, or process.

17 **(18)** “State” means a state of the United States, the District of Columbia,
18 Puerto Rico, the United States Virgin Islands, or any territory or insular possession
19 subject to the jurisdiction of the United States.

20 **(19)** “Trust account” means an account held by a provider that is all of the
21 following:

22 (a) Established in an insured bank.

23 (b) Separate from other accounts of the provider or its designee.

24 (c) Designated as a trust account or other account designated to indicate that
25 the money in the account is not the money of the provider or its designee.

BILL

1 (d) Used to hold money of one or more individuals for disbursement to creditors
2 of the individuals.

3 **422.503 Exempt agreements and persons. (1)** This subchapter does not
4 apply to an agreement with an individual who the provider has no reason to know
5 resides in this state at the time of the agreement.

6 **(2)** This subchapter does not apply to a provider to the extent that the provider
7 does any of the following:

8 (a) Provides or agrees to provide debt–management, educational, or counseling
9 services to an individual who the provider has no reason to know resides in this state
10 at the time the provider agrees to provide the services.

11 (b) Receives no compensation for debt–management services from or on behalf
12 of the individuals to whom it provides the services or from their creditors.

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

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

18 (b) A bank.

19 (c) An affiliate, as defined in s. 422.502 (1) (b) 1., of a bank if the affiliate is
20 regulated by a federal or state banking regulatory authority.

21 (d) A title insurer, escrow company, or other person that provides bill–paying
22 services if the provision of debt–management services is incidental to the bill–paying
23 services.

24 **422.504 Registration required. (1)** Except as otherwise provided in sub. (2),
25 a provider may not provide debt–management services to an individual who it

BILL

1 reasonably should know resides in this state at the time it agrees to provide the
2 services, unless the provider is registered under this subchapter.

3 (2) If a provider is registered under this subchapter, sub. (1) does not apply to
4 an employee or agent of the provider.

5 (3) The administrator shall maintain and publicize a list of the names of all
6 registered providers.

7 **422.505 Application for registration: form, fee, and accompanying**
8 **documents.** (1) An application for registration as a provider must be in a form
9 prescribed by the administrator.

10 (2) Subject to adjustment of dollar amounts pursuant to s. 422.532 (6), an
11 application for registration as a provider must be accompanied by all of the following:

12 (a) The fee established by the administrator.

13 (b) The bond required by s. 422.513.

14 (c) Identification of all trust accounts required by s. 422.522 and an irrevocable
15 consent authorizing the administrator to review and examine the trust accounts.

16 (d) Evidence of insurance in the amount of \$250,000 that satisfies all of the
17 following:

18 1. The insurance is against the risks of dishonesty, fraud, theft, and other
19 misconduct on the part of the applicant or a director, employee, or agent of the
20 applicant.

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

23 3. The insurance has no deductible.

24 4. The insurance is payable to the applicant, the individuals who have
25 agreements with the applicant, and this state, as their interests may appear.

BILL

1 5. The insurance is not subject to cancellation by the applicant without the
2 approval of the administrator.

3 (e) If applicable, proof of compliance with s. 178.45, 180.1501, 181.1501, or
4 183.1002.

5 (f) If the applicant is organized as a not-for-profit entity or is exempt from
6 taxation, evidence of not-for-profit and tax-exempt status applicable to the
7 applicant under the Internal Revenue Code, 26 USC 501.

8 **422.506 Application for registration: required information.** An
9 application for registration must be signed and verified under oath or affirmation
10 and include all of the following:

11 (1) The applicant's name, principal business address and telephone number,
12 and all other business addresses in this state, electronic-mail addresses, and
13 Internet Web site addresses.

14 (2) All names under which the applicant conducts business.

15 (3) The address of each location in this state at which the applicant will provide
16 debt-management services or a statement that the applicant will have no such
17 location.

18 (4) The name and home address of each officer and director of the applicant and
19 each person that owns at least 10 percent of the applicant.

20 (5) Identification of every jurisdiction in which, during the 5 years immediately
21 preceding the application the applicant or any of its officers or directors has been
22 licensed or registered to provide debt-management services, or in which individuals
23 have resided when they received debt-management services from the applicant.

24 (6) A statement describing, to the extent it is known or should be known by the
25 applicant, any material civil or criminal judgment or litigation and any material

BILL

1 administrative or enforcement action by a governmental agency in any jurisdiction
2 against the applicant, any of its officers, directors, owners, or agents, or any person
3 who is authorized to have access to the trust account required by s. 422.522.

4 (7) The applicant's financial statements, audited by an accountant licensed to
5 conduct audits, for each of the 2 years immediately preceding the application or, if
6 it has not been in operation for the 2 years preceding the application, for the period
7 of its existence.

8 (8) Evidence of accreditation by an independent accrediting organization
9 approved by the administrator.

10 (9) Evidence that, within 12 months after initial employment, each of the
11 applicant's counselors becomes certified as a certified counselor.

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

15 (11) A description of the applicant's financial analysis and initial budget plan,
16 including any form or electronic model, used to evaluate the financial condition of
17 individuals.

18 (12) A copy of each form of agreement that the applicant will use with
19 individuals who reside in this state.

20 (13) The schedule of fees and charges that the applicant will use with
21 individuals who reside in this state.

22 (14) At the applicant's expense, the results of a criminal-records check,
23 including fingerprints, conducted within the immediately preceding 12 months,
24 covering every officer of the applicant and every employee or agent of the applicant
25 who is authorized to have access to the trust account required by s. 422.522.

BILL

1 **(15)** The names and addresses of all employers of each director during the 10
2 years immediately preceding the application.

3 **(16)** A description of any ownership interest of at least 10 percent by a director,
4 owner, or employee of the applicant in all of the following:

5 (a) Any affiliate of the applicant.

6 (b) Any entity that provides products or services to the applicant or any
7 individual relating to the applicant's debt-management services.

8 **(17)** A statement of the amount of compensation of the applicant's 5 most highly
9 compensated employees for each of the 3 years immediately preceding the
10 application or, if it has not been in operation for the 3 years preceding the application,
11 for the period of its existence.

12 **(18)** The identity of each director who is an affiliate, as defined in s. 422.502
13 (1) (a) or (b) 1., 2., 4., 5., or 6., of the applicant.

14 **(19)** Any other information that the administrator reasonably requires to
15 perform the administrator's duties under s. 422.509.

16 **422.507 Application for registration: obligation to update information.**
17 An applicant or registered provider shall notify the administrator within 10 days
18 after a change in the information specified in s. 422.505 (2) (d) or (f) or 422.506 (1),
19 (3), (6), (12), or (13).

20 **422.508 Application for registration: public information.** Except for the
21 information required by s. 422.506 (7), (14), and (17) and the addresses required by
22 s. 422.506 (4), the administrator shall make the information in an application for
23 registration as a provider available to the public.

BILL

1 **422.509 Certificate of registration: issuance or denial. (1)** Except as
2 otherwise provided in subs. (2) and (3), the administrator shall issue a certificate of
3 registration as a provider to a person that complies with ss. 422.505 and 422.506.

4 **(2)** The administrator may deny registration if any of the following apply:

5 (a) The application contains information that is materially erroneous or
6 incomplete.

7 (b) An officer, director, or owner of the applicant has been convicted of a crime,
8 or suffered a civil judgment, involving dishonesty or the violation of state or federal
9 securities laws.

10 (c) The applicant or any of its officers, directors, or owners has defaulted in the
11 payment of money collected for others.

12 (d) The administrator finds that the financial responsibility, experience,
13 character, or general fitness of the applicant or its owners, directors, employees, or
14 agents does not warrant belief that the business will be operated in compliance with
15 this subchapter.

16 **(3)** The administrator shall deny registration if any of the following apply:

17 (a) The application is not accompanied by the fee established by the
18 administrator.

19 (b) The application is not accompanied by a bond under s. 422.513 or a bond
20 substitute under s. 422.514.

21 (c) With respect to an applicant that is organized as a not-for-profit entity or
22 has obtained tax-exempt status under the Internal Revenue Code, 26 USC 501, the
23 applicant's board of directors is not independent of the applicant's employees and
24 agents.

BILL

1 **(4)** Subject to adjustment of the dollar amount pursuant to s. 422.532 (6), a
2 board of directors is not independent for purposes of sub. (3) if any of the following
3 apply:

4 (a) More than one-fourth of its members are affiliates of the applicant, as
5 defined in s. 422.502 (1) (a) or (b) 1., 2., 4., 5., 6., or 7.

6 (b) After the date 10 years before first becoming a director of the applicant,
7 more than one-fourth of its members were employed by or directors of a person that
8 received from the applicant more than \$25,000 in either the current year or the
9 preceding year.

10 **422.510 Certificate of registration: timing.** **(1)** The administrator shall
11 approve or deny an initial registration as a provider within 120 days after an
12 application is filed. In connection with a request pursuant to s. 422.506 (19) for
13 additional information, the administrator may extend the 120-day period for not
14 more than 60 days. Within 7 days after denying an application, the administrator,
15 in a record, shall inform the applicant of the reasons for the denial.

16 **(2)** If the administrator denies an application for registration as a provider or
17 does not act on an application within the time prescribed in sub. (1), the applicant
18 may appeal and request a hearing pursuant to subch. III of ch. 227.

19 **(3)** Subject to ss. 422.511 (4) and 422.534, a registration as a provider is valid
20 for one year.

21 **422.511 Renewal of registration.** **(1)** A provider must obtain a renewal of
22 its registration annually.

23 **(2)** An application for renewal of registration as a provider must be in a form
24 prescribed by the administrator, signed and verified under oath or affirmation, and
25 must satisfy all of the following:

BILL

1 (a) Be filed no fewer than 30 and no more than 60 days before the registration
2 expires.

3 (b) Be accompanied by the fee established by the administrator and the bond
4 required by s. 422.513.

5 (c) Contain the matter required for initial registration as a provider by s.
6 422.506 (8) and (9) and a financial statement, audited by an accountant licensed to
7 conduct audits, for the applicant's fiscal year immediately preceding the application.

8 (d) Disclose any changes in the information contained in the applicant's
9 application for registration or its immediately previous application for renewal, as
10 applicable.

11 (e) Supply evidence of insurance in an amount equal to the larger of \$250,000
12 or the highest daily balance in the trust account required by s. 422.522 during the
13 6 month period immediately preceding the application and that satisfies all of the
14 following:

15 1. The insurance is against risks of dishonesty, fraud, theft, and other
16 misconduct on the part of the applicant or a director, employee, or agent of the
17 applicant.

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

20 3. The insurance has no deductible.

21 4. The insurance is payable to the applicant, the individuals who have
22 agreements with the applicant, and this state, as their interests may appear.

23 5. The insurance is not subject to cancellation by the applicant without the
24 approval of the administrator.

BILL

1 (f) Disclose the total amount of money received by the applicant pursuant to
2 plans during the preceding 12 months from or on behalf of individuals who reside in
3 this state and the total amount of money distributed to creditors of those individuals
4 during that period.

5 (g) Disclose, to the best of the applicant's knowledge, the gross amount of money
6 accumulated during the preceding 12 months pursuant to plans by or on behalf of
7 individuals who reside in this state and with whom the applicant has agreements.

8 (h) Provide any other information that the administrator reasonably requires
9 to perform the administrator's duties under this section.

10 **(3)** Except for the information required by s. 422.506 (7), (14), and (17) and the
11 addresses required by s. 422.506 (4), the administrator shall make the information
12 in an application for renewal of registration as a provider available to the public.

13 **(4)** If a registered provider files a timely and complete application for renewal
14 of registration, the registration remains effective until the administrator, in a record,
15 notifies the applicant of a denial and states the reasons for the denial.

16 **(5)** If the administrator denies an application for renewal of registration as a
17 provider, the applicant, within 30 days after receiving notice of the denial, may
18 appeal and request a hearing pursuant to subch. III of ch. 227. Subject to s. 422.534,
19 while the appeal is pending the applicant shall continue to provide
20 debt-management services to individuals with whom it has agreements. If the
21 denial is affirmed, subject to the administrator's order and s. 422.534, the applicant
22 shall continue to provide debt-management services to individuals with whom it has
23 agreements until, with the approval of the administrator, it transfers the
24 agreements to another registered provider or returns to the individuals all
25 unexpended money that is under the applicant's control.

BILL

1 **422.512 Registration in another state.** If a provider holds a license or
2 certificate of registration in another state authorizing it to provide
3 debt-management services, the provider may submit a copy of that license or
4 certificate and the application for it instead of an application in the form prescribed
5 by s. 422.505 (1), 422.506, or 422.511 (2). The administrator shall accept the
6 application and the license or certificate from the other state as an application for
7 registration as a provider or for renewal of registration as a provider, as appropriate,
8 in this state if all of the following apply:

9 **(1)** The application in the other state contains information substantially
10 similar to or more comprehensive than that required in an application submitted in
11 this state.

12 **(2)** The applicant provides the information required by s. 422.506 (1), (3), (10),
13 (12), and (13).

14 **(3)** The applicant, verified under oath or affirmation, certifies that the
15 information contained in the application is current or, to the extent it is not current,
16 supplements the application to make the information current.

17 **422.513 Bond required. (1)** Except as otherwise provided in s. 422.514, a
18 provider that is required to be registered under this subchapter shall file a surety
19 bond with the administrator, which must satisfy all of the following:

20 (a) Be in effect during the period of registration and for 2 years after the
21 provider ceases providing debt-management services to individuals in this state.

22 (b) Run to this state for the benefit of this state and of individuals who reside
23 in this state when they agree to receive debt-management services from the
24 provider, as their interests may appear.

BILL

1 **(2)** Subject to adjustment of the dollar amount pursuant to s. 422.532 (6), a
2 surety bond filed pursuant to sub. (1) must satisfy all of the following:

3 (a) Be in the amount of \$50,000 or other larger or smaller amount that the
4 administrator determines is warranted by the financial condition and business
5 experience of the provider, the history of the provider in performing
6 debt-management services, the risk to individuals, and any other factor the
7 administrator considers appropriate.

8 (b) Be issued by a bonding, surety, or insurance company authorized to do
9 business in this state and rated at least “A” by a nationally recognized rating
10 organization.

11 (c) Have payment conditioned upon noncompliance of the provider or its agent
12 with this subchapter.

13 **(3)** If the principal amount of a surety bond is reduced by payment of a claim
14 or a judgment, the provider shall immediately notify the administrator and, within
15 30 days after notice by the administrator, file a new or additional surety bond in an
16 amount set by the administrator. The amount of the new or additional bond must
17 be at least the amount of the bond immediately before payment of the claim or
18 judgment. If for any reason a surety terminates a bond, the provider shall
19 immediately file a new surety bond in the amount of \$50,000 or other amount
20 determined pursuant to sub. (2).

21 **(4)** The administrator or an individual may obtain satisfaction out of the surety
22 bond procured pursuant to this section if any of the following apply:

23 (a) The administrator assesses expenses under s. 422.532 (2) (a), issues a final
24 order under s. 422.533 (1) (b), or recovers a final judgment under s. 422.533 (1) (d)
25 or (e) or (4).

BILL

1 (b) An individual recovers a final judgment pursuant to s. 422.535 (1), (2), or
2 (3) (a), (b), or (d).

3 (5) If claims against a surety bond exceed or are reasonably expected to exceed
4 the amount of the bond, the administrator, on the initiative of the administrator or
5 on petition of the surety, shall, unless the proceeds are adequate to pay all costs,
6 judgments, and claims, distribute the proceeds in the following order:

7 (a) To satisfaction of a final order or judgment under s. 422.533 (1) (b), (d), or
8 (e) or (4).

9 (b) To final judgments recovered by individuals pursuant to s. 422.535 (1), (2),
10 or (3) (a), (b), or (d), pro rata.

11 (c) To claims of individuals established to the satisfaction of the administrator,
12 pro rata.

13 (d) If a final order or judgment is issued under s. 422.533 (1), to the expenses
14 charged pursuant to s. 422.532 (2) (a).

15 **422.514 Bond required: substitute. (1)** Instead of the surety bond required
16 by s. 422.513, a provider may deliver to the administrator any of the following, in the
17 amount required by s. 422.513 (2), and, except as otherwise provided in par. (b) 1.,
18 payable or available to this state and to individuals who reside in this state when
19 they agree to receive debt–management services from the provider, as their interests
20 may appear, if the provider or its agent does not comply with this subchapter:

21 (a) A certificate of insurance issued by an insurance company authorized to do
22 business in this state and rated at least “A” by a nationally recognized rating
23 organization, with no deductible.

24 (b) With the approval of the administrator, any of the following:

BILL

1 1. An irrevocable letter of credit, issued or confirmed by a bank approved by the
2 administrator, payable upon presentation of a certificate by the administrator
3 stating that the provider or its agent has not complied with this subchapter.

4 2. Bonds or other obligations of the United States or guaranteed by the United
5 States or bonds or other obligations of this state or a political subdivision of this state,
6 to be deposited and maintained with a bank approved by the administrator for this
7 purpose.

8 **(2)** If a provider furnishes a substitute pursuant to sub. (1), the provisions of
9 s. 422.513 (1), (3), (4), and (5) apply to the substitute.

10 **422.515 Requirement of good faith.** A provider shall act in good faith in all
11 matters under this subchapter.

12 **422.516 Customer service.** A provider that is required to be registered under
13 this subchapter shall maintain a toll-free communication system, staffed at a level
14 that reasonably permits an individual to speak to a certified counselor or
15 customer-service representative, as appropriate, during ordinary business hours.

16 **422.517 Prerequisites for providing debt-management services. (1)**
17 Before providing debt-management services, a registered provider shall give the
18 individual an itemized list of goods and services and the charges for each. The list
19 must be clear and conspicuous, be in a record the individual may keep whether or not
20 the individual assents to an agreement, and describe all of the following:

21 (a) The goods and services the provider offers free of additional charge if the
22 individual enters into an agreement.

23 (b) The good and services the provider offers for a charge if the individual does
24 not enter into an agreement.

BILL

1 (c) The good and services the provider offers for a charge if the individual enters
2 into an agreement, using the following terminology, as applicable, and format:

3 Set-up fee
4 *dollar amount of fee*

5 Monthly service fee
6 *dollar amount of fee or method of determining amount*

7 Settlement fee
8 *dollar amount of fee or method of determining amount*

9 Goods and services in addition to those provided in connection with a plan:

10
11 *(item) dollar amount or method of determining amount*

12
13 *(item) dollar amount or method of determining amount*

14 **(2)** A provider may not furnish debt-management services unless the provider,
15 through the services of a certified counselor, has satisfied all of the following:

16 (a) The provider provides the individual with reasonable education about the
17 management of personal finance.

18 (b) The provider has prepared a financial analysis.

19 (c) If the individual is to make regular, periodic payments, the provider has
20 satisfied all of the following:

21 1. The provider has prepared a plan for the individual.

22 2. The provider has made a determination, based on the provider’s analysis of
23 the information provided by the individual and otherwise available to it, that the
24 plan is suitable for the individual and the individual will be able to meet the payment
25 obligations under the plan.

BILL

1 3. The provider believes that each creditor of the individual listed as a
2 participating creditor in the plan will accept payment of the individual's debts as
3 provided in the plan.

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

6 (a) Provide the individual with a copy of the analysis and plan required by sub.
7 (2) in a record that identifies the provider and that the individual may keep whether
8 or not the individual assents to the agreement.

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

12 (c) With respect to all creditors identified by the individual or otherwise known
13 by the provider to be creditors of the individual, provide the individual with a list of
14 all of the following:

15 1. Creditors that the provider expects to participate in the plan and grant
16 concessions.

17 2. Creditors that the provider expects to participate in the plan but not grant
18 concessions.

19 3. Creditors that the provider expects not to participate in the plan.

20 4. All other creditors.

21 **(4)** Before an individual assents to an agreement to engage in a plan, the
22 provider shall inform the individual, in a record that contains nothing else, that is
23 given separately, and that the individual may keep whether or not the individual
24 assents to the agreement, of all of the following:

25 (a) The name and business address of the provider.

BILL

1 (b) That plans are not suitable for all individuals and the individual may ask
2 the provider about other ways, including bankruptcy, to deal with indebtedness.

3 (c) That establishment of a plan may adversely affect the individual’s credit
4 rating or credit scores.

5 (d) That nonpayment of debt may lead creditors to increase finance and other
6 charges or undertake collection activity, including litigation.

7 (e) Unless it is not true, that the provider may receive compensation from the
8 creditors of the individual.

9 (f) That, unless the individual is insolvent, if a creditor settles for less than the
10 full amount of the debt, the plan may result in the creation of taxable income to the
11 individual, even though the individual does not receive any money.

12 (5) If a provider may receive payments from an individual’s creditors and the
13 plan contemplates that the individual’s creditors will reduce finance charges or fees
14 for late payment, default, or delinquency, the provider may comply with sub. (4) by
15 providing the following disclosure, surrounded by black lines:

16 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

17 (1) Debt–management plans are not right for all individuals, and you may ask
18 us to provide information about other ways, including bankruptcy, to deal with your
19 debts.

20 (2) Using a debt–management plan may hurt your credit rating or credit scores.

21 (3) We may receive compensation for our services from your creditors.

22

23 *Name and business address of provider*

24 (6) If a provider will not receive payments from an individual’s creditors and
25 the plan contemplates that the individual’s creditors will reduce finance charges or

BILL

1 fees for late payment, default, or delinquency, a provider may comply with sub. (4)
2 by providing the following disclosure, surrounded by black lines:

3 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

4 (1) Debt-management plans are not right for all individuals, and you may ask
5 us to provide information about other ways, including bankruptcy, to deal with your
6 debts.

7 (2) Using a debt-management plan may hurt your credit rating or credit scores.

8

9 *Name and business address of provider*

10 (7) If a plan contemplates that creditors will settle debts for less than the full
11 principal amount of debt owed, a provider may comply with sub. (4) by providing the
12 following disclosure, surrounded by black lines:

13 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

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

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

- 17 • hurt your credit rating or credit scores;
- 18 • lead your creditors to increase finance and other charges; and
- 19 • lead your creditors to undertake activity, including lawsuits, to collect the
- 20 debts.

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

23

24 *Name and business address of provider*

BILL

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

3 (a) “Federal act” means the Electronic Signatures in Global and National
4 Commerce Act, 15 USC 7001 to 7031.

5 (b) “Consumer” means an individual who seeks or obtains goods or services that
6 are used primarily for personal, family, or household purposes.

7 **(2)** A provider may satisfy the requirements of s. 422.517, 422.519, or 422.527
8 by means of the Internet or other electronic means if the provider obtains a
9 consumer’s consent in the manner provided by 15 USC 7001 (c) (1).

10 **(3)** The disclosures and materials required by ss. 422.517, 422.519, and
11 422.527 shall be presented in a form that is capable of being accurately reproduced
12 for later reference.

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

17 **(5)** At the time of providing the materials and agreement required by ss.
18 422.517 (3) and (4), 422.519, and 422.527, a provider shall inform the individual that
19 upon electronic, telephonic, or written request, it will send the individual a written
20 copy of the materials, and shall comply with a request as provided in sub. (6).

21 **(6)** If a provider is requested, before the expiration of 90 days after a plan is
22 completed or terminated, to send a written copy of the materials required by s.
23 422.517 (3) and (4), 422.519, and 422.527, the provider shall send them at no charge
24 within 3 business days after the request, but the provider need not comply with a
25 request more than once per calendar month or if it reasonably believes the request

BILL

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

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

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

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

10 (c) The names of its principal officers.

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

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

21 **422.519 Form and contents of agreement. (1)** An agreement must satisfy
22 all of the following:

23 (a) Be in a record.

24 (b) Be dated and signed by the provider and the individual.

BILL

1 (c) Include the name of the individual and the address where the individual
2 resides.

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

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

6 (f) Disclose all of the following:

7 1. The services to be provided.

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

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

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

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

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

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

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

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

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

BILL

1 9. That the individual may contact the administrator with any questions or
2 complaints regarding the provider.

3 10. The address, telephone number, and Internet address or Web site of the
4 administrator.

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

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

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

12 (a) That the individual has a right to terminate the agreement at any time,
13 without penalty or obligation, by giving the provider written or electronic notice, in
14 which event all of the following apply:

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

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

21 3. All powers of attorney granted by the individual to the provider are revoked
22 and ineffective.

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

BILL

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

4 1. The identity of the creditor.

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

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

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

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

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

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

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

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

BILL

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

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

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

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

Notice of Right to Cancel

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

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

18

19 *E-mail address of provider*

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

21 at

22 *Name of provider*

Address of provider

23 before midnight on:

24 *Date*

BILL

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

BILL

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

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

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

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

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

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

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

BILL

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

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

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

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

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

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

BILL

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

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

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

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

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

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

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

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

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

BILL

1 (d) Except as otherwise provided in s. 422.528 (4), if an individual does not
2 assent to an agreement, a provider may receive for educational and counseling
3 services it provides to the individual a fee not exceeding \$100 or, with the approval
4 of the administrator, a larger fee. The administrator may approve a fee larger than
5 \$100 if the nature and extent of the educational and counseling services warrant the
6 larger fee.

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

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

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

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

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

22 **422.524 Voluntary contributions.** A provider may not solicit a voluntary
23 contribution from an individual or an affiliate of the individual for any service
24 provided to the individual. A provider may accept voluntary contributions from an
25 individual but, until 30 days after completion or termination of a plan, the aggregate

BILL

1 amount of money received from or on behalf of the individual may not exceed the total
2 amount the provider may charge the individual under s. 422.523.

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

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

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

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

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

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

16 (b) Sixty-five percent of any portion of the set-up fee received pursuant to s.
17 422.523 (4) (b) which has not been credited against settlement fees.

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

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

BILL

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

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

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

6 (d) The amount held in reserve.

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

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

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

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

13 4. The calculation of a settlement fee.

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

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

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

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

BILL

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

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

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

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

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

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

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

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

BILL

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

5 (L) Make a representation of any of the following:

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

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

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

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

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

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

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

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

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

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

BILL

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

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

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

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

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

11 1. The administrator, upon proper demand.

12 2. A creditor of the individual, to the extent necessary to secure the cooperation
13 of the creditor in a plan.

14 3. The extent necessary to administer the plan.

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

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

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

24 **(3)** This subchapter does not authorize any person to engage in the practice of
25 law.

BILL

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

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

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

17 **422.530 Advertising.** A provider that advertises debt–management services
18 shall disclose, in an easily comprehensible manner, the information specified in s.
19 422.517 (4) (c) and (d).

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

BILL

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

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

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

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

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

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

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

BILL

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

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

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

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

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

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

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

BILL

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

2 1. Enforce an order.

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

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

5 **(2)** Subject to adjustment of the dollar amount pursuant to s. 422.532 (6), if a
6 person violates or knowingly authorizes, directs, or aids in the violation of a final
7 order issued under sub. (1) (a) or (b), the administrator may recover in a civil action
8 a forfeiture not exceeding \$20,000 for each violation.

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

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

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

19 **422.534 Suspension, revocation, or nonrenewal of registration. (1)** In
20 this section, "insolvent" means any of the following:

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

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

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

25 101 to 1532.

BILL

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

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

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

7 (c) The provider is insolvent.

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

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

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

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

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

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

BILL

1 or deposited by or on behalf of the individual pursuant to the agreement, except
2 amounts paid to creditors, in addition to the recovery under sub. (3) (c) and (d).

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

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

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

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

16 (c) Punitive damages.

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

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

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

24 **(6)** A provider is not liable under this section for a violation of this subchapter
25 if the provider proves that the violation was not intentional and resulted from a

BILL

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

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

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

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

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

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

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

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

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

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

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

BILL

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

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

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

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

15 **SECTION 8. Initial applicability.**

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

19 **SECTION 9. Effective date.**

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

22 **(END)**