

2007 BILL

1 **AN ACT** *to renumber* 218.02 (9) and 218.02 (10); *to amend* chapter 218 (title),
2 220.02 (2) (b), 220.02 (3) and 422.501 (2) (b) 4.; and *to repeal and recreate*
3 subchapter II (title) of chapter 218 [precedes 218.02], 218.02 (title) and 218.02
4 (1) to (8) of the statutes; **relating to:** adopting the Uniform Debt-Management
5 Services 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 Division of Banking (division) of the Department of Financial Institutions regulates persons engaged in the business of prorating the income of a debtor to a debtor's creditors or assuming a debtor's obligations by purchasing the accounts of the debtor. Such a person must obtain a license as an adjustment service company from the division. The bill repeals this licensure requirement and adopts instead the Uniform Debt-Management Services Act, which was approved by the National Conference of Commissioners on Uniform State Laws in 2005.

Under the bill, with certain exceptions, a person may not provide debt-management services to a resident of this state unless the person obtains a license from the division. "Debt-management services" 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," which is defined as assents to repayment of debt on terms that are favorable to the individual.

A person is exempt from the licensure requirement if the person receives no compensation for providing debt-management services, but this exemption does not

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apply if the services are provided without charge for the purpose of evading the bill's requirements. Also exempt is a person who provides debt-management services to an individual whom the person has no reason to believe resides in this state at the time the person agrees to provide the services. In addition, the bill exempts all of the following persons:

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

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

1. Provide evidence that the applicant has insurance of \$250,000 against risks of dishonesty, fraud, theft, and other misconduct on the part of directors, employees, and agents.
2. If the applicant is a nonprofit or tax-exempt entity, provide evidence of such status.
3. If the applicant is an out-of-state corporation or limited liability company, provide a certificate of good standing issued by the other state.
4. Provide specified business, financial, employee, and accreditation information.
5. Provide evidence that the applicant's counselors obtain certification as counselors within 12 months of employment.
6. Describe criminal convictions and certain governmental and other actions, charges, suits, or claims regarding the applicant.
7. Submit the results of criminal background checks on the applicant's officers.
8. Describe the applicant's educational programs, financial analyses, and initial budget plans for individuals whom the applicant counsels.
9. Provide copies of the agreements for providing debt-management services that the applicant will use in this state.
10. Provide the applicant's fee schedule.

In addition, an applicant must file a surety bond for the purpose of protecting individuals for whom the applicant agrees to provide debt-management services. Also, if the applicant intends to maintain trust accounts for paying creditors on behalf of individuals to whom the applicant provides debt-management services, the applicant must submit the results of criminal background checks on all employees and agents who will have access to the trust accounts.

The division must issue a license to an applicant, unless any of the following apply: 1) the application is incomplete or contains erroneous information; 2) an officer, director, or owner of the applicant has defaulted in the payment of money collected for others or has been convicted of a crime, or suffered a civil judgment,

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involving dishonesty or the violation of federal or state securities laws; or 3) the division makes a specified finding regarding the applicant's inability to operate its business in compliance with the bill's requirements. In addition, if the applicant is a nonprofit or tax-exempt entity, the division must deny the application if the applicant's board of directors is not independent of its employees and agents. The bill includes tests for the division to determine independence. The bill also requires the division to deny a license if the applicant is liable for delinquent taxes or is delinquent in making court-ordered child or family support payments.

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

The bill creates other requirements, including the following:

1. The bill imposes deadlines on the division's consideration of an application for a license.
2. The bill requires licensed persons to renew their licenses annually.
3. The bill allows a person licensed or registered in another state to apply for a license in this state by submitting the other state's application and license or registration.
4. The bill allows the division to suspend or revoke a license if a person is insolvent, violates the bill's requirements, or is liable for delinquent taxes or is delinquent in making court-ordered child or family support payments.
5. The bill allows the division to investigate and enforce the bill's requirements, including by ordering persons to take corrective action or by obtaining civil forfeitures.
6. The bill allows an individual to void a debt-management service agreement with a licensed person who violates the bill's requirements and allows an individual who is harmed by a licensed person's violation of the bill's requirements to bring a civil action against the licensed person.

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:

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1 d. An aunt, uncle, great aunt, great uncle, first cousin, niece, nephew,
2 grandniece, or grandnephew, whether related by the whole or the half blood or
3 adoption, or the spouse of any of them.

4 e. Any other individual occupying the residence of the individual.

5 2. “Affiliate,” with respect to an entity, means any of the following:

6 a. A person that directly or indirectly controls, is controlled by, or is under
7 common control with the entity.

8 b. An officer of, or an individual performing similar functions with respect to,
9 the entity.

10 c. A director of, or an individual performing similar functions with respect to,
11 the entity.

12 d. Subject to adjustment of the dollar amount pursuant to sub. (31) (f), a person
13 that receives or received more than \$25,000 from the entity in either the current year
14 or the preceding year or a person that owns more than 10 percent of, or an individual
15 who is employed by or is a director of, a person that receives or received more than
16 \$25,000 from the entity in either the current year or the preceding year.

17 e. An officer or director of, or an individual performing similar functions with
18 respect to, a person described in subd. 2. a.

19 f. The spouse of, or an individual occupying the residence of, an individual
20 described in subd. 2. a. to e.

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

23 (b) “Agreement” means an agreement between a provider and an individual for
24 the performance of debt-management services.

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

3 (d) “Certified counselor” means an individual certified by a training program
4 or certifying organization, approved by the division, that authenticates the
5 competence of individuals providing education and assistance to other individuals
6 in connection with debt–management services.

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

9 (f) “Day” means calendar day.

10 (g) “Debt–management services” means services as an intermediary between
11 an individual and one or more creditors of the individual for the purpose of obtaining
12 concessions.

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

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

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

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

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

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1 (m) “Plan” means a program or strategy in which a provider furnishes debt
2 management services to an individual and which includes a schedule of payments
3 to be made by or on behalf of the individual and used to pay debts owed by the
4 individual.

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

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

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

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

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

- 16 1. To execute or adopt a tangible symbol.
- 17 2. To attach to or logically associate with the record an electronic sound, symbol,
18 or process.

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

22 (t) “Trust account” means an account held by a provider that is all of the
23 following:

- 24 1. Established in an insured financial institution.
- 25 2. Separate from other accounts of the provider or its designee.

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1 3. Designated as a trust account or other account designated to indicate that
2 the money in the account is not the money of the provider or its designee.

3 4. Used to hold money of one or more individuals for disbursement to creditors
4 of the individuals.

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

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

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

13 2. Receives no compensation for debt–management services from or on behalf
14 of the individuals to whom it provides the services or from their creditors, unless the
15 services are provided free of charge with the intent of evading the provisions of this
16 section.

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

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

22 2. A financial institution.

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

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1 4. A title insurer, escrow company, or other person, that provides bill-paying
2 services, if the provision of debt-management services is incidental to the
3 bill-paying services.

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

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

11 **(4) LICENSE REQUIRED.** (a) Except as otherwise provided in par. (b), a provider
12 may not provide debt-management services to an individual who it reasonably
13 should know resides in this state at the time it agrees to provide the services, unless
14 the provider is licensed under this section.

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

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

19 **(5) APPLICATION FOR LICENSE: FORM, FEE, AND ACCOMPANYING DOCUMENTS.** (a) An
20 application for licensure as a provider must be in a form prescribed by the division.

21 (b) Subject to adjustment of dollar amounts pursuant to sub. (31) (f), an
22 application for licensure as a provider must be accompanied by all of the following:

23 1. The fee established by the division.

24 2. The bond required by sub. (13).

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1 3. Identification of all trust accounts required by sub. (21) and an irrevocable
2 consent authorizing the division to review and examine the trust accounts.

3 4. Evidence of insurance in the amount of \$250,000 that satisfies all of the
4 following:

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

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

10 c. The insurance has no deductible.

11 d. The insurance is payable to the applicant, the individuals who have
12 agreements with the applicant, and this state, as their interests may appear.

13 e. The insurance is not subject to cancellation by the applicant without the
14 approval of the division.

15 5. If applicable, proof of compliance with s. 178.45, 180.1501, 181.1501, or
16 183.1002.

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

20 7. If the applicant is a corporation or limited liability company organized under
21 the laws of another state, a certificate of good standing issued by the other state.

22 **(6)** APPLICATION FOR LICENSE: REQUIRED INFORMATION. An application for
23 licensure must be signed and verified under oath or affirmation and include all of the
24 following:

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1 (a) The applicant’s name, principal business address and telephone number,
2 and all other business addresses in this state, electronic-mail addresses, and
3 Internet Web site addresses.

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

5 (c) The address of each location in this state at which the applicant will provide
6 debt-management services or a statement that the applicant will have no such
7 location.

8 (d) The title, name, and home address of each officer and director of the
9 applicant; the percentage ownership, if any, of the applicant held by each officer and
10 director; and the name and home address of each person that owns at least 10 percent
11 of the applicant.

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

16 (f) A statement describing all of the following, to the extent it is known or should
17 be known by the applicant, in any jurisdiction against the applicant, any of its
18 officers, directors, owners, or agents, or any person who is authorized to have access
19 to the trust account required by sub. (21):

20 1. All criminal convictions.

21 2. All actions by governmental agencies, and all judgments, relevant to the
22 provision of debt-management services.

23 3. All pending charges, actions, suits, and claims, relevant to the provision of
24 debt-management services.

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

5 (h) Evidence of accreditation by an independent accrediting organization
6 approved by the division.

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

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

12 (k) A description of the applicant's financial analysis and initial budget plan,
13 including any form or electronic model, used to evaluate the financial condition of
14 individuals.

15 (L) A copy of each form of agreement that the applicant will use with
16 individuals who reside in this state.

17 (m) The schedule of fees and charges that the applicant will use with
18 individuals who reside in this state.

19 (n) At the applicant's expense, the results of a criminal-records check,
20 including fingerprints, conducted within the immediately preceding 12 months,
21 covering all of the following:

22 1. Every officer of the applicant.

23 2. Every employee or agent of the applicant who is authorized to have access
24 to the trust account required by sub. (21).

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

3 (p) 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 1. Any affiliate of the applicant.

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

8 (q) 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 (r) The identity of each director who is an affiliate, as defined in sub. (2) (a) 1.
13 or 2. a., 2. b., 2. d., 2. e., or 2. f., of the applicant.

14 (s) Any other information that the division reasonably requires to perform the
15 division's duties under sub. (9).

16 **(7) APPLICATION FOR LICENSE: OBLIGATION TO UPDATE INFORMATION.** An applicant
17 or licensed provider shall notify the division within 10 days after a change in the
18 information specified in sub. (5) (b) 4. or 6. or (6) (a), (c), (f), (L), or (m).

19 **(8) APPLICATION FOR LICENSE: PUBLIC INFORMATION.** Except for the information
20 required by sub. (6) (g), (n), and (q) and the addresses required by sub. (6) (d), which
21 the division shall withhold from inspection and copying under s. 19.35 (1), the
22 division shall make all other information in an application for licensure as a provider
23 available to the public.

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1 **(9) LICENSE: ISSUANCE OR DENIAL.** (a) Except as otherwise provided in pars. (b)
2 and (c), the division shall issue a license as a provider to a person that complies with
3 subs. (5) and (6).

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

5 1. The application is incomplete or contains erroneous information.

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

9 3. The applicant or any of its officers, directors, or owners has defaulted in the
10 payment of money collected for others.

11 4. The division finds that the financial responsibility, experience, character, or
12 general fitness of the applicant or its owners, directors, employees, or agents does not
13 warrant belief that the business will be operated in compliance with this section.

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

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

16 2. The application is not accompanied by a bond under sub. (13).

17 3. With respect to an applicant that is organized as a not-for-profit entity or
18 has obtained tax-exempt status under the Internal Revenue Code, 26 USC 501, the
19 applicant's board of directors is not independent of the applicant's employees and
20 agents.

21 4. The applicant has been certified under s. 73.0301 by the department of
22 revenue as being liable for delinquent taxes.

23 5. If the applicant is an individual, the applicant has failed to comply, after
24 appropriate notice, with a subpoena or warrant issued by the department of
25 workforce development or a county child support agency under s. 59.53 (5) and

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1 related to paternity or child support proceedings and is delinquent in making
2 court-ordered payments of child or family support, maintenance, birth expenses,
3 medical expenses or other expenses related to the support of a child or former spouse,
4 as provided in a memorandum of understanding entered into under s. 49.857.

5 (d) Subject to adjustment of the dollar amount pursuant to sub. (31) (f), a board
6 of directors is not independent for purposes of par. (c) if any of the following apply:

7 1. More than one-fourth of its members are affiliates of the applicant, as
8 defined in sub. (2) (a) 1. or 2. a., 2. b., 2. d., 2. e., or 2. f.

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

13 **(10) LICENSE: TIMING.** (a) The division shall approve or deny an initial license
14 as a provider within 120 days after an application is filed. In connection with a
15 request pursuant to sub. (6) (s) for additional information, the division may extend
16 the 120-day period for not more than 60 days. Within 7 days after denying an
17 application, the division, in a record, shall inform the applicant of the reasons for the
18 denial.

19 (b) If the division denies an application for licensure as a provider or does not
20 act on an application within the time prescribed in sub. (1), the applicant may appeal
21 and request a hearing pursuant to subch. III of ch. 227.

22 (c) Subject to subs. (11) (d) and (33), a license as a provider is valid for one year.

23 **(11) RENEWAL OF LICENSE.** (a) A provider must obtain a renewal of its license
24 annually.

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1 (b) An application for renewal of licensure as a provider must be in a form
2 prescribed by the division, signed and verified under oath or affirmation, and must
3 satisfy all of the following:

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

5 2. Be accompanied by the fee established by the division and the bond required
6 by sub. (13).

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

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

13 5. Supply evidence of insurance in an amount equal to the larger of \$250,000
14 or the highest daily balance in the trust account required by sub. (21) during the 6
15 month period immediately preceding the application and that satisfies all of the
16 following:

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

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

22 c. The insurance has no deductible.

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

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

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

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

10 8. Provide any other information that the division reasonably requires to
11 perform the division's duties under this subsection.

12 (c) Except for the information required by sub. (6) (g), (n), and (q) and the
13 addresses required by sub. (6) (d), the division shall make the information in an
14 application for renewal of licensure as a provider available to the public.

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

18 (e) If the division denies an application for renewal of licensure as a provider,
19 the applicant, within 30 days after receiving notice of the denial, may appeal and
20 request a hearing pursuant to subch. III of ch. 227. Subject to sub. (33), while the
21 appeal is pending the applicant shall continue to provide debt-management services
22 to individuals with whom it has agreements. If the denial is affirmed, subject to the
23 division's order and sub. (33), the applicant shall continue to provide
24 debt-management services to individuals with whom it has agreements until, with
25 the approval of the division, it transfers the agreements to another licensed provider

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1 or returns to the individuals all unexpended money that is under the applicant's
2 control.

3 **(12) LICENSE OR REGISTRATION IN ANOTHER STATE.** If a provider holds a license or
4 certificate of registration in another state authorizing it to provide
5 debt-management services, the provider may submit a copy of that license or
6 certificate and the application for it instead of an application in the form prescribed
7 by sub. (5) (a), (6), or (11) (b). The division shall accept the application and the license
8 or certificate from the other state as an application for licensure as a provider or for
9 renewal of licensure as a provider, as appropriate, in this state if all of the following
10 apply:

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

14 (b) The applicant provides the information required by sub. (6) (a), (c), (j), (L),
15 and (m).

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

19 **(13) BOND REQUIRED.** (a) A provider that is required to be licensed under this
20 section shall file a surety bond with the division, which must satisfy all of the
21 following:

22 1. Be in effect during the period of licensure and for 2 years after the provider
23 ceases providing debt-management services to individuals in this state.

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1 2. Run to this state for the benefit of this state and of individuals who reside
2 in this state when they agree to receive debt-management services from the
3 provider, as their interests may appear.

4 (b) Subject to adjustment of the dollar amount pursuant to sub. (31) (f), a surety
5 bond filed pursuant to par. (a) must satisfy all of the following:

6 1. Be in the amount of \$50,000 or other larger or smaller amount that the
7 division determines is warranted by the financial condition and business experience
8 of the provider, the history of the provider in performing debt-management services,
9 the risk to individuals, and any other factor the division considers appropriate.

10 2. Be issued by a bonding, surety, or insurance company authorized to do
11 business in this state and rated at least “A” by a nationally recognized rating
12 organization.

13 3. Have payment conditioned upon noncompliance of the provider or its agent
14 with this section.

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

22 (d) The division or an individual may obtain satisfaction out of the surety bond
23 procured pursuant to this subsection if any of the following apply:

24 1. The division assesses expenses under sub. (31) (b) 1., issues a final order
25 under sub. (32) (a) 2., or recovers a final judgment under sub. (32) (a) 4. or 5. or (d).

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1 2. An individual recovers a final judgment pursuant to sub. (34) (a), (b), or (c)
2 1., 2., or 4.

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

7 1. To satisfaction of a final order or judgment under sub. (32) (a) 2., 4., or 5. or
8 (d).

9 2. To final judgments recovered by individuals pursuant to sub. (34) (a), (b), or
10 (c) 1., 2., or 4., pro rata.

11 3. To claims of individuals established to the satisfaction of the division, pro
12 rata.

13 4. If a final order or judgment is issued under sub. (32) (a), to the expenses
14 charged pursuant to sub. (31) (b) 1.

15 **(14) REQUIREMENT OF GOOD FAITH.** A provider shall act in good faith in all
16 matters under this section.

17 **(15) CUSTOMER SERVICE.** A provider that is required to be licensed under this
18 section shall maintain a toll-free communication system, staffed at a level that
19 reasonably permits an individual to speak to a certified counselor or
20 customer-service representative, as appropriate, during ordinary business hours.

21 **(16) PREREQUISITES FOR PROVIDING DEBT-MANAGEMENT SERVICES.** (a) Before
22 providing debt-management services, a licensed provider shall give the individual
23 an itemized list of goods and services and the charges for each. The list must be clear
24 and conspicuous, be in a record the individual may keep whether or not the
25 individual assents to an agreement, and describe all of the following:

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1 b. The provider has made a determination, based on the provider's analysis of
2 the information provided by the individual and otherwise available to it, that the
3 plan is suitable for the individual and the individual will be able to meet the payment
4 obligations under the plan.

5 c. The provider believes that each creditor of the individual listed as a
6 participating creditor in the plan will accept payment of the individual's debts as
7 provided in the plan.

8 (c) Before an individual assents to an agreement to engage in a plan, a provider
9 shall do all of the following:

10 1. Provide the individual with a copy of the analysis and plan required by par.
11 (b) in a record that identifies the provider and that the individual may keep whether
12 or not the individual assents to the agreement.

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

16 3. With respect to all creditors identified by the individual or otherwise known
17 by the provider to be creditors of the individual, provide the individual with a list of
18 all of the following:

19 a. Creditors that the provider expects to participate in the plan and grant
20 concessions.

21 b. Creditors that the provider expects to participate in the plan but not grant
22 concessions.

23 c. Creditors that the provider expects not to participate in the plan.

24 d. All other creditors.

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

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

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

8 3. That establishment of a plan may adversely affect the individual's credit
9 rating or credit scores.

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

12 5. Unless it is not true, that the provider may receive compensation from the
13 creditors of the individual.

14 6. That, unless the individual is insolvent, if a creditor settles for less than the
15 full amount of the debt, the plan may result in the creation of taxable income to the
16 individual, even though the individual does not receive any money.

17 (e) If a provider may receive payments from an individual's creditors and the
18 plan contemplates that the individual's creditors will reduce finance charges or fees
19 for late payment, default, or delinquency, the provider may comply with par. (d) by
20 providing the following disclosure, surrounded by black lines:

21 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

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

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

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

2

3 *Name and business address of provider*

4 (f) If a provider will not receive payments from an individual’s creditors and the
5 plan contemplates that the individual’s creditors will reduce finance charges or fees
6 for late payment, default, or delinquency, a provider may comply with par. (d) by
7 providing the following disclosure, surrounded by black lines:

8 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

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

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

13

14 *Name and business address of provider*

15 (g) If a plan contemplates that creditors will settle debts for less than the full
16 principal amount of debt owed, a provider may comply with par. (d) by providing the
17 following disclosure, surrounded by black lines:

18 **IMPORTANT INFORMATION FOR YOU TO CONSIDER**

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

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

- 22 • hurt your credit rating or credit scores;
- 23 • lead your creditors to increase finance and other charges; and
- 24 • lead your creditors to undertake activity, including lawsuits, to collect the
- 25 debts.

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

3
4

Name and business address of provider

5 **(17)** COMMUNICATION BY ELECTRONIC OR OTHER MEANS. (a) In this subsection:

6 1. “Federal act” means the Electronic Signatures in Global and National
7 Commerce Act, 15 USC 7001 to 7031.

8 2. “Consumer” means an individual who seeks or obtains goods or services that
9 are used primarily for personal, family, or household purposes.

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

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

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

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

23 (f) If a provider is requested, before the expiration of 90 days after a plan is
24 completed or terminated, to send a written copy of the materials required by subs.
25 (16) (c) and (d), (18), and (26), the provider shall send them at no charge within 3

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1 business days after the request, but the provider need not comply with a request
2 more than once per calendar month or if it reasonably believes the request is made
3 for purposes of harassment. If a request is made more than 90 days after a plan is
4 completed or terminated, the provider shall send within a reasonable time a written
5 copy of the materials requested.

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

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

10 2. Its principal business address, telephone number, and electronic-mail
11 address, if any.

12 3. The names of its principal officers.

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

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

22 (a) 6. g.

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

25 1. Be in a record.

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- 1 2. Be dated and signed by the provider and 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. 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 d. If a plan provides for regular periodic payments to creditors, the plan must
- 14 disclose each creditor of the individual to which payment will be made, the amount
- 15 owed to each creditor, and any concessions the provider reasonably believes each
- 16 creditor will offer; and the schedule of expected payments to each creditor, including
- 17 the amount of each payment and the date on which it will be made.
- 18 e. Each creditor that the provider believes will not participate in the plan and
- 19 to which the provider will not direct payment.
- 20 f. How the provider will comply with its obligations under sub. (26) (a).
- 21 g. That the provider may terminate the agreement for good cause, upon return
- 22 of unexpended money of the individual.
- 23 h. That the individual may cancel the agreement as provided in sub. (19).
- 24 i. That the individual may contact the division with any questions or
- 25 complaints regarding the provider.

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1 j. The address, telephone number, and Internet address or Web site of the
2 division.

3 (b) For purposes of par. (a) 5., delivery of an electronic record occurs when it is
4 made available in a format in which the individual may retrieve, save, and print it
5 and the individual is notified that it is available.

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

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

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

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

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

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

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

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1 3. 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 a. The identity of the creditor.

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

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

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

16 2. 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 section.

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

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

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

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

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

6 **(19) CANCELLATION OF AGREEMENT; WAIVER.** (a) An individual may cancel an
7 agreement before midnight of the 3rd business day after the individual assents to it,
8 unless the agreement does not comply with par. (b) or sub. (18) or (27), in which event
9 the individual may cancel the agreement within 30 days after the individual assents
10 to it. To exercise the right to cancel, the individual must give notice in a record to the
11 provider. Notice by mail is given when mailed.

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

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

19

E-mail address of provider

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

22 at

Name of provider

Address of provider

24 before midnight on:

Date

25

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

24 **(21)** TRUST ACCOUNT. (a) All money paid to a provider by or on behalf of an
25 individual pursuant to a plan for distribution to creditors is held in trust. Within 2

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

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

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

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

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

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1 (f) If a provider has established a trust account pursuant to par. (a), 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 (g) 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 division by a method approved by the division. Unless the division by rule
9 provides otherwise, within 5 days thereafter, the provider shall give notice to the
10 division describing the remedial action taken or to be taken.

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

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

20 **(22) FEES AND OTHER CHARGES.** (a) A provider may not impose directly or
21 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
23 subsection.

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

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

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

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

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

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

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

22 a. Subject to sub. sub. (18) (d), a fee for consultation, obtaining a credit report,
23 setting up an account, and the like, in an amount not exceeding the lesser of \$400 and
24 4 percent of the debt in the plan at the inception of the plan.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 19 1. Any money of the individual held in trust for the benefit of the individual.
- 20 2. Sixty-five percent of any portion of the set-up fee received pursuant to sub.
21 (22) (d) 2. which has not been credited against settlement fees.

22 **(26) PERIODIC REPORTS AND RETENTION OF RECORDS.** (a) A provider shall provide
23 the accounting required by par. (b) upon cancellation or termination of an agreement.
24 Before cancellation or termination of any agreement, a provider shall also provide
25 the accounting required by par. (b) at least once each month and within 5 business

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1 days after a request by an individual, but the provider need not comply with more
2 than one request in any calendar month.

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

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

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

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

10 4. The amount held in reserve.

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

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

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

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

17 d. The calculation of a settlement fee.

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

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

25 1. Misappropriate or misapply money held in trust.

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

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

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

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

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

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

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

23 9. Structure a plan in a manner that would result in a negative amortization
24 of any of an individual's debts, unless a creditor that is owed a negatively amortizing

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1 debt agrees to refund or waive the finance charge upon payment of the principal
2 amount of the debt.

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

5 11. Settle a debt or lead an individual to believe that a payment to a creditor
6 is in settlement of a debt to the creditor unless, at the time of settlement, the
7 individual receives a certification by the creditor that the payment is in full
8 settlement of the debt.

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

10 a. That the provider will furnish money to pay bills or prevent attachments.

11 b. That payment of a certain amount will permit satisfaction of a certain
12 amount or range of indebtedness.

13 c. That participation in a plan will or may prevent litigation, garnishment,
14 attachment, repossession, foreclosure, eviction, or loss of employment.

15 13. Misrepresent that it is authorized or competent to furnish legal advice or
16 perform legal services.

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

21 15. Take a confession of judgment or power of attorney to confess judgment
22 against an individual.

23 16. Employ an unfair, unconscionable, or deceptive act or practice, including
24 the knowing omission of any material information.

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

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

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

5 a. A promissory note or other negotiable instrument other than a check or a
6 demand draft.

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

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

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

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

15 a. The division, upon proper demand.

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

18 c. The extent necessary to administer the plan.

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

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

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

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

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

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

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

21 **(29)** ADVERTISING. A provider that advertises debt–management services shall
22 disclose, in an easily comprehensible manner, the information specified in sub. (16)
23 (d) 3. and 4.

24 **(30)** LIABILITY FOR THE CONDUCT OF OTHER PERSONS. If a provider delegates any
25 of its duties or obligations under an agreement or this section to another person,

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1 including an independent contractor, the provider is liable for conduct of the person
2 which, if done by the provider, would violate the agreement or this section.

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

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

14 1. Charge the person the reasonable costs necessarily incurred to conduct the
15 examination.

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

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

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

24 (d) The division may enter into cooperative arrangements with any other
25 federal or state agency having authority over providers and may exchange with any

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1 of those agencies information about a provider, including information obtained
2 during an examination of the provider.

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

5 (f) The division, by rule, shall adopt dollar amounts instead of those specified
6 in subs. (2), (5), (9), (13), (22), (32), and (34) to reflect inflation, as measured by the
7 United States bureau of labor statistics consumer price index for all urban
8 consumers or, if that index is not available, another index adopted by rule by the
9 division. The division shall adopt a base year and adjust the dollar amounts,
10 effective on July 1 of each year, if the change in the index from the base year, as of
11 December 31 of the preceding year, is at least 10 percent. The dollar amount must
12 be rounded to the nearest \$100, except that the amounts in sub. (22) must be rounded
13 to the nearest dollar.

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

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

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

20 2. 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 3. Subject to adjustment of the dollar amount pursuant to sub. (31) (f),
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.

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

2 a. Enforce an order.

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

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

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

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

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

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

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

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

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

23 3. Being insolvent within the meaning of the federal bankruptcy law, 11 USC
24 101 to 1532.

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

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

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

7 3. The provider is insolvent.

8 4. The provider or an employee, affiliate, or agent of the provider has refused
9 to permit the division to make an examination authorized by this section, failed to
10 comply with sub. (31) (b) 2. within 15 days after request, or made a material
11 misrepresentation or omission in complying with sub. (31) (b) 2.

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

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

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

19 (d) In accordance with a memorandum of understanding entered into under s.
20 49.857, the division shall restrict or suspend a license if the licensee is an individual
21 who fails to comply, after appropriate notice, with a subpoena or warrant issued by
22 the department of workforce development or a county child support agency under s.
23 59.53 (5) and related to paternity or child support proceedings or who is delinquent
24 in making court-ordered payments of child or family support, maintenance, birth

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1 expenses, medical expenses or other expenses related to the support of a child or
2 former spouse.

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

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

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

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

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

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

24 1. Compensatory damages for injury, including noneconomic injury, caused by
25 the violation.

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1 2. Except as otherwise provided in par. (d) and subject to adjustment of the
2 dollar amount pursuant to sub. (31) (f), with respect to a violation of sub. (16), (18),
3 (19), (20), (21), (22), (23), (26), or (27) (a), (b), or (d), the greater of the amount
4 recoverable under subd. 1. or \$5,000.

5 3. Punitive damages.

6 4. Reasonable attorney's fees and costs.

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

9 (e) In addition to the remedy available under par. (c), if a provider violates an
10 individual's rights under sub. (19), the individual may recover in a civil action all
11 money paid or deposited by or on behalf of the individual pursuant to the agreement,
12 except for amounts paid to creditors.

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

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

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

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

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

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

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

9 3. The provider's last disbursement to a creditor of the individual.

10 4. The provider's last accounting to the individual pursuant to sub. (26) (a).

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

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

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

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

23 **(38)** Relation to Electronic Signatures in Global and National Commerce Act.
24 This section modifies, limits, and supersedes the federal Electronic Signatures in
25 Global and National Commerce Act (15 USC 7001 to 7031) but does not modify, limit,

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1 or supersede 15 USC 7001 (c) or authorize electronic delivery of any of the notices
2 described in 15 USC 7003 (b).

3 **SECTION 5.** 218.02 (9) of the statutes is renumbered 218.02 (39).

4 **SECTION 6.** 218.02 (10) of the statutes is renumbered 218.02 (40).

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

6 220.02 (2) (b) The lending of money under s. 138.09 or those relating to finance
7 companies, motor vehicle dealers, ~~adjustment service companies~~ debt-management
8 service providers, community currency exchanges, and collection agencies under ch.
9 218.

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

11 220.02 (3) It is the intent of sub. (2) to give the division jurisdiction to enforce
12 and carry out all laws relating to banks or banking in this state, including those
13 relating to state banks, savings banks, savings and loan associations, and trust
14 company banks, and also all laws relating to small loan companies or other loan
15 companies or agencies, finance companies, insurance premium finance companies,
16 motor vehicle dealers, ~~adjustment service companies~~ debt-management service
17 providers, community currency exchanges, mortgage bankers, loan originators,
18 mortgage brokers, and collection agencies and those relating to sellers of checks
19 under ch. 217, whether doing business as corporations, individuals, or otherwise, but
20 to exclude laws relating to credit unions.

21 **SECTION 9.** 422.501 (2) (b) 4. of the statutes is amended to read:

22 422.501 (2) (b) 4. A person licensed as ~~an adjustment service company~~ a
23 debt-management service provider under s. 218.02 if the person is acting within the
24 course and scope of that license.

25 **SECTION 10. Initial applicability.**

