

STATE OF RHODE ISLAND

IN GENERAL ASSEMBLY

JANUARY SESSION, A.D. 2006

A N A C T

RELATING TO FINANCIAL INSTITUTIONS

Introduced By: Representative Arthur J. Corvese

Date Introduced: February 16, 2006

Referred To: House Corporations

It is enacted by the General Assembly as follows:

1 SECTION 1. Sections 19-14-1, 19-14-2, 19-14-3, 19-14-4 and 19-14-6 of the General
2 Laws in Chapter 19-14 entitled "Licensed Activities" are hereby amended to read as follows:

3 **19-14-1. Definitions.** -- For purposes of this chapter and chapters 14.1, 14.2, 14.3, 14.4,
4 14.6 and 14.7 of this title:

5 (1) "Check" means any check, draft, money order, personal money order, or other
6 instrument for the transmission or payment of money. For the purposes of check cashing,
7 travelers checks or foreign denomination instruments shall not be considered checks. "Check
8 cashing" means providing currency for checks;

9 (2) "Deliver" means to deliver a check to the first person who in payment for the check
10 makes or purports to make a remittance of or against the face amount of the check, whether or not
11 the deliverer also charges a fee in addition to the face amount, and whether or not the deliverer
12 signs the check;

13 (3) "Electronic money transfer" means receiving money for transmission within the
14 United States or to locations abroad by any means including, but not limited to, wire, facsimile or
15 other electronic transfer system;

16 (4) (i) "Lender" means any person who makes or funds a loan within this state with the
17 person's own funds, regardless of whether the person is the nominal mortgagee or creditor on the
18 instrument evidencing the loan;

19 (ii) A loan is made or funded within this state if any of the following conditions exist:

1 (A) The loan is secured by real property located in this state;

2 (B) An application for a loan is taken by an employee, agent, or representative of the
3 lender within this state;

4 (C) The loan closes within this state; or

5 (D) The loan solicitation is done by an individual with a physical presence in this state.

6 (iii) The term "lender" shall also include any person engaged in a transaction whereby
7 the person makes or funds a loan within this state using the proceeds of an advance under a line
8 of credit over which proceeds the person has dominion and control and for the repayment of
9 which the person is unconditionally liable. This transaction is not a table funding transaction. A
10 person is deemed to have dominion and control over the proceeds of an advance under a line of
11 credit used to fund a loan regardless of whether:

12 (A) The person may, contemporaneously with or shortly following the funding of the
13 loan, assign or deliver to the line of credit lender one or more loans funded by the proceeds of an
14 advance to the person under the line of credit;

15 (B) The proceeds of an advance are delivered directly to the settlement agent by the line
16 of credit lender, unless the settlement agent is the agent of the line of credit lender;

17 (C) One or more loans funded by the proceeds of an advance under the line of credit is
18 purchased by the line of credit lender; or

19 (D) Under the circumstances as set forth in regulations adopted by the director or the
20 director's designee pursuant to this chapter;

21 (5) "Licensee" means an entity licensed under this chapter;

22 (6) "Loan" means any advance of money or credit including, but not limited to:

23 (i) Loans secured by mortgages;

24 (ii) Insurance premium finance agreements;

25 (iii) The purchase or acquisition of retail installment contracts or advances to the holders
26 of those contracts;

27 (iv) Educational loans;

28 (v) Any other advance of money; or

29 (vi) Any transaction such as those commonly known as "pay day loans," "pay day
30 advances," or "deferred presentment loans," in which a cash advance is made to a customer in
31 exchange for the customer's personal check, or in exchange for the customer's authorization to
32 debit the customer's deposit account, and where the parties agree either that the check will not be
33 cashed or deposited, or that customer's deposit account will not be debited, until a designated
34 future date.

1 (7) "Loan broker" means any person who, for compensation or gain, or in the expectation
2 of compensation or gain, either directly or indirectly, solicits, processes, negotiates, places or sells
3 a loan within this state for others in the primary market, or offers to do so. A loan broker shall
4 also mean any person who is the nominal mortgagee or creditor in a table funding transaction. A
5 loan is brokered within this state if any of the following conditions exist:

6 (i) The loan is secured by real property located in this state;

7 (ii) An application for a loan is taken by an employee, agent or representative of the loan
8 broker within this state;

9 (iii) The loan closes within this state; or

10 (iv) The loan solicitation is done by an individual with a physical presence in this state.

11 (8) "Personal money order" means any instrument for the transmission or payment of
12 money in relation to which the purchaser or remitter appoints or purports to appoint the seller as
13 his or her agent for the receipt, transmission, or handling of money, whether the instrument is
14 signed by the seller or by the purchaser or remitter or some other person;

15 (9) "Primary market" means the market in which loans are made to borrowers by lenders,
16 whether or not through a loan broker or other conduit;

17 (10) "Principal owner" means any person who owns, controls, votes or has a beneficial
18 interest in, directly or indirectly, ten percent (10%) or more of the outstanding capital stock of a
19 licensee;

20 (11) "Sell" means to sell, to issue, or to deliver a check;

21 (12) "Small loan" means a loan of less than five thousand dollars (\$5,000), not secured
22 by real estate, made pursuant to the provisions of chapter 14.2 of this title;

23 (13) "Small loan lender" means a lender engaged in the business of making small loans
24 within this state;

25 (14) "Table funding transaction" means a transaction in which there is a
26 contemporaneous advance of funds by a lender and an assignment by the mortgagee or creditor of
27 the loan to the lender;

28 (15) "Check casher" means a person or entity that, for compensation, engages, in whole
29 or in part, in the business of cashing checks;

30 (16) "Deferred deposit transaction" means any transaction such as those commonly
31 known as "pay-day loans," "pay-day advances," or "deferred presentment loans" in which a cash
32 advance is made to a customer in exchange for the customer's personal check or in exchange for
33 the customer's authorization to debit the customer's deposit account and where the parties agree
34 either that the check will not be cashed or deposited, or that the customer's deposit account will

1 not be debited until a designated future date;

2 (17) "Insurance premium finance agreement" means an agreement by which an insured,
3 or prospective insured, promises to pay to an insurance premium finance company the amount
4 advanced or to be advanced, under the agreement to an insurer or to an insurance producer, in
5 payment of a premium or premiums on an insurance contract or contracts, together with interest
6 and a service charge, as authorized and limited by this title;

7 (18) "Insurance premium finance company" means a person engaged in the business of
8 making insurance premium finance agreements or acquiring insurance premium finance
9 agreements from other insurance premium finance companies;

10 (19) "Simple interest" means interest computed on the principal balance outstanding
11 immediately prior to a payment for the actual number of days between payments made on a loan
12 over the life of a loan;

13 ~~(20) "Credit counseling service" means a person or corporation that provides DMP~~
14 ~~service to consumers, usually for a fee, contribution, or other consideration;~~

15 ~~(21) "Debt Management plan (DMP)" means a program whereby money is received from~~
16 ~~a consumer by the credit counseling service for the purpose of distributing that money to one or~~
17 ~~more creditors of the consumer in full or partial payment of the consumer's obligation;~~

18 ~~(22)~~ (20) "Nonprofit organization" means a corporation qualifying as a 26 U.S.C. section
19 50(c)(3) nonprofit organization, in the operation of which no member, director, officer, partner,
20 employee, agent, or other affiliated person profits financially other than receiving reasonable
21 salaries if applicable, and which provides debt counseling services for individuals at no cost or a
22 cost not exceeding that required to defray bona fide expenses in order to provide the services; and

23 ~~(23) "Joint control agent" means any person engaged in the business of receiving money~~
24 ~~or other property for disbursement or use in payment of the cost of labor, material services, permits,~~
25 ~~fees, or other items of expense incurred in the construction of improvements upon real property.~~

26 **19-14-2. Licenses required.** -- No person shall engage within this state in the business
27 of: (1) making or funding loans or acting as a lender or small loan lender; (2) brokering loans or
28 acting as a loan broker; (3) selling checks for a fee or other consideration; (4) cashing checks for
29 a fee or other consideration which includes any premium charged for the sale of goods in excess
30 of the cash price of the goods; (5) providing electronic money transfers for a fee or other
31 consideration; or (6) providing ~~debt management plan(s)~~ debt management services without first
32 obtaining a license or registration from the director or the director's designee. The licensing
33 requirement for any person providing debt management plans shall apply to all persons, without
34 regard for state of incorporation or a physical presence in this state, who initiate or service debt

1 management plans for residents of this state. Special exemptions from licensing for each activity
2 are contained in other chapters in this title.

3 **19-14-3. Application for license.** -- (a) Application for a license shall be made in writing
4 under oath in a form to be provided by the director or the director's designee. The applicant at the
5 time of making application shall pay to the director or the director's designee the sum of one half
6 (1/2) of the annual license fee as a fee for investigating the application. If the application for
7 license is approved, the applicant shall pay a fee equal to the annual license fee as provided in this
8 chapter. The license shall be continuous and the license fee shall cover the period through March
9 31 of each year. Any application approved after January 1 of any given year shall pay one half
10 (1/2) of the annual license fee for the period ending March 31 of that year.

11 (b) ~~[RESERVED] Only a nonprofit organization may apply for a license to provide debt~~
12 ~~management plan(s) under this title. Any nonprofit organization desiring to obtain a license shall~~
13 ~~file with the department of business regulation an application in writing under oath providing the~~
14 ~~following information:~~

15 ~~-(1) Proof of nonprofit status as determined by being designated under the United States~~
16 ~~Internal Revenue Code as section 501(c)(3).~~

17 ~~-(2) Proof of a separate trust account with a federally insured financial institution for the~~
18 ~~handling of client funds.~~

19 ~~-(3) Proof of counselor certification through a bona fide third party certification provider~~
20 ~~that demonstrates the competence of counselors providing consumer assistance.~~

21 ~~-(4) Proof of a board of directors, a majority of which does not include individuals for~~
22 ~~whom such a position could pose a conflict with the mission of the organization, such as creditors~~
23 ~~and creditors' representatives, bankruptcy attorneys, and others who would have a direct stake in~~
24 ~~the outcome of the counseling process. The board must have a working majority that is not~~
25 ~~comprised of officers of the company or their relatives.~~

26 ~~-(5) Proof of agency accreditation provided by a bona fide third party accreditation body~~
27 ~~such as the council on accreditation or as approved by the director. Such accreditation shall~~
28 ~~include sector certification that insures compliance to industry standards and best practices and~~
29 ~~corporate governance.~~

30 ~~-(6) A copy of an annual audit by an independent certified public accountant, which such~~
31 ~~audit taking place within six (6) months of the close of the agency's fiscal year.~~

32 (c) ~~[RESERVED] The director shall require a background report prepared by an~~
33 ~~independent licensed private investigation firm for every applicant for a license to engage in the~~
34 ~~business of providing debt management plan(s), including said applicant's principal owners and~~

1 ~~officers. The cost of such report shall be borne by the applicant. The director may conduct an~~
2 ~~additional inquiry or investigation to determine the applicant's fitness to be licensed or continue~~
3 ~~to be licensed.~~

4 (d) Any license issued under the provisions of former section 5-66-2 shall remain in full
5 force and effect until its expiration and shall be subject to the provisions of this chapter.

6 **19-14-4. Annual fee.** -- (a) Each licensee shall pay an annual license fee as follows:

7 (1) Each small loan lender license and each branch certificate, the sum of five hundred
8 fifty dollars (\$550);

9 (2) Each loan broker license and each branch certificate, the sum of five hundred fifty
10 dollars (\$550);

11 (3) Each lender license and each branch certificate, the sum of one thousand one hundred
12 dollars (\$1,100);

13 (4) Each sale of checks license, the sum of three hundred dollars (\$300);

14 (5) Each check cashing license, the sum of three hundred dollars (\$300);

15 (6) Each electronic money transfer license, the sum of three hundred dollars (\$300); and

16 (7) Each ~~debt management plan license~~ [registration to provide debt-management](#)
17 [services](#), the sum of two hundred dollars (\$200).

18 (b) Any licensee who shall not pay the annual fee by March 31 of each year shall be
19 subject to a daily penalty of twenty-five dollars (\$25) per day, subject to a maximum of seven
20 hundred fifty dollars (\$750). The penalty shall be paid to the director to and for the use of the
21 state. The penalty may be waived for good cause by the director or the director's designee, upon
22 written request.

23 **19-14-6. Bond of applicant.** -- (a) An applicant for any license shall file with the director
24 or the director's designee a bond to be approved by him or her in which the applicant shall be the
25 obligor.

26 (b) The amount of the bond shall be as follows:

27 (1) Small loan lenders, the sum of ten thousand dollars (\$10,000);

28 (2) Loan brokers, the sum of ten thousand dollars (\$10,000);

29 (3) Lenders, the sum of twenty-five thousand dollars (\$25,000);

30 (4) Sale of checks and electronic money transfer licensees, the sum of fifty thousand
31 dollars (\$50,000) subject to a maximum of one hundred and fifty thousand dollars (\$150,000)
32 when aggregated with agent locations;

33 (5) Check cashing licensees who accept checks for collection with deferred payment, the
34 sum of fifty thousand dollars (\$50,000) subject to a maximum of one hundred and fifty thousand

1 dollars (\$150,000) when aggregated with agent locations;

2 (6) Foreign exchange licensees, the sum of ten thousand dollars (\$10,000);

3 (7) Each branch or agent location of a licensee, the sum of five thousand dollars
4 (\$5,000); or

5 (8) Each ~~debt management plan licensee, the sum equal to the amount of moneys~~
6 ~~received from debtors and on hand at any time, but not less than twenty thousand dollars~~
7 ~~(\$20,000) with one or more insurers, approved by the director, which does not exceed the sum in~~
8 ~~the aggregate~~ debt-management services registrant, the amount provided in section 19-14.7-13.

9 (c) The bond shall run to the state for the use of the state and of any person who may
10 have cause of action against the obligor of the bond under the provisions of this title. The bond
11 shall be conditioned upon the obligor faithfully conforming to and abiding by the provisions of
12 this title and of all rules and regulations lawfully made, and the obligor will pay to the state and to
13 any person any and all money that may become due or owing to the state or to the person from
14 the obligor under and by virtue of the provisions of this title.

15 (d) The provisions of subsection (b)(6) of this section shall not apply to any foreign
16 exchange business holding a valid electronic money transfer license issued pursuant to section
17 19-14-1 et seq., that has filed with the division of banking the bond required by subsections (b)(4)
18 and (b)(7) of this section.

19 (e) The bond shall remain in force and effect until the surety is released from liability by
20 the director or the director's designee or until the bond is cancelled by the surety. The surety may
21 cancel the bond and be released from further liability under the bond upon receipt by the director
22 or the director's designee of written notice of the cancellation of the bond at least thirty (30) days
23 in advance of the cancellation of the bond. The cancellation shall not affect any liability incurred
24 or accrued under the bond before the termination of the thirty (30) day period. Upon receipt of
25 any notice of cancellation, the director shall provide written notice to the licensee.

26 SECTION 2. Chapter 19-14.7 of the General Laws entitled "Nonprofit Credit
27 Counseling Services Act" is hereby repealed in its entirety.

28 ~~CHAPTER 19-14.7~~

29 ~~Nonprofit Credit Counseling Services Act~~

30 ~~19-14.7-1. Short title. -- This chapter shall be known as the "Nonprofit Credit~~
31 ~~Counseling Services Act."~~

32 ~~19-14.7-2. Special exemptions. -- No license to provide debt management plans shall be~~
33 ~~required of any:~~

34 ~~-(a) Regulated institutions and banks or credit unions organized under the laws of the~~

1 ~~United States, or banks or credit unions organized under the laws of any state within the United~~
2 ~~States if the laws of the state in which the bank or credit union is organized authorizes under~~
3 ~~conditions not substantially more restrictive than those imposed by the laws of this state, as~~
4 ~~determined by the director or the director's designee, a financial institution or credit union to~~
5 ~~engage in the business of originating or brokering loans in the other state; no bank or credit union~~
6 ~~duly organized under the laws of another state within the United States may receive deposits, pay~~
7 ~~checks or lend money from an established location within this state without having obtained the~~
8 ~~approval of the director or the director's designee pursuant to chapter 7 of this title;~~

9 ~~(b) Person licensed to practice law in this state when services are rendered in the course~~
10 ~~of his or her practice as an attorney and fees for such services are not in excess of those stated in~~
11 ~~this chapter;~~

12 ~~(c) Transaction in which money or other property is paid through a "joint control agent";~~

13 ~~(d) Merchant owned credit or creditors association;~~

14 ~~(e) A certified public accountant (CPA), when services are rendered in the course of his~~
15 ~~or her practice as a CPA and fees for such services are not in excess of those stated in this~~
16 ~~chapter.~~

17 ~~**19-14.7-3. Licensee's duties.** (a) All debt management plans must be evidenced by a~~
18 ~~written agreement between the credit counseling agency and the consumer, clearly acknowledged~~
19 ~~by both parties. A copy of the agreement must be provided to the consumer.~~

20 ~~(b) All debt management plan agreements must contain the following:~~

21 ~~(1) The name and address of both the consumer and the credit counseling agency;~~

22 ~~(2) A full description of all services to be performed for the consumer;~~

23 ~~(3) A clear indication of the costs to the consumer, including contributions or fees,~~
24 ~~highlighted in bold type;~~

25 ~~(4) A statement that the agreement may be terminated for any reason by the consumer~~
26 ~~and that the consumer has no obligation to continue the arrangement unless satisfied with the~~
27 ~~services provided;~~

28 ~~(5) An indication of how to resolve disputes under the agreement, including the~~
29 ~~telephone number of the department of business regulation;~~

30 ~~(6) A complete list of the consumer's and agency's obligations that are subject to the~~
31 ~~agreement; and~~

32 ~~(7) A budget analysis showing, as a minimum, sources of income, detailed monthly~~
33 ~~expenses, and debt payments.~~

34 ~~(c) Licensees shall:~~

1 ~~-(1) Maintain complete and adequate records during the term of the contract with the~~
2 ~~consumer and for a period of seven (7) years from the date of cancellation or completion of the~~
3 ~~contract with each debtor. These records shall contain complete information regarding the~~
4 ~~contract, extensions of the contract, payments, disbursements and charges, and shall be open to~~
5 ~~inspection by the director and his or her appointed agents during normal business hours;~~

6 ~~-(2) Make remittances to creditors within a reasonable period of time after receipt of any~~
7 ~~funds, less prorated fees and costs, unless the reasonable payment of one or more of the debtor's~~
8 ~~obligations requires that funds be held for a longer period so as to accumulate a sum certain;~~

9 ~~-(3) Furnish the consumer with a written statement of his or her account on a regular~~
10 ~~basis, as established by the director and within a reasonable time after the consumer requests it~~
11 ~~and within ninety (90) days after the completion of the credit counseling agreement, and furnish~~
12 ~~the consumer a verbal accounting at any time the consumer requests it during normal business~~
13 ~~hours; and~~

14 ~~-(4) Keep the cost to the consumer for the credit counseling services as low as possible. In~~
15 ~~no event, shall the cost to the consumer, including voluntary contributions, exceed those set by~~
16 ~~regulation. All material contracts or fee for service arrangements with any third party out sources,~~
17 ~~companies, or vendors must be disclosed to the director. No one may be denied access to the debt~~
18 ~~management plans because of an inability to pay a fee.~~

19 **19-14.7-4. Prohibited acts.** -- No licensee shall:

20 ~~-(a) Purchase from a creditor any obligation of a consumer;~~

21 ~~-(b) Operate as a collection agent and as a licensee for the same consumer's account;~~

22 ~~-(c) Execute any contract or agreement to be signed by the consumer, unless the contract~~
23 ~~or agreement is completed in full;~~

24 ~~-(d) Pay any bonus or consideration to any person for the referral of a debtor to his or her~~
25 ~~business or accept or receive any bonus, commission, or consideration for referring any consumer~~
26 ~~to any person for any reason;~~

27 ~~-(e) Advertise, display, distribute, broadcast, or televise his or her services, rates, or terms~~
28 ~~in any manner where any false, misleading, or deceptive statements or representations are made~~
29 ~~with regard to the services to be performed by the licensee or the charges to be made;~~

30 ~~-(f) Lend money or provide credit to any consumer;~~

31 ~~-(g) Obtain a mortgage or any other security interest in property of a consumer;~~

32 ~~-(h) Pay any incentive to its employees for the executing of any debt management plan~~
33 ~~contracts or receive any undisclosed compensation, bonds, commissions, or compensation for~~
34 ~~referring any consumer for any reason; or~~

1 ~~(i) Enter into any contract or fee for service arrangement with any company or vendor~~
2 ~~owned, controlled, or affiliated with an officer or director or relative of an officer or director that~~
3 ~~materially personally benefits, enriches, or inures benefit to an officer or director of the nonprofit~~
4 ~~credit counseling agency.~~

5 SECTION 3. Title 19 of the General Laws entitled "FINANCIAL INSTITUTIONS" is
6 hereby amended by adding thereto the following chapter:

7 CHAPTER 14.8

8 UNIFORM DEBT-MANAGEMENT SERVICES ACT

9 **19-14.8-1. Short title.** – This chapter shall be known and may be cited as the "Uniform
10 Debt-Management Services Act."

11 **19-14.8-2. Definitions.** – In this chapter:

12 (1) "Director" means the director of the department of business regulation.

13 (2) "Affiliate":

14 (a) with respect to an individual, means:

15 (i) the spouse of the individual;

16 (ii) a sibling of the individual or the spouse of a sibling;

17 (iii) an individual or the spouse of an individual who is a lineal ancestor or lineal
18 descendant of the individual or the individual's spouse;

19 (iv) an aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or
20 grandnephew, whether related by the whole or the half blood or adoption, or the spouse of any of
21 them; or

22 (v) any other individual occupying the residence of the individual; and

23 (b) with respect to an entity, means:

24 (i) a person that directly or indirectly controls, is controlled by, or is under common
25 control with the entity;

26 (ii) an officer of, or an individual performing similar functions with respect to, the entity;

27 (iii) a director of, or an individual performing similar functions with respect to, the entity;

28 (iv) subject to adjustment of the dollar amount pursuant to this chapter, a person that
29 receives or received more than twenty-five thousand dollars (\$25,000) from the entity in either
30 the current year or the preceding year or a person that owns more than ten percent (10%) of, or an
31 individual who is employed by or is a director of, a person that receives or received more than
32 twenty-five thousand dollars (\$25,000) from the entity in either the current year or the preceding
33 year;

34 (v) an officer or director of, or an individual performing similar functions with respect to,

1 a person described in subsection (b)(i) above;

2 (vi) the spouse of, or an individual occupying the residence of, an individual described in
3 subsection (b)(i) through (v); or

4 (vii) an individual who has the relationship specified in subsection (a)(iv) to an
5 individual or the spouse of an individual described in subsection (b)(i) through (v).

6 (3) "Agreement" means an agreement between a provider and an individual for the
7 performance of debt-management services.

8 (4) "Bank" means a financial institution, including a commercial bank, savings bank,
9 savings and loan association, credit union, and trust company, engaged in the business of
10 banking, chartered under federal or state law, and regulated by a federal or state banking
11 regulatory authority.

12 (5) "Business address" means the physical location of a business, including the name and
13 number of a street.

14 (6) "Certified counselor" means an individual certified by a training program or certifying
15 organization, approved by the director, that authenticates the competence of individuals providing
16 education and assistance to other individuals in connection with debt-management services.

17 (7) "Concessions" means assent to repayment of a debt on terms more favorable to an
18 individual than the terms of the contract between the individual and a creditor.

19 (8) "Day" means calendar day.

20 (9) "Debt-management services" means services as an intermediary between an
21 individual and one or more creditors of the individual for the purpose of obtaining concessions,
22 but does not include:

23 (a) legal services provided in an attorney-client relationship by an attorney licensed or
24 otherwise authorized to practice law in this state;

25 (b) accounting services provided in an accountant-client relationship by a certified public
26 accountant licensed to provide accounting services in this state; or

27 (c) financial-planning services provided in a financial planner-client relationship by a
28 member of a financial-planning profession whose members the director, by rule, determines are

29 (i) licensed by this state;

30 (ii) subject to a disciplinary mechanism;

31 (iii) subject to a code of professional responsibility; and

32 (iv) subject to a continuing-education requirement.

33 (10) "Entity" means a person other than an individual.

34 (11) "Good faith" means honesty in fact and the observance of reasonable standards of

1 fair dealing.

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

6 (13) "Plan" means a program or strategy in which a provider furnishes debt-management
7 services to an individual and which includes a schedule of payments to be made by or on behalf
8 of the individual and used to pay debts owed by the individual.

9 (14) "Principal amount of the debt" means the amount of a debt at the time of an
10 agreement.

11 (15) "Provider" means a person that provides, offers to provide, or agrees to provide debt-
12 management services directly or through others.

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

15 (17) "Settlement fee" means a charge imposed on or paid by an individual in connection
16 with a creditor's assent to accept in full satisfaction of a debt an amount less than the principal
17 amount of the debt.

18 (18) "Sign" means, with present intent to authenticate or adopt a record:

19 (a) to execute or adopt a tangible symbol; or

20 (b) to attach to or logically associate with the record an electronic sound, symbol, or
21 process.

22 (19) "State" means a state of the United States, the District of Columbia, Puerto Rico, the
23 United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of
24 the United States.

25 (20) "Trust account" means an account held by a provider that is:

26 (a) established in an insured bank;

27 (b) separate from other accounts of the provider or its designee;

28 (c) de signated as a trust account or other account designated to indicate that the money in
29 the account is not the money of the provider or its designee; and

30 (d) used to hold money of one or more individuals for disbursement to creditors of the
31 individuals.

32 **19-14.8-3. Exempt agreements and person. -- (a) This chapter does not apply to an**
33 **agreement with an individual who the provider has no reason to know resides in this state at the**
34 **time of the agreement.**

1 (b) This chapter does not apply to a provider to the extent that the provider:
2 (1) provides or agrees to provide debt-management, educational, or counseling services
3 to an individual who the provider has no reason to know resides in this state at the time the
4 provider agrees to provide the services; or
5 (2) receives no compensation for debt-management services from or on behalf of the
6 individuals to whom it provides the services or from their creditors.
7 (c) This chapter does not apply to the following persons or their employees when the
8 person or the employee is engaged in the regular course of the person's business or profession:
9 (1) a judicial officer, a person acting under an order of a court or an administrative
10 agency, or an assignee for the benefit of creditors;
11 (2) a bank chartered under the laws of the United States or of this state;
12 (3) an affiliate, as defined in subdivision 19-14.8-2(2)(b)(i), of a bank described in
13 subsection (2) if the affiliate is regulated by a federal or state banking regulatory authority;
14 (4) a title insurer, escrow company, or other person that provides bill-paying services if
15 the provision of debt-management services is incidental to the bill-paying services; or
16 (5) a bank chartered under the laws of another state, so long as the laws of such other
17 state expressly authorize such bank to operate in such state, under conditions no more restrictive
18 than those imposed by the laws of this state, as determined by the director or the director's
19 designee; or
20 (6) an affiliate, as defined in subdivision 19-14.8-2(2)(b)(i), of a bank described in
21 subsection (5) above if the affiliate is regulated by a federal or state banking regulatory authority.
22 **19-14.8-4. Registration and not-for-profit status required. --** (a) Except as otherwise
23 provided in subsection (b), a provider may not provide debt-management services to an individual
24 who it reasonably should know resides in this state at the time it agrees to provide the services,
25 unless the provider is registered under this chapter.
26 (b) If a provider is registered under this chapter, subsection (a) does not apply to an
27 employee or agent of the provider.
28 (c) The director shall maintain and publicize a list of the names of all registered
29 providers.
30 (d) A provider may be registered only if it is:
31 (1) organized and properly operating as a not-for-profit entity under the law of the state in
32 which it was formed; and
33 (2) exempt from taxation under the Internal Revenue Code, 26 U.S.C. Section 501 as
34 amended.

1 **19-14.8-5. Application for registration – Form, fee and accompanying documents. --**

- 2 (a) An application for registration as a provider must be in a form prescribed by the director.
- 3 (b) Subject to adjustment of dollar amounts pursuant to subsection 19-14.8-32(f), an
4 application for registration as a provider must be accompanied by:
- 5 (1) the fee established by chapter 19-14;
6 (2) the bond required by section 19-14.8-13;
7 (3) identification of all trust accounts required by section 19-14.8-22 and an irrevocable
8 consent authorizing the director to review and examine the trust accounts;
9 (4) evidence of insurance in the amount of two hundred fifty thousand dollars (\$250,000):
10 (A) against the risks of dishonesty, fraud, theft, and other misconduct on the part of the
11 applicant or a director, employee, or agent of the applicant;
12 (B) issued by an insurance company authorized to do business in this state and rated at
13 least "A" by a nationally recognized rating organization;
14 (C) with no deductible;
15 (D) payable to the applicant, the individuals who have agreements with the applicant, and
16 this state, as their interests may appear; and
17 (E) not subject to cancellation by the applicant without the approval of the director;
18 (5) if the applicant is a foreign corporation, proof that the applicant holds a certificate of
19 authority to conduct affairs in this state, as required by chapter 7-6; and
20 (6) evidence of not-for-profit and tax-exempt status applicable to the applicant under the
21 Internal Revenue Code, 26 U.S.C. Section 501, as amended.

22 **19-14.8-6. Application for registration – Required information. -- An application for**
23 registration must be signed under oath or certified under the penalties of perjury and include:

- 24 (1) the applicant's name, principal business address and telephone number, and all other
25 business addresses in this state, electronic -mail addresses, and Internet website addresses;
26 (2) all names under which the applicant conducts business;
27 (3) the address of each location in this state at which the applicant will provide debt-
28 management services or a statement that the applicant will have no such location;
29 (4) the name and home address of each officer and director of the applicant and each
30 person that owns at least ten percent (10%) of the applicant;
31 (5) identification of every jurisdiction in which, during the five (5) years immediately
32 preceding the application:
33 (A) the applicant or any of its officers or directors has been licensed or registered to
34 provide debt-management services; or

1 (B) individuals have resided when they received debt-management services from the
2 applicant;

3 (6) a statement describing, to the extent it is known or should be known by the applicant,
4 any material civil or criminal judgment or litigation and any material administrative or
5 enforcement action by a governmental agency in any jurisdiction against the applicant, any of its
6 officers, directors, owners, or agents, or any person who is authorized to have access to the trust
7 account required by section 19-14.8-22;

8 (7) the applicant's financial statements, audited by an accountant licensed to conduct
9 audits, for each of the two (2) years immediately preceding the application or, if it has not been in
10 operation for the two (2) years preceding the application, for the period of its existence;

11 (8) evidence of accreditation by an independent accrediting organization approved by the
12 director;

13 (9) evidence that, within twelve (12) months after initial employment, each of the
14 applicant's counselors becomes certified as a certified counselor;

15 (10) a description of the three (3) most commonly used educational programs that the
16 applicant provides or intends to provide to individuals who reside in this state and a copy of any
17 materials used or to be used in those programs;

18 (11) a description of the applicant's financial analysis and initial budget plan, including
19 any form or electronic model, used to evaluate the financial condition of individuals;

20 (12) a copy of each form of agreement that the applicant will use with individuals who
21 reside in this state;

22 (13) the schedule of fees and charges that the applicant will use with individuals who
23 reside in this state;

24 (14) at the applicant's expense, the results of a criminal-records check, including
25 fingerprints, conducted within the immediately preceding twelve (12) months, covering every
26 officer of the applicant and every employee or agent of the applicant who is authorized to have
27 access to the trust account required by section 19-14.8-22;

28 (15) the names and addresses of all employers of each director during the ten (10) years
29 immediately preceding the application;

30 (16) a description of any ownership interest of at least ten percent (10%) by a director,
31 owner, or employee of the applicant in:

32 (A) any affiliate of the applicant; or

33 (B) any entity that provides products or services to the applicant or any individual
34 relating to the applicant's debt-management services;

1 (17) a statement of the amount of compensation of the applicant's five (5) most highly
2 compensated employees for each of the three (3) years immediately preceding the application or,
3 if it has not been in operation for the three (3) years preceding the application, for the period of its
4 existence;

5 (18) the identity of each director who is an affiliate, as defined in subdivision 19-14.8-
6 2(2)(A) or (B)(i), (ii), (iv), (v), (vi), or (vii), of the applicant; and

7 (19) any other information that the director reasonably requires to perform the director's
8 duties hereunder.

9 **19-14.8-7. Application for registration – Obligation to update.** -- An applicant or
10 registered provider shall notify the director within ten (10) days after a change in the information
11 specified in subdivision 19-14.8-5(b)(4) or (6) or subsection 19-14.8-6(1), (3), (6), (12), or (13).

12 **19-14.8-8. Application for registration – Public information.** -- Except for the
13 information required by this chapter and the addresses required by this chapter, the director shall
14 make the information in an application for registration as a provider available to the public.

15 **19-14.8-9. Certificate of registration – Issuance or denial.** -- (a) Except as otherwise
16 provided in subsections (b) and (c), the director shall issue a certificate of registration as a
17 provider to a person that complies with section 19-14.8-5 and section 19-14.8-6.

18 (b) The director may deny registration if:

19 (1) the application contains information that is materially erroneous or incomplete;

20 (2) an officer, director, or owner of the applicant has been convicted of a crime, or
21 suffered a civil judgment, involving dishonesty or the violation of state or federal securities laws;

22 (3) the applicant or any of its officers, directors, or owners has defaulted in the payment
23 of money collected for others; or

24 (4) the director finds that the financial responsibility, experience, character, or general
25 fitness of the applicant or its owners, directors, employees, or agents does not warrant belief that
26 the business will be operated in compliance with this chapter.

27 (c) The director shall deny registration if:

28 (1) the application is not accompanied by the fee established by the director; or

29 (2) the applicant's board of directors is not independent of the applicant's employees and
30 agents.

31 (d) Subject to adjustment of the dollar amount pursuant to subsection 19-14.8-32(f), a
32 board of directors is not independent for purposes of subsection (c) if more than one-fourth (1/4)
33 of its members:

34 (1) are affiliates of the applicant, as defined in this chapter; or

1 (2) after the date ten (10) years before first becoming a director of the applicant, were
2 employed by or directors of a person that received from the applicant more than twenty-five
3 thousand dollars (\$25,000) in either the current year or the preceding year.

4 **19-14.8-10. Certificate of registration -- Timing.** -- (a) The director shall approve or
5 deny an initial registration as a provider within one hundred twenty (120) days after an
6 application is filed. In connection with a request pursuant to this chapter for additional
7 information, the director may extend the one hundred twenty (120) day period for not more than
8 sixty (60) days. Within seven (7) days after denying an application, the director, in a record, shall
9 inform the applicant of the reasons for the denial.

10 (b) If the director denies an application for registration as a provider or does not act on an
11 application within the time prescribed in subsection (a), the applicant may appeal and request a
12 hearing pursuant to chapter 42-35.

13 (c) Subject to this chapter subsection 19-14.8-11(d) and section 19-14.8-34, a registration
14 as a provider is valid for one year.

15 **19-14.8-11. Renewal of registration.** -- (a) A provider must obtain a renewal of its
16 registration annually.

17 (b) An application for renewal of registration as a provider must be in a form prescribed
18 by the director, signed under oath or certified under the penalties of perjury, and:

19 (1) be filed in accordance with section 19-14-22;

20 (2) be accompanied by the fee established by chapter 19-14 and the bond required by this
21 chapter;

22 (3) contain the matter required for initial registration as a provider by this chapter and a
23 financial statement, audited by an accountant licensed to conduct audits, for the applicant's fiscal
24 year immediately preceding the application;

25 (4) disclose any changes in the information contained in the applicant's application for
26 registration or its immediately previous application for renewal, as applicable;

27 (5) supply evidence of insurance in an amount equal to the larger of two hundred fifty
28 thousand dollars (\$250,000) or the highest daily balance in the trust account required by this
29 chapter during the six (6) month period immediately preceding the application:

30 (A) against risks of dishonesty, fraud, theft, and other misconduct on the part of the
31 applicant or a director, employee, or agent of the applicant;

32 (B) issued by an insurance company authorized to do business in this state and rated at
33 least "A" by a nationally recognized rating organization;

34 (C) with no deductible;

1 (D) payable to the applicant, the individuals who have agreements with the applicant, and
2 this state, as their interests may appear; and

3 (E) not subject to cancellation by the applicant without the approval of the director;

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

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

10 (8) provide any other information that the director reasonably requires to perform the
11 director's duties under this section.

12 (c) Except for the information required by subsections 19-14.8-6(7), (14), and (17) and
13 the addresses required by subsection 19-14.8-6(4), the director shall make the information in an
14 application for renewal of registration as a provider available to the public.

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

18 (e) If the director denies an application for renewal of registration as a provider, the
19 applicant, within ten (10) days after receiving notice of the denial, may appeal and request a
20 hearing pursuant to chapter 42-35. Subject to section 19-14.8-34, while the appeal is pending the
21 applicant shall continue to provide debt-management services to individuals with whom it has
22 agreements. If the denial is affirmed, subject to the director's order and section 19-14.8-34, the
23 applicant shall continue to provide debt-management services to individuals with whom it has
24 agreements until, with the approval of the director, it transfers the agreements to another
25 registered provider or returns to the individuals all unexpended money that is under the
26 applicant's control.

27 **19-14.8-12. Registration in another state. --** If a provider holds a license or certificate
28 of registration in another state authorizing it to provide debt-management services, the provider
29 may submit a copy of that license or certificate and the application for it instead of an application
30 in the form prescribed by subsection 19-14.8-5(a), 6, or 11(b). The director shall accept the
31 application and the license or certificate from the other state as an application for registration as a
32 provider or for renewal of registration as a provider, as appropriate, in this state if:

33 (1) the application in the other state contains information substantially similar to or more
34 comprehensive than that required in an application submitted in this state;

1 (2) the applicant provides the information required by subsections 19-14.8-6(1), (3), (10),
2 (12), and (13); and

3 (3) the applicant, under oath or certified under the penalties of perjury, certifies that the
4 information contained in the application is current or, to the extent it is not current, supplements
5 the application to make the information current.

6 **19-14.8-13. Bond required.** -- (a) Except as otherwise provided in section 19-14.8-14, a
7 provider that is required to be registered under this chapter shall file a surety bond with the
8 director, which must:

9 (1) be in effect during the period of registration and for two (2) years after the provider
10 ceases providing debt-management services to individuals in this state; and

11 (2) run to this state for the benefit of this state and of individuals who reside in this state
12 when they agree to receive debt-management services from the provider, as their interests may
13 appear.

14 (b) Subject to adjustment of the dollar amount pursuant to subsection 19-14.8-32(f), a
15 surety bond filed pursuant to subsection (a) must:

16 (1) be in the amount of fifty thousand dollars (\$50,000) or other larger or smaller amount
17 that the director determines is warranted by the financial condition and business experience of the
18 provider, the history of the provider in performing debt-management services, the risk to
19 individuals, and any other factor the director considers appropriate;

20 (2) be issued by a bonding, surety, or insurance company authorized to do business in this
21 state and rated at least "A" by a nationally recognized rating organization; and

22 (3) have payment conditioned upon noncompliance of the provider or its agent with this
23 chapter.

24 (c) If the principal amount of a surety bond is reduced by payment of a claim or a
25 judgment, the provider shall immediately notify the director and, within thirty (30) days after
26 notice by the director, file a new or additional surety bond in an amount set by the director. The
27 amount of the new or additional bond must be at least the amount of the bond immediately before
28 payment of the claim or judgment. If for any reason a surety terminates a bond, the provider shall
29 immediately file a new surety bond in the amount of fifty thousand dollars (\$50,000) or other
30 amount determined pursuant to subsection (b).

31 (d) The director or an individual may obtain satisfaction out of the surety bond procured
32 pursuant to this section if:

33 (1) the director assesses expenses under subdivision 19-14.8-32(b)(1), issues a final order
34 under subdivision 19-14.8-33(a)(2), or recovers a final judgment under subdivision 19-14.8-

1 33(a)(4) or (5) or (d); or

2 (2) an individual recovers a final judgment pursuant to subsection 19-14.8-5(a), (b), or
3 (c)(1), (2), or (4).

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

8 (1) to satisfaction of a final order or judgment under subsection 19-14.8-33(a)(2), (4), or
9 (5) or (d);

10 (2) to final judgments recovered by individuals pursuant to subsection 19-14.8-35(a), (b),
11 or (c) (1), (2) or (4), pro rata;

12 (3) to claims of individuals established to the satisfaction of the director, pro rata; and

13 (4) if a final order or judgment is issued under subsection 19-14.8-33(a), to the expenses
14 charged pursuant to subdivision 19-14.8-32(b)(1).

15 **19-14.8-14. Bond required -- Substitute. --** (a) Instead of the surety bond required by
16 section 19-14.8-13, a provider may deliver to the director, in the amount required by subsection
17 19-14.8-13(b), and, except as otherwise provided in subparagraph (2)(A) below, payable or
18 available to this state and to individuals who reside in this state when they agree to receive debt-
19 management services from the provider, as their interests may appear, if the provider or its agent
20 does not comply with this chapter:

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

24 (2) with the approval of the director:

25 (A) an irrevocable letter of credit, issued or confirmed by a bank approved by the
26 director, payable upon presentation of a certificate by the director stating that the provider or its
27 agent has not complied with this chapter; or

28 (B) bonds or other obligations of the United States or guaranteed by the United States or
29 bonds or other obligations of this state or a political subdivision of this state, to be deposited and
30 maintained with a bank approved by the director for this purpose.

31 (b) If a provider furnishes a substitute pursuant to subsection (a), the provisions of
32 subsections 19-14.8-13(a), (c), (d), and (e) apply to the substitute.

33 **19-14.8-15. Requirement of good faith. --** A provider shall act in good faith in all
34 matters under this chapter.

1 19-14.8-16. Customer service. -- A provider that is required to be registered under this
2 chapter shall maintain a toll-free communication system, staffed at a level that reasonably permits
3 an individual to speak to a certified counselor or customer-service representative, as appropriate,
4 during ordinary business hours.

5 19-14.8-17. Prerequisites for providing debt-management services. -- (a) Before
6 providing debt-management services, a registered provider shall give the individual an itemized
7 list of goods and services and the charges for each. The list must be clear and conspicuous, be in a
8 record the individual may keep whether or not the individual assents to an agreement, and
9 describe the goods and services the provider offers:

- 10 (1) free of additional charge if the individual enters into an agreement;
- 11 (2) for a charge if the individual does not enter into an agreement; and
- 12 (3) for a charge if the individual enters into an agreement, using the following
13 terminology, as applicable, and format:

14 Set-up fee _____
15 _____ dollar amount of fee

16 Monthly service fee _____
17 _____ dollar amount of fee or method of determining amount

18 Settlement fee _____
19 _____ dollar amount of fee or method of determining amount

20 Goods and services in addition to those provided in connection with a plan:
21 _____
22 (item) _____ dollar amount or method of determining amount

23 _____
24 (item) _____ dollar amount or method of determining amount.

25 (b) A provider may not furnish debt-management services unless the provider, through
26 the services of a certified counselor:

27 (1) provides the individual with reasonable education about the management of personal
28 finance;

29 (2) has prepared a financial analysis; and

30 (3) if the individual is to make regular, periodic payments:

31 (A) has prepared a plan for the individual;

32 (B) has made a determination, based on the provider's analysis of the information
33 provided by the individual and otherwise available to it, that the plan is suitable for the individual
34 and the individual will be able to meet the payment obligations under the plan; and

1 (C) believes that each creditor of the individual listed as a participating creditor in the
2 plan will accept payment of the individual's debts as provided in the plan.

3 (c) Before an individual assents to an agreement to engage in a plan, a provider shall:

4 (1) provide the individual with a copy of the analysis and plan required by subsection (b)
5 in a record that identifies the provider and that the individual may keep whether or not the
6 individual assents to the agreement;

7 (2) inform the individual of the availability, at the individual's option, of assistance by a
8 toll-free communication system or in person to discuss the financial analysis and plan required by
9 subsection (b); and

10 (3) with respect to all creditors identified by the individual or otherwise known by the
11 provider to be creditors of the individual, provide the individual with a list of:

12 (A) creditors that the provider expects to participate in the plan and grant concessions;

13 (B) creditors that the provider expects to participate in the plan but not grant concessions;

14 (C) creditors that the provider expects not to participate in the plan; and

15 (D) all other creditors.

16 (d) Before an individual assents to an agreement to engage in a plan, the provider shall
17 inform the individual, in a record that contains nothing else, that is given separately, and that the
18 individual may keep whether or not the individual assents to the agreement:

19 (1) of the name and business address of the provider;

20 (2) that plans are not suitable for all individuals and the individual may ask the provider
21 about other ways, including bankruptcy, to deal with indebtedness;

22 (3) that establishment of a plan may adversely affect the individual's credit rating or
23 credit scores;

24 (4) that nonpayment of debt may lead creditors to increase finance and other charges or
25 undertake collection activity, including litigation;

26 (5) unless it is not true, that the provider may receive compensation from the creditors of
27 the individual; and

28 (6) that, unless the individual is insolvent, if a creditor settles for less than the full amount
29 of the debt, the plan may result in the creation of taxable income to the individual, even though
30 the individual does not receive any money.

31 (e) If a provider may receive payments from an individual's creditors and the plan
32 contemplates that the individual's creditors will reduce finance charges or fees for late payment,
33 default, or delinquency, the provider may comply with subsection (d) by providing the following
34 disclosure, surrounded by black lines:

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IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

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

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

Name and business address of provider

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

IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

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

Name and business address of provider

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

IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

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

_____ hurt your credit rating or credit scores;

_____ lead your creditors to increase finance and other charges; and

_____ lead your creditors to undertake activity, including lawsuits, to collect the debts.

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

Name and business address of provider

19-14.8-18. Communication by electronic or other means. – (a) In this section:

(1) "Federal act" means the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., as amended.

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

3 (b) A provider may satisfy the requirements of section 19-14.8-17, 19-14.8-19, or 19-
4 14.8-27 by means of the Internet or other electronic means if the provider obtains a consumer's
5 consent in the manner provided by section 101(c)(1) of the federal act.

6 (c) The disclosures and materials required by sections 19-14.8-17, 19-14.8-19, and 19-
7 14.8-27 shall be presented in a form that is capable of being accurately reproduced for later
8 reference.

9 (d) With respect to disclosure by means of an Internet website, the disclosure of the
10 information required by subsection 19-14.8-17(d) must appear on one or more screens that:

11 (1) contain no other information; and

12 (2) the individual must see before proceeding to assent to formation of a plan.

13 (e) At the time of providing the materials and agreement required by subsections 19-14.8-
14 17(c) and (d), section 19-14.8-19, and section 19-14.8-27, a provider shall inform the individual
15 that upon electronic, telephonic, or written request, it will send the individual a written copy of
16 the materials, and shall comply with a request as provided in subsection (f).

17 (f) If a provider is requested, before the expiration of ninety (90) days after a plan is
18 completed or terminated, to send a written copy of the materials required by subsections 19-14.8-
19 17(c) and (d), section 19-14.8-19, or section 19-14.8-27, the provider shall send them at no charge
20 within three (3) business days after the request, but the provider need not comply with a request
21 more than once per calendar month or if it reasonably believes the request is made for purposes of
22 harassment. If a request is made more than ninety (90) days after a plan is completed or
23 terminated, the provider shall send within a reasonable time a written copy of the materials
24 requested.

25 (g) A provider that maintains an Internet website shall disclose on the home page of its
26 website or on a page that is clearly and conspicuously connected to the home page by a link that
27 clearly reveals its contents:

28 (1) its name and all names under which it does business;

29 (2) its principal business address, telephone number, and electronic-mail address, if any;
30 and

31 (3) the names of its principal officers.

32 (h) Subject to subsection (i), if a consumer who has consented to electronic
33 communication in the manner provided by section 101 of the federal act withdraws consent as
34 provided in the federal act, a provider may terminate its agreement with the consumer.

1 (i) If a provider wishes to terminate an agreement with a consumer pursuant to subsection
2 (h), it shall notify the consumer that it will terminate the agreement unless the consumer, within
3 thirty (30) days after receiving the notification, consents to electronic communication in the
4 manner provided in section 101(c) of the federal act. If the consumer consents, the provider may
5 terminate the agreement only as permitted by subdivision 19-14.8-19(a)(6)(G).

6 **19-14.8-19. Form and content of agreement. -- (a) An agreement must:**

7 (1) be in a record;

8 (2) be dated and signed by the provider and the individual;

9 (3) include the name of the individual and the address where the individual resides;

10 (4) include the name, business address, and telephone number of the provider;

11 (5) be delivered to the individual immediately upon formation of the agreement; and

12 (6) disclose:

13 (A) the services to be provided;

14 (B) the amount, or method of determining the amount, of all fees, individually itemized,
15 to be paid by the individual;

16 (C) the schedule of payments to be made by or on behalf of the individual, including the
17 amount of each payment, the date on which each payment is due, and an estimate of the date of
18 the final payment;

19 (D) if a plan provides for regular periodic payments to creditors:

20 (i) each creditor of the individual to which payment will be made, the amount owed to
21 each creditor, and any concessions the provider reasonably believes each creditor will offer; and

22 (ii) the schedule of expected payments to each creditor, including the amount of each
23 payment and the date on which it will be made;

24 (E) each creditor that the provider believes will not participate in the plan and to which
25 the provider will not direct payment;

26 (F) how the provider will comply with its obligations under subsection 19-14.8-27(a);

27 (G) that the provider may terminate the agreement for good cause, upon return of
28 unexpended money of the individual;

29 (H) that the individual may cancel the agreement as provided in section 19-14.8-20;

30 (I) that the individual may contact the director with any questions or complaints
31 regarding the provider; and

32 (J) the address, telephone number, and Internet address or website of the director.

33 (b) For purposes of subsection (a)(5), delivery of an electronic record occurs when it is
34 made available in a format in which the individual may retrieve, save, and print it and the

1 individual is notified that it is available.

2 (c) If the director supplies the provider with any information required under subsection
3 (a)(6)(J), the provider may comply with that requirement only by disclosing the information
4 supplied by the director.

5 (d) An agreement must provide that:

6 (1) the individual has a right to terminate the agreement at any time, without penalty or
7 obligation, by giving the provider written or electronic notice, in which event:

8 (A) the provider will refund all unexpended money that the provider or its agent has
9 received from or on behalf of the individual for the reduction or satisfaction of the individual's
10 debt;

11 (B) with respect to an agreement that contemplates that creditors will settle debts for less
12 than the principal amount of debt, the provider will refund sixty-five percent (65%) of any portion
13 of the set-up fee that has not been credited against the settlement fee; and

14 (C) all powers of attorney granted by the individual to the provider are revoked and
15 ineffective;

16 (2) the individual authorizes any bank in which the provider or its agent has established a
17 trust account to disclose to the director any financial records relating to the trust account; and

18 (3) the provider will notify the individual within five (5) days after learning of a creditor's
19 decision to reject or withdraw from a plan and that this notice will include:

20 (A) the identity of the creditor; and

21 (B) the right of the individual to modify or terminate the agreement.

22 (e) An agreement may confer on a provider a power of attorney to settle the individual's
23 debt for no more than fifty percent (50%) of the principal amount of the debt. An agreement may
24 not confer a power of attorney to settle a debt for more than fifty percent (50%) of that amount,
25 but may confer a power of attorney to negotiate with creditors of the individual on behalf of the
26 individual. An agreement must provide that the provider will obtain the assent of the individual
27 after a creditor has assented to a settlement for more than fifty percent (50%) of the principal
28 amount of the debt.

29 (f) An agreement may not:

30 (1) provide for application of the law of any jurisdiction other than the United States and
31 this state;

32 (2) except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. Section 2, as
33 amended, contain a provision that modifies or limits otherwise available forums or procedural
34 rights, including the right to trial by jury, that are generally available to the individual under law

1 other than this chapter;

2 (3) contain a provision that restricts the individual's remedies under this chapter or law
3 other than this chapter; or

4 (4) contain a provision that:

5 (A) limits or releases the liability of any person for not performing the agreement or for
6 violating this chapter; or

7 (B) indemnifies any person for liability arising under the agreement or this chapter.

8 (g) All rights and obligations specified in subsection (d) and section 19-14.8-20 exist
9 even if not provided in the agreement. A provision in an agreement which violates subsection (d),
10 (e), or (f) is void.

11 **19-14.8-20. Cancellation of agreement -- Waiver. --** (a) An individual may cancel an
12 agreement before midnight of the third (3rd) business day after the individual assents to it, unless
13 the agreement does not comply with subsection (b) or section 19-14.8-19 or 19-14.8-28, in which
14 event the individual may cancel the agreement within thirty (30) days after the individual assents
15 to it. To exercise the right to cancel, the individual must give notice in a record to the provider.
16 Notice by mail is given when mailed.

17 (b) An agreement must be accompanied by a form that contains in bold-face type,
18 surrounded by bold black lines:

19 Notice of Right to Cancel

20 You may cancel this agreement, without any penalty or obligation, at any time before
21 midnight of the third business day that begins the day after you agree to it by electronic
22 communication or by signing it.

23 To cancel this agreement during this period, send an e-mail to
24 _____ or mail or deliver a signed, dated copy of this
25 E-mail address of provider
26 notice, or any other written notice to _____
27 Name of provider
28 at _____ before midnight on _____.
29 Address of provider _____ Date

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

32 You also may terminate this agreement at any later time, but we are not required to
33 refund fees you have paid us.

34 _____ I cancel this agreement,

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Print your name

Signature

Date

(c) If a personal financial emergency necessitates the disbursement of an individual's money to one or more of the individual's creditors before the expiration of three (3) days after an agreement is signed, an individual may waive the right to cancel. To waive the right, the individual must send or deliver a signed, dated statement in the individual's own words describing the circumstances that necessitate a waiver. The waiver must explicitly waive the right to cancel. A waiver by means of a standard-form record is void.

19-14.8-21. Required language. -- Unless the director, by rule, provides otherwise, the disclosures and documents required by this chapter must be in English. If a provider communicates with an individual primarily in a language other than English, the provider must furnish a translation into the other language of the disclosures and documents required by this chapter.

19-14.8-22. Trust account. -- (a) All money paid to a provider by or on behalf of an individual pursuant to a plan for distribution to creditors is held in trust. Within two (2) business days after receipt, the provider shall deposit the money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services.

(b) Money held in trust by a provider is not property of the provider or its designee. The money is not available to creditors of the provider or designee, except an individual from whom or on whose behalf the provider received money, to the extent that the money has not been disbursed to creditors of the individual.

(c) A provider shall:

(1) maintain separate records of account for each individual to whom the provider is furnishing debt-management services;

(2) disburse money paid by or on behalf of the individual to creditors of the individual as disclosed in the agreement, except that:

(A) the provider may delay payment to the extent that a payment by the individual is not final; and

(B) if a plan provides for regular periodic payments to creditors, the disbursement must comply with the due dates established by each creditor; and

1 (3) promptly correct any payments that are not made or that are misdirected as a result of
2 an error by the provider or other person in control of the trust account and reimburse the
3 individual for any costs or fees imposed by a creditor as a result of the failure to pay or
4 misdirection.

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

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

10 (f) If a provider has established a trust account pursuant to subsection (a), the provider
11 shall reconcile the trust account at least once a month. The reconciliation must compare the cash
12 balance in the trust account with the sum of the balances in each individual's account. If the
13 provider or its designee has more than one trust account, each trust account must be individually
14 reconciled.

15 (g) If a provider discovers, or has a reasonable suspicion of, embezzlement or other
16 unlawful appropriation of money held in trust, the provider immediately shall notify the director
17 by a method approved by the director. Unless the director by rule provides otherwise, within five
18 (5) days thereafter, the provider shall give notice to the director describing the remedial action
19 taken or to be taken.

20 (h) If an individual terminates an agreement or it becomes reasonably apparent to a
21 provider that a plan has failed, the provider shall promptly refund to the individual all money paid
22 by or on behalf of the individual which has not been paid to creditors, less fees that are payable to
23 the provider under section 19-14.8-23.

24 (i) Before relocating a trust account from one bank to another, a provider shall inform the
25 director of the name, business address, and telephone number of the new bank. As soon as
26 practicable, the provider shall inform the director of the account number of the trust account at
27 the new bank.

28 **19-14.8-23. Fees and other charges.** -- (a) A provider may not impose directly or
29 indirectly a fee or other charge on an individual or receive money from or on behalf of an
30 individual for debt-management services except as permitted by this section.

31 (b) A provider may not impose charges or receive payment for debt-management services
32 until the provider and the individual have signed an agreement that complies with sections 19-
33 14.8-19 and 19-14.8-28.

34 (c) If an individual assents to an agreement, a provider may not impose a fee or other

1 charge for educational or counseling services, or the like, except as otherwise provided in this
2 subsection and subsection 19-14.8-28(d). The director may authorize a provider to charge a fee
3 based on the nature and extent of the educational or counseling services furnished by the
4 provider.

5 (d) Subject to adjustment of dollar amounts pursuant to subsection 19-14.8-32(f), the
6 following rules apply:

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

9 (A) a fee not exceeding fifty dollars (\$50.00) for consultation, obtaining a credit report,
10 setting up an account, and the like; and

11 (B) a monthly service fee, not to exceed ten dollars (\$10.00) times the number of
12 creditors remaining in a plan at the time the fee is assessed, but not more than fifty dollars (\$50)
13 in any month.

14 (2) If an individual assents to a plan that contemplates that creditors will settle debts for
15 less than the principal amount of the debt, a provider may charge:

16 (A) subject to subsection 19-14.8-19(d), a fee for consultation, obtaining a credit report,
17 setting up an account, and the like, in an amount not exceeding the lesser of four hundred dollars
18 (\$400) and four percent (4%) of the debt in the plan at the inception of the plan; and

19 (B) a monthly service fee, not to exceed ten dollars (\$10) times the number of creditors
20 remaining in a plan at the time the fee is assessed, but not more than fifty dollars (\$50) in any
21 month.

22 (3) A provider may not impose or receive fees under both paragraphs (1) and (2).

23 (4) Except as otherwise provided in subsection 19-14.8-28(d), if an individual does not
24 assent to an agreement, a provider may receive for educational and counseling services it
25 provides to the individual a fee not exceeding one hundred dollars (\$100) or, with the approval of
26 the director, a larger fee. The director may approve a fee larger than one hundred (\$100) if the
27 nature and extent of the educational and counseling services warrant the larger fee.

28 (e) If, before the expiration of ninety (90) days after the completion or termination of
29 educational or counseling services, an individual assents to an agreement, the provider shall
30 refund to the individual any fee paid pursuant to subsection (d)(4).

31 (f) Except as otherwise provided in subsections (c) and (d), if a plan contemplates that
32 creditors will settle an individual's debts for less than the principal amount of the debt,
33 compensation for services in connection with settling a debt may not exceed, with respect to each
34 debt:

1 (1) thirty percent (30%) of the excess of the principal amount of the debt over the amount
2 paid the creditor pursuant to the plan less;

3 (2) to the extent it has not been credited against an earlier settlement fee:

4 (A) the fee charged pursuant to subdivision (d)(2)(A); and

5 (B) the aggregate of fees charged pursuant to subdivision (d)(2)(B).

6 (g) Subject to adjustment of the dollar amount pursuant to subsection 19-14.8-32(f), if a
7 payment to a provider by an individual under this chapter is dishonored, a provider may impose a
8 reasonable charge on the individual, not to exceed the lesser of twenty-five dollars (\$25) and the
9 amount permitted by law other than this chapter.

10 **19-14.8-24. Voluntary contributions.** -- A provider may not solicit a voluntary
11 contribution from an individual or an affiliate of the individual for any service provided to the
12 individual. A provider may accept voluntary contributions from an individual but, until thirty (30)
13 days after completion or termination of a plan, the aggregate amount of money received from or
14 on behalf of the individual may not exceed the total amount the provider may charge the
15 individual under section 19-14.8-23.

16 **19-14.8-25. Voidable agreements.** -- (a) If a provider imposes a fee or other charge or
17 receives money or other payments not authorized by section 19-14.8-23 or 19-14.8-24, the
18 individual may void the agreement and recover as provided in section 19-14.8-35.

19 (b) If a provider is not registered as required by this chapter when an individual assents to
20 an agreement, the agreement is voidable by the individual.

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

23 **19-14.8-26. Termination of agreements.** -- (a) If an individual who has entered into an
24 agreement fails for sixty (60) days to make payments required by the agreement, a provider may
25 terminate the agreement.

26 (b) If a provider or an individual terminates an agreement, the provider shall immediately
27 return to the individual:

28 (1) any money of the individual held in trust for the benefit of the individual; and

29 (2) sixty-five percent (65%) of any portion of the set-up fee received pursuant to
30 subdivision 19-14.8-23(d)(2) which has not been credited against settlement fees.

31 **19-14.8-27. Periodic reports and retention of records.** -- (a) A provider shall provide
32 the accounting required by subsection (b):

33 (1) upon cancellation or termination of an agreement; and

34 (2) before cancellation or termination of any agreement:

1 (A) at least once each month; and
2 (B) within five (5) business days after a request by an individual, but the provider need
3 not comply with more than one request in any calendar month.

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

6 (1) the amount of money received from the individual since the last report;
7 (2) the amounts and dates of disbursement made on the individual's behalf, or by the
8 individual upon the direction of the provider, since the last report to each creditor listed in the
9 plan;

10 (3) the amounts deducted from the amount received from the individual;
11 (4) the amount held in reserve; and
12 (5) if, since the last report, a creditor has agreed to accept as payment in full an amount
13 less than the principal amount of the debt owed by the individual:

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; and
17 (D) the calculation of a settlement fee.

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

22 **19-14.8-28. Prohibited acts and practices. --** (a) A provider may not, directly or
23 indirectly:

24 (1) misappropriate or misapply money held in trust;
25 (2) settle a debt on behalf of an individual for more than fifty percent (50%) of the
26 principal amount of the debt owed a creditor, unless the individual assents to the settlement after
27 the creditor has assented;

28 (3) take a power of attorney that authorizes it to settle a debt, unless the power of attorney
29 expressly limits the providers authority to settle debts for not more than fifty percent (50%) of the
30 principal amount of the debt owed a creditor;

31 (4) exercise or attempt to exercise a power of attorney after an individual has terminated
32 an agreement;

33 (5) initiate a transfer from an individuals account at a bank or with another person unless
34 the transfer is:

1 (A) a return of money to the individual; or
2 (B) before termination of an agreement, properly authorized by the agreement and this
3 chapter, and for:
4 (i) payment to one or more creditors pursuant to a plan; or
5 (ii) payment of a fee;
6 (6) offer a gift or bonus, premium, reward, or other compensation to an individual for
7 executing an agreement;
8 (7) offer, pay, or give a gift or bonus, premium, reward, or other compensation to a
9 person for referring a prospective customer, if the person making the referral has a financial
10 interest in the outcome of debt-management services provided to the customer, unless neither the
11 provider nor the person making the referral communicates to the prospective customer the
12 identity of the source of the referral;
13 (8) receive a bonus, commission, or other benefit for referring an individual to a person;
14 (9) structure a plan in a manner that would result in a negative amortization of any of an
15 individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to refund or
16 waive the finance charge upon payment of the principal amount of the debt;
17 (10) compensate its employees on the basis of a formula that incorporates the number of
18 individuals the employee induces to enter into agreements;
19 (11) settle a debt or lead an individual to believe that a payment to a creditor is in
20 settlement of a debt to the creditor unless, at the time of settlement, the individual receives a
21 certification by the creditor that the payment is in full settlement of the debt;
22 (12) make a representation that:
23 (A) the provider will furnish money to pay bills or prevent attachments;
24 (B) payment of a certain amount will permit satisfaction of a certain amount or range of
25 indebtedness; or
26 (C) participation in a plan will or may prevent litigation, garnishment, attachment,
27 repossession, foreclosure, eviction, or loss of employment;
28 (13) misrepresent that it is authorized or competent to furnish legal advice or perform
29 legal services;
30 (14) represent that it is a not-for-profit entity unless it is organized and properly operating
31 as a not-for-profit under the law of the state in which it was formed or that it is a tax-exempt
32 entity unless it has received certification of tax-exempt status from the Internal Revenue Service;
33 (15) take a confession of judgment or power of attorney to confess judgment against an
34 individual; or

1 (16) employ an unfair, unconscionable, or deceptive act or practice, including the
2 knowing omission of any material information.

3 (b) If a provider furnishes debt-management services to an individual, the provider may
4 not, directly or indirectly:

5 (1) purchase a debt or obligation of the individual;
6 (2) receive from or on behalf of the individual:
7 (A) a promissory note or other negotiable instrument other than a check or a demand
8 draft; or
9 (B) a post-dated check or demand draft;
10 (3) lend money or provide credit to the individual, except as a deferral of a settlement fee
11 at no additional expense to the individual;
12 (4) obtain a mortgage or other security interest from any person in connection with the
13 services provided to the individual;
14 (5) except as permitted by federal law, disclose the identity or identifying information of
15 the individual or the identity of the individual's creditors, except to:
16 (A) the director, upon proper demand;
17 (B) a creditor of the individual, to the extent necessary to secure the cooperation of the
18 creditor in a plan; or
19 (C) the extent necessary to administer the plan;
20 (6) except as otherwise provided in subsection 19-14.8-23(f), provide the individual less
21 than the full benefit of a compromise of a debt arranged by the provider;
22 (7) charge the individual for or provide credit or other insurance, coupons for goods or
23 services, membership in a club, access to computers or the Internet, or any other matter not
24 directly related to debt-management services or educational services concerning personal finance;
25 or
26 (8) furnish legal advice or perform legal services, unless the person furnishing that advice
27 to or performing those services for the individual is licensed to practice law.

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

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

33 (e) Unless a person supplies goods, services, or facilities generally and supplies them to
34 the provider at a cost no greater than the cost the person generally charges to others, a provider

1 may not purchase goods, services, or facilities from the person if an employee or a person that the
2 provider should reasonably know is an affiliate of the provider:

3 (1) owns more than ten percent (10%) of the person; or

4 (2) is an employee or affiliate of the person.

5 **19-14.8-29. Notice of litigation.** -- No later than thirty (30) days after a provider has been
6 served with notice of a civil action for violation of this chapter by or on behalf of an individual
7 who resides in this state at either the time of an agreement or the time the notice is served, the
8 provider shall notify the director in a record that it has been sued.

9 **19-14.8-30. Advertising.** -- A provider that advertises debt-management services shall
10 disclose, in an easily comprehensible manner, the information specified in subdivisions 19-14.8-
11 17(d)(3) and (4).

12 **19-14.8-31. Liability for the conduct of other persons.** -- If a provider delegates any of
13 its duties or obligations under an agreement or this chapter to another person, including an
14 independent contractor, the provider is liable for conduct of the person which, if done by the
15 provider, would violate the agreement or this chapter.

16 **19-14.8-32. Powers of director or director's designee.** -- (a) The director may act on
17 its own initiative or in response to complaints and may receive complaints, take action to obtain
18 voluntary compliance with this chapter, refer cases to the attorney general, and seek or provide
19 remedies as provided in this chapter.

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

26 (1) charge the person the reasonable expenses necessarily incurred to conduct the
27 examination;

28 (2) require or permit a person to file a statement under oath as to all the facts and
29 circumstances of a matter to be investigated; and

30 (3) seek a court order authorizing seizure from a bank at which the person maintains a
31 trust account required by section 19-14.8-22, any or all money, books, records, accounts, and
32 other property of the provider that is in the control of the bank and relates to individuals who
33 reside in this state.

34 (c) The director may adopt rules to implement the provisions of this chapter in

1 accordance with chapter 42-35.

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

5 (e) [RESERVED].

6 (f) The director, by rule, shall adopt dollar amounts instead of those specified in sections
7 19-14.8-2, 19-14.8-5, 19-14.8-9, 19-14.8-13, 19-14.8-23, 19-14.8-33, and 19-14.8-35 to reflect
8 inflation, as measured by the United States Bureau of Labor Statistics Consumer Price Index for
9 All Urban Consumers or, if that index is not available, another index adopted by rule by the
10 director. The director shall adopt a base year and adjust the dollar amounts, effective on July 1 of
11 each year, if the change in the index from the base year, as of December 31 of the preceding year,
12 is at least ten percent (10%). The dollar amount must be rounded to the nearest one hundred
13 dollars (\$100), except that the amounts in section 19-14.8-23 must be rounded to the nearest
14 dollar.

15 (g) The director shall notify registered providers of any change in dollar amounts made
16 pursuant to subsection (f) and make that information available to the public.

17 **19-14.8-33. Administrative remedies. --** (a) The director may enforce this chapter and
18 rules adopted under this chapter by taking one or more of the following actions:

19 (1) ordering a provider or a director, employee, or other agent of a provider to cease and
20 desist from any violations;

21 (2) ordering a provider or a person that has caused a violation to correct the violation,
22 including making restitution of money or property to a person aggrieved by a violation;

23 (3) subject to adjustment of the dollar amount pursuant to subsection 19-14.8-32(f),
24 imposing on a provider or a person that has caused a violation a civil penalty not exceeding ten
25 thousand dollars (\$10,000) for each violation;

26 (4) prosecuting a civil action to:

27 (A) enforce an order; or

28 (B) obtain restitution or an injunction or other equitable relief, or both;

29 (5) intervening in an action brought under section 19-14.8-35.

30 (b) Subject to adjustment of the dollar amount pursuant to subsection 19-14.8-32(f), if a
31 person violates or knowingly authorizes, directs, or aids in the violation of a final order issued
32 under subsection (a)(1) or (2), the director may impose a civil penalty not exceeding twenty
33 thousand dollars (\$20,000) for each violation.

34 (c) The director may maintain an action to enforce this chapter in any county.

1 (d) The director may recover the reasonable costs of enforcing the chapter under
2 subsections (a) through (c), including attorney's fees based on the hours reasonably expended and
3 the hourly rates for attorneys of comparable experience in the community.

4 (e) In determining the amount of a civil penalty to impose under subsection (a) or (b), the
5 director shall consider the seriousness of the violation, the good faith of the violator, any previous
6 violations by the violator, the deleterious effect of the violation on the public, the net worth of the
7 violator, and any other factor the director considers relevant to the determination of the civil
8 penalty.

9 **19-14.8-34. Suspension, revocation or nonrenewal of registration.** -- (a) In this
10 section, "insolvent" means:

11 (1) having generally ceased to pay debts in the ordinary course of business other than as a
12 result of good-faith dispute;

13 (2) being unable to pay debts as they become due; or

14 (3) being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C. Section
15 101 et seq., as amended.

16 (b) The director may suspend, revoke, or deny renewal of a provider's registration if:

17 (1) a fact or condition exists that, if it had existed when the registrant applied for
18 registration as a provider, would have been a reason for denying registration;

19 (2) the provider has committed a material violation of this chapter or a rule or order of the
20 director under this chapter;

21 (3) the provider is insolvent;

22 (4) the provider or an employee or affiliate of the provider has refused to permit the
23 director to make an examination authorized by this chapter, failed to comply with subdivision 19-
24 14.8-32(b)(2) within fifteen (15) days after request, or made a material misrepresentation or
25 omission in complying with subdivision 19-14.8-32(b)(2); or

26 (5) the provider has not responded within a reasonable time and in an appropriate manner
27 to communications from the director.

28 (c) If a provider does not comply with subsection 19-14.8-22(f) or if the director
29 otherwise finds that the public health or safety or general welfare requires emergency action, the
30 director may order a summary suspension of the provider's registration, effective on the date
31 specified in the order.

32 (d) If the director suspends, revokes, or denies renewal of the registration of a provider,
33 the director may seek a court order authorizing seizure of any or all of the money in a trust
34 account required by section 19-14.8-22, books, records, accounts, and other property of the

1 provider which are located in this state.

2 (e) If the director suspends or revokes a provider's registration, the provider may appeal
3 and request a hearing pursuant to chapter 42-35.

4 **19-14.8-35. Private enforcement.** -- (a) If an individual voids an agreement pursuant to
5 subsection 19-14.8-25(b), the individual may recover in a civil action all money paid or deposited
6 by or on behalf of the individual pursuant to the agreement, except amounts paid to creditors, in
7 addition to the recovery under subsection (c)(3) and (4).

8 (b) If an individual voids an agreement pursuant to subsection 19-14.8-25(a), the
9 individual may recover in a civil action three (3) times the total amount of the fees, charges,
10 money, and payments made by the individual to the provider, in addition to the recovery under
11 subsection (c)(4).

12 (c) Subject to subsection (d), an individual with respect to whom a provider violates this
13 chapter may recover in a civil action from the provider and any person that caused the violation:

14 (1) compensatory damages for injury, including noneconomic injury, caused by the
15 violation;

16 (2) except as otherwise provided in subsection (d) and subject to adjustment of the dollar
17 amount pursuant to subsection 19-14.8-32(f), with respect to a violation of section 19-14.8-17,
18 19-14.8-19, 19-14.8-20, 19-14.8-21, 19-14.8-22, 19-14.8-23, 19-14.8-24, 19-14.8-27, or
19 subsection 19-14.8-28(a), (b), or (d), the greater of the amount recoverable under paragraph (1) or
20 five thousand dollars (\$5,000);

21 (3) punitive damages; and

22 (4) reasonable attorney's fees and costs.

23 (d) In a class action, except for a violation of subdivision 19-14.8-28(a)(5), the minimum
24 damages provided in subsection (c)(2) do not apply.

25 (e) In addition to the remedy available under subsection (c), if a provider violates an
26 individual's rights under section 19-14.8-20, the individual may recover in a civil action all
27 money paid or deposited by or on behalf of the individual pursuant to the agreement, except for
28 amounts paid to creditors.

29 (f) A provider is not liable under this section for a violation of this chapter if the provider
30 proves that the violation was not intentional and resulted from a good-faith error notwithstanding
31 the maintenance of procedures reasonably adapted to avoid the error. An error of legal judgment
32 with respect to a provider's obligations under this chapter is not a good-faith error. If, in
33 connection with a violation, the provider has received more money than authorized by an
34 agreement or this chapter, the defense provided by this subsection is not available unless the

1 provider refunds the excess within two (2) business days of learning of the violation.

2 (g) The director shall assist an individual in enforcing a judgment against the surety bond
3 or other security provided under section 19-14.8-13 or 19-14.8-14.

4 **19-14.8-36. Violation of unfair or deceptive practices statute. --** If an act or practice of
5 a provider violates both this chapter and either chapter 13.1 of title 6, an individual may not
6 recover under both for the same act or practice.

7 **19-14.8-37. Statute of limitations. --** (a) An action or proceeding brought pursuant to
8 subsection 19-14.8-33(a), (b), or (c) must be commenced within four (4) years after the conduct
9 that is the basis of the director's complaint.

10 (b) An action brought pursuant to section 19-14.8-35 must be commenced within two (2)
11 years after the latest of:

12 (1) the individual's last transmission of money to a provider;

13 (2) the individual's last transmission of money to a creditor at the direction of the
14 provider;

15 (3) the provider's last disbursement to a creditor of the individual;

16 (4) the provider's last accounting to the individual pursuant to subsection 19-14.8-27(a);

17 (5) the date on which the individual discovered or reasonably should have discovered the
18 facts giving rise to the individual's claim; or

19 (6) termination of actions or proceedings by the director with respect to a violation of the
20 chapter.

21 (c) The period prescribed in subsection (b)(5) is tolled during any period during which
22 the provider or, if different, the defendant has materially and willfully misrepresented information
23 required by this chapter to be disclosed to the individual, if the information so misrepresented is
24 material to the establishment of the liability of the defendant under this chapter.

25 **19-14.8-38. Uniformity of application and construction. --** In applying and construing
26 this chapter, consideration must be given to the need to promote uniformity of the law with
27 respect to its subject matter among states that enact it.

28 **19-14.8-39. Relation to electronic signatures in global and national commerce act. --**
29 This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and
30 National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede
31 Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of
32 the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).

33 **19-14.8-40. Transitional provisions – Application to existing transactions. --**
34 Transactions entered into before this chapter takes effect and the rights, duties, and interests

1 resulting from them may be completed, terminated, or enforced as required or permitted by a law
2 amended, repealed, or modified by this chapter as though the amendment, repeal, or modification
3 had not occurred.

4 **19-14.8-41. Severability.** -- If any provision of this chapter or its application to any
5 person or circumstance is held invalid, the invalidity does not affect other provisions or
6 applications of this chapter that can be given effect without the invalid provision or application,
7 and to this end the provisions of this chapter are severable.

8 **19-14.8-42. [Reserved].** -- [Reserved]

9 **19-14.8-43. Official comments.** -- It is the intention of the general assembly that the
10 official comments to this chapter represent the express legislative intent of the general assembly
11 and shall be used as a guide for interpretation of this chapter.

12 SECTION 4. This act shall take effect on March 31, 2007.

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LC02403
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EXPLANATION
BY THE LEGISLATIVE COUNCIL
OF
A N A C T
RELATING TO FINANCIAL INSTITUTIONS

- 1 This act would create the Uniform Debt-Management Services Act.
- 2 This act would take effect on March 31, 2007.

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LC02403
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