

1 STATE OF OKLAHOMA

2 2nd Session of the 52nd Legislature (2010)

3 HOUSE BILL 3106

By: Trebilcock

4
5
6 AS INTRODUCED

7 An Act relating to debtor and creditor; creating the
8 Uniform Debt-Management Services Act; defining terms;
9 providing exemptions; requiring registration of
10 providers; exempting certain persons from
11 registration; requiring publication of list of
12 registered providers; providing for form of
13 application; requiring payment of fee; requiring
14 bond; requiring certain information regarding trust
15 accounts; requiring evidence of insurance; providing
16 requirements for insurance; requiring proof of
17 compliance with certain state law; requiring evidence
18 of certain exemption under the Internal Revenue Code;
19 requiring application to be signed under oath;
20 requiring certain information be included in
21 application; requiring updating of information
22 contained in application; making application
23 information public, with exceptions; providing for
24 issuance or denial of certificate of registration;
authorizing temporary certificate of registration;
providing grounds for denial of certificate;
providing time periods for approval or denial of
initial registration; providing appeal process;
providing duration of validity of registration;
requiring annual renewal of registration; providing
for form, procedure and requirements for renewal;
making certain renewal information available to the
public; providing for denial of renewal; providing
appeal process; providing requirements and procedure
for registration of a provider that is licensed or
registered in another state; providing bond
requirements; providing acceptable substitute for
bond; requiring providers to act in good faith;
requiring providers to maintain toll-free
communication systems; providing prerequisites for
providing debt-management services; specifying

1 details to be included in itemized list; requiring
2 certain services be provided; requiring certain
3 information be provided; requiring certain
4 disclosures; defining terms; providing for
5 communication by electronic or other means; providing
6 for requests for written copy of materials; requiring
7 certain disclosures if provider maintains an Internet
8 website; authorizing provider to terminate agreement
9 under certain circumstances and providing procedure
10 therefor; providing for form and contents of
11 agreements; providing for delivery; providing
12 requirements for agreements; authorizing agreement to
13 confer power of attorney, with restrictions;
14 prohibiting certain provisions in agreements;
15 providing procedure and form for cancellation of
16 agreement; authorizing and providing procedure for
17 waiver of right to cancel; requiring disclosures and
18 documents to be in English; providing for translation
19 to other language in certain circumstances; requiring
20 money paid to a provider to be held in trust;
21 requiring money to be deposited in trust account
22 within certain time; providing nature of money held
23 in trust; providing requirements for money held in
24 trust; requiring certain notification of embezzlement
or other unlawful appropriation of money held in
trust; providing for refund of money if agreement is
terminated or debt-management services plan fails;
providing requirements for relocating a trust
account; providing requirements and restrictions for
imposition of fees or other charges by a provider;
limiting amount of fees and other charges; providing
restrictions on voluntary contributions; providing
circumstances for which agreements are voidable;
providing for termination of agreement by provider;
providing requirements for termination; requiring
certain accounting of information; requiring provider
to maintain records for certain period of time;
prohibiting certain acts and practices; requiring
certain notice of litigation; requiring certain
disclosures; providing for liability of provider that
delegates duties and obligations; providing powers of
the Administrator; requiring notification of change
in fees and other costs; providing administrative
remedies; defining term; authorizing suspension,
revocation or denial of renewal of registration and
providing grounds therefor; authorizing the
Administrator to seek court order for certain

1 purpose; providing appeal process; providing for
2 private cause of action; providing for recovery
3 pursuant to private cause of action; providing that
4 provider is not liable in private cause of action
5 under certain circumstances; requiring the
6 Administrator to assist individuals in enforcing
7 judgments against surety bonds or other security;
8 limiting recovery if provider violates more than one
9 law; providing statute of limitations; providing for
10 tolling of statute; providing for uniformity of
11 application and construction; providing relation to
12 certain federal act; providing transitional
13 provisions; providing for application to existing
14 transactions; repealing 24 O.S. 2001, Sections 131,
15 132, as amended by Section 1, Chapter 171, O.S.L.
16 2002, 133, 134, 135, 136, 137, 138, 139, 140, 141, as
17 amended by Section 2, Chapter 171, O.S.L. 2002, 142,
18 143, 144, 145, 146, 147 and 148 (24 O.S. Supp. 2009,
19 Sections 132 and 141), which relate to the Credit
20 Services Organization Act; providing for
21 codification; and providing an effective date.

22
23 BE IT ENACTED BY THE PEOPLE OF THE STATE OF OKLAHOMA:

24 SECTION 1. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 171 of Title 24, unless there is
created a duplication in numbering, reads as follows:

SHORT TITLE. This act shall be known and may be cited as the
"Uniform Debt-Management Services Act".

SECTION 2. NEW LAW A new section of law to be codified
in the Oklahoma Statutes as Section 172 of Title 24, unless there is
created a duplication in numbering, reads as follows:

DEFINITIONS. In the Uniform Debt-Management Services Act:

(1) "Administrator" means the Administrator of Consumer
Affairs.

1 (2) "Affiliate":

2 (A) with respect to an individual, means:

3 (i) the spouse of the individual;

4 (ii) a sibling of the individual or the spouse of a
5 sibling;

6 (iii) an individual or the spouse of an individual who
7 is a lineal ancestor or lineal descendant of the
8 individual or the individual's spouse;

9 (iv) an aunt, uncle, great aunt, great uncle, first
10 cousin, niece, nephew, grandniece, or
11 grandnephew, whether related by the whole or the
12 half blood or adoption, or the spouse of any of
13 them; or

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

16 (B) with respect to an entity, means:

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

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

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

24

1 (iv) subject to adjustment of the dollar amount
2 pursuant to subsection (f) of Section 32 of this
3 act, a person that receives or received more than
4 Twenty-five Thousand Dollars (\$25,000.00) from
5 the entity in either the current year or the
6 preceding year or a person that owns more than
7 ten percent (10%) of, or an individual who is
8 employed by or is a director of, a person that
9 receives or received more than Twenty-five
10 Thousand Dollars (\$25,000.00) from the entity in
11 either the current year or the preceding year;

12 (v) an officer or director of, or an individual
13 performing similar functions with respect to, a
14 person described in division (i) of this
15 subparagraph;

16 (vi) the spouse of, or an individual occupying the
17 residence of, an individual described in
18 divisions (i) through (v) of this subparagraph;
19 or

20 (vii) an individual who has the relationship specified
21 in division (iv) of subparagraph (A) of this
22 paragraph to an individual or the spouse of an
23 individual described in divisions (i) through (v)
24 of this subparagraph.

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

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

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

10 (6) (A) "Certified counselor" means an individual certified by
11 a training program or certifying organization,
12 approved by the Administrator, that authenticates the
13 competence of individuals providing education and
14 assistance to other individuals in connection with
15 debt-management services in which an agreement
16 contemplates that creditors will reduce finance
17 charges or fees for late payment, default, or
18 delinquency.

19 (B) "Certified debt specialist" means an individual
20 certified by a training program or certifying
21 organization, approved by the Administrator, that
22 authenticates the competence of individuals providing
23 education and assistance to other individuals in
24 connection with debt-management services in which an

1 agreement contemplates that creditors will settle
2 debts for less than the full principal amount of debt
3 owed.

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

7 (8) "Day" means calendar day.

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

- 12 (A) legal services provided in an attorney-client
13 relationship by an attorney licensed or otherwise
14 authorized to practice law in this state;
- 15 (B) accounting services provided in an accountant-client
16 relationship by a certified public accountant licensed
17 to provide accounting services in this state; or
- 18 (C) financial-planning services provided in a financial
19 planner-client relationship by a member of a
20 financial-planning profession whose members the
21 Administrator, by rule, determines are:
- 22 (i) licensed by this state;
- 23 (ii) subject to a disciplinary mechanism;
- 24

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

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

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

5 (11) "Good faith" means honesty in fact and the observance of
6 reasonable standards of fair dealing.

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

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

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

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

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

24

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

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

7 (A) to execute or adopt a tangible symbol; or

8 (B) to attach to or logically associate with the record an
9 electronic sound, symbol, or process.

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

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

16 (A) established in an insured bank;

17 (B) separate from other accounts of the provider or its
18 designee;

19 (C) designated as a trust account or other account
20 designated to indicate that the money in the account
21 is not the money of the provider or its designee; and

22 (D) used to hold money of one or more individuals for
23 disbursement to creditors of the individuals.

24

1 SECTION 3. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 173 of Title 24, unless there is
3 created a duplication in numbering, reads as follows:

4 EXEMPT AGREEMENTS AND PERSONS.

5 (a) The Uniform Debt-Management Services Act does not apply to
6 an agreement with an individual who the provider has no reason to
7 know resides in this state at the time of the agreement.

8 (b) The Uniform Debt-Management Services Act does not apply to
9 a provider to the extent that the provider:

10 (1) provides or agrees to provide debt-management, educational,
11 or counseling services to an individual who the provider has no
12 reason to know resides in this state at the time the provider agrees
13 to provide the services; or

14 (2) receives no compensation for debt-management services from
15 or on behalf of the individuals to whom it provides the services or
16 from their creditors.

17 (c) The Uniform Debt-Management Services Act does not apply to
18 the following persons or their employees when the person or the
19 employee is engaged in the regular course of the person's business
20 or profession:

21 (1) a judicial officer, a person acting under an order of a
22 court or an administrative agency, or an assignee for the benefit of
23 creditors;

24 (2) a bank;

1 (3) an affiliate, as defined in division (i) of subparagraph
2 (B) of paragraph (2) of Section 2 of this act, of a bank if the
3 affiliate is regulated by a federal or state banking regulatory
4 authority; or

5 (4) a title insurer, escrow company, or other person that
6 provides bill-paying services if the provision of debt-management
7 services is incidental to the bill-paying services.

8 SECTION 4. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 174 of Title 24, unless there is
10 created a duplication in numbering, reads as follows:

11 REGISTRATION REQUIRED.

12 (a) Except as otherwise provided in subsection (b) of this
13 section, a provider may not provide debt-management services to an
14 individual who it reasonably should know resides in this state at
15 the time it agrees to provide the services, unless the provider is
16 registered under the Uniform Debt-Management Services Act.

17 (b) If a provider is registered under the Uniform Debt-
18 Management Services Act, subsection (a) of this section does not
19 apply to an employee or agent of the provider.

20 (c) The Administrator shall maintain and publicize a list of
21 the names of all registered providers.

22 SECTION 5. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 175 of Title 24, unless there is
24 created a duplication in numbering, reads as follows:

1 APPLICATION FOR REGISTRATION: FORM, FEE, AND ACCOMPANYING
2 DOCUMENTS.

3 (a) An application for registration as a provider must be in a
4 form prescribed by the Administrator.

5 (b) Subject to adjustment of dollar amounts pursuant to
6 subsection (f) of Section 32 of this act, an application for
7 registration as a provider must be accompanied by:

8 (1) the fee established by the Administrator;

9 (2) the bond required by Section 13 of this act;

10 (3) identification of all trust accounts required by Section 22
11 of this act and an irrevocable consent authorizing the Administrator
12 to review and examine the trust accounts;

13 (4) evidence of insurance in the amount of Two Hundred Fifty
14 Thousand Dollars (\$250,000.00):

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

18 (B) issued by an insurance company authorized to do
19 business in this state and rated at least A or
20 equivalent by a nationally recognized rating
21 organization approved by the Administrator;

22 (C) with a deductible not exceeding Five Thousand Dollars
23 (\$5,000.00);

24

1 (D) payable for the benefit of the applicant, this state,
2 and individuals who are residents of this state, as
3 their interests may appear; and

4 (E) not subject to cancellation by the applicant or the
5 insurer until sixty (60) days after written notice has
6 been given to the Administrator;

7 (5) proof of compliance with state law specifying the
8 prerequisites for a specific type of business or commercial entity
9 to do business in this state, if applicable to the applicant; and

10 (6) if the applicant is exempt from taxation under the Internal
11 Revenue Code, 26 U.S.C., Section 501, as amended, evidence of that
12 status.

13 SECTION 6. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 176 of Title 24, unless there is
15 created a duplication in numbering, reads as follows:

16 APPLICATION FOR REGISTRATION: REQUIRED INFORMATION. An
17 application for registration must be signed under oath and include:

18 (1) the applicant's name, principal business address and
19 telephone number, and all other business addresses in this state,
20 electronic-mail addresses, and Internet website addresses;

21 (2) all names under which the applicant conducts business;

22 (3) the address of each location in this state at which the
23 applicant will provide debt-management services or a statement that
24 the applicant will have no such location;

1 (4) the name and home address of each officer and director of
2 the applicant and each person that owns at least ten percent (10%)
3 of the applicant;

4 (5) identification of every jurisdiction in which, during the
5 five (5) years immediately preceding the application:

6 (A) the applicant or any of its officers or directors has
7 been licensed or registered to provide debt-management
8 services; or

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

11 (6) a statement describing, to the extent it is known or should
12 be known by the applicant, any material civil or criminal judgment
13 or litigation and any material administrative or enforcement action
14 by a governmental agency in any jurisdiction against the applicant,
15 any of its officers, directors, owners, or agents, or any person who
16 is authorized to have access to the trust account required by
17 Section 22 of this act;

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

23 (8) evidence of accreditation by an independent accrediting
24 organization approved by the Administrator;

1 (9) evidence that, within twelve (12) months after initial
2 employment, each of the applicant's counselors becomes certified as
3 a certified counselor or certified debt specialist;

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

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

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

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

15 (14) at the applicant's expense, the results of a criminal-
16 records check, including fingerprints, conducted within the
17 immediately preceding twelve (12) months, covering every officer of
18 the applicant and every employee or agent of the applicant who is
19 authorized to have access to the trust account required by Section
20 22 of this act;

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

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

- 1 (A) any affiliate of the applicant; or
2 (B) any entity that provides products or services to the
3 applicant or any individual relating to the
4 applicant's debt-management services;

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

10 (18) the identity of each director who is an affiliate, as
11 defined in subparagraph (A) of paragraph (2) of Section 2 of this
12 act or division (i), (ii), (iv), (v), (vi), or (vii) of subparagraph
13 (B) of paragraph (2) of Section 2 of this act, of the applicant; and

14 (19) any other information that the Administrator reasonably
15 requires to perform the Administrator's duties under Section 9 of
16 this act.

17 SECTION 7. NEW LAW A new section of law to be codified
18 in the Oklahoma Statutes as Section 177 of Title 24, unless there is
19 created a duplication in numbering, reads as follows:

20 APPLICATION FOR REGISTRATION: OBLIGATION TO UPDATE INFORMATION.

21 An applicant or registered provider shall notify the Administrator
22 within ten (10) days after a change in the information specified in
23 paragraph (4) or (6) of subsection (b) of Section 5 of this act or
24 paragraph (1), (3), (6), (12), or (13) of Section 6 of this act.

1 SECTION 8. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 178 of Title 24, unless there is
3 created a duplication in numbering, reads as follows:

4 APPLICATION FOR REGISTRATION: PUBLIC INFORMATION. Except for
5 the information required by paragraphs (7), (14), and (17) of
6 Section 6 of this act and the addresses required by paragraph (4) of
7 Section 6 of this act, the Administrator shall make the information
8 in an application for registration as a provider available to the
9 public.

10 SECTION 9. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 179 of Title 24, unless there is
12 created a duplication in numbering, reads as follows:

13 CERTIFICATE OF REGISTRATION: ISSUANCE OR DENIAL.

14 (a) Except as otherwise provided in subsections (c) and (d) of
15 this section, the Administrator shall issue a certificate of
16 registration as a provider to a person that complies with Sections 5
17 and 6 of this act.

18 (b) If an applicant has otherwise complied with Sections 5 and
19 6 of this act, including a timely effort to obtain the information
20 required by paragraph (14) of Section 6 of this act but the
21 information has not been received, the Administrator may issue a
22 temporary certificate of registration. The temporary certificate
23 shall expire no later than one hundred eighty (180) days after
24 issuance.

1 (c) The Administrator may deny registration if:

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

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

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

9 (4) the Administrator finds that the financial responsibility,
10 experience, character, or general fitness of the applicant or its
11 owners, directors, employees, or agents does not warrant belief that
12 the business will be operated in compliance with the Uniform Debt-
13 Management Services Act.

14 (d) The Administrator shall deny registration if, with respect
15 to an applicant that is organized as a not-for-profit entity or has
16 obtained tax-exempt status under the Internal Revenue Code, 26
17 U.S.C., Section 501, as amended, the applicant's board of directors
18 is not independent of the applicant's employees and agents.

19 (e) Subject to adjustment of the dollar amount pursuant to
20 subsection (f) of Section 32 of this act, a board of directors is
21 not independent for purposes of subsection (d) of this section if
22 more than one-fourth (1/4) of its members:

23 (1) are affiliates of the applicant, as defined in subparagraph
24 (A) of paragraph (2) of Section 2 of this act or division (i), (ii),

1 (iv), (v), (vi), or (vii) of subparagraph (B) of paragraph (2) of
2 Section 2 of this act; or

3 (2) after the date ten (10) years before first becoming a
4 director of the applicant, were employed by or directors of a person
5 that received from the applicant more than Twenty-five Thousand
6 Dollars (\$25,000.00) in either the current year or the preceding
7 year.

8 SECTION 10. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 180 of Title 24, unless there is
10 created a duplication in numbering, reads as follows:

11 CERTIFICATE OF REGISTRATION: TIMING.

12 (a) The Administrator shall approve or deny an initial
13 registration as a provider within one hundred twenty (120) days
14 after an application is filed. In connection with a request
15 pursuant to paragraph (19) of Section 6 of this act for additional
16 information, the Administrator may extend the one-hundred-twenty-day
17 period for not more than sixty (60) days. Within seven (7) days
18 after denying an application, the Administrator, in a record, shall
19 inform the applicant of the reasons for the denial.

20 (b) If the Administrator denies an application for registration
21 as a provider or does not act on an application within the time
22 prescribed in subsection (a) of this section, the applicant may
23 appeal and request a hearing pursuant to the Administrative
24 Procedures Act.

1 (c) Subject to subsection (d) of Section 11 and Section 34 of
2 this act, a registration as a provider is valid for one (1) year.

3 SECTION 11. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 181 of Title 24, unless there is
5 created a duplication in numbering, reads as follows:

6 RENEWAL OF REGISTRATION.

7 (a) A provider must obtain a renewal of its registration
8 annually.

9 (b) An application for renewal of registration as a provider
10 must be in a form prescribed by the Administrator, signed under
11 oath, and:

12 (1) be filed no fewer than thirty (30) and no more than sixty
13 (60) days before the registration expires;

14 (2) be accompanied by the fee established by the Administrator
15 and the bond required by Section 13 of this act;

16 (3) contain the matter required for initial registration as a
17 provider by paragraphs (8) and (9) of Section 6 of this act and a
18 financial statement, audited by an accountant licensed to conduct
19 audits, for the applicant's fiscal year immediately preceding the
20 application;

21 (4) disclose any changes in the information contained in the
22 applicant's application for registration or its immediately previous
23 application for renewal, as applicable. If an application is
24 otherwise complete and the applicant has made a timely effort to

1 obtain the information required by paragraph (14) of Section 6 of
2 this act but the information has not been received, the
3 Administrator may issue a temporary renewal of registration. The
4 temporary renewal shall expire no later than one hundred eighty
5 (180) days after issuance;

6 (5) supply evidence of insurance in an amount equal to the
7 larger of Two Hundred Fifty Thousand Dollars (\$250,000.00) or the
8 highest daily balance in the trust account required by Section 22 of
9 this act during the six-month period immediately preceding the
10 application:

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

14 (B) issued by an insurance company authorized to do
15 business in this state and rated at least A or
16 equivalent by a nationally recognized rating
17 organization approved by the Administrator;

18 (C) with a deductible not exceeding Five Thousand Dollars
19 (\$5,000.00);

20 (D) payable for the benefit of the applicant, this state,
21 and individuals who are residents of this state, as
22 their interests may appear; and
23
24

1 (E) not subject to cancellation by the applicant or the
2 insurer until sixty (60) days after written notice has
3 been given to the Administrator;

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

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

13 (8) provide any other information that the Administrator
14 reasonably requires to perform the Administrator's duties under this
15 section.

16 (c) Except for the information required by paragraphs (7),
17 (14), and (17) of Section 6 of this act and the addresses required
18 by paragraph (4) of Section 6 of this act, the Administrator shall
19 make the information in an application for renewal of registration
20 as a provider available to the public.

21 (d) If a registered provider files a timely and complete
22 application for renewal of registration, the registration remains
23 effective until the Administrator, in a record, notifies the
24 applicant of a denial and states the reasons for the denial.

1 (e) If the Administrator denies an application for renewal of
2 registration as a provider, the applicant, within thirty (30) days
3 after receiving notice of the denial, may appeal and request a
4 hearing pursuant to the Administrative Procedures Act. Subject to
5 Section 34 of this act, while the appeal is pending the applicant
6 shall continue to provide debt-management services to individuals
7 with whom it has agreements. If the denial is affirmed, subject to
8 the Administrator's order and Section 34 of this act, the applicant
9 shall continue to provide debt-management services to individuals
10 with whom it has agreements until, with the approval of the
11 Administrator, it transfers the agreements to another registered
12 provider or returns to the individuals all unexpended money that is
13 under the applicant's control.

14 SECTION 12. NEW LAW A new section of law to be codified
15 in the Oklahoma Statutes as Section 182 of Title 24, unless there is
16 created a duplication in numbering, reads as follows:

17 REGISTRATION IN ANOTHER STATE. If a provider holds a license or
18 certificate of registration in another state authorizing it to
19 provide debt-management services, the provider may submit a copy of
20 that license or certificate and the application for it instead of an
21 application in the form prescribed by subsection (a) of Section 5 of
22 this act, Section 6 of this act, or subsection (b) of Section 11 of
23 this act. The Administrator shall accept the application and the
24 license or certificate from the other state as an application for

1 registration as a provider or for renewal of registration as a
2 provider, as appropriate, in this state if:

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

6 (2) the applicant provides the information required by
7 paragraphs (1), (3), (10), (12), and (13) of Section 6 of this act;
8 and

9 (3) the applicant, under oath, certifies that the information
10 contained in the application is current or, to the extent it is not
11 current, supplements the application to make the information
12 current.

13 SECTION 13. NEW LAW A new section of law to be codified
14 in the Oklahoma Statutes as Section 183 of Title 24, unless there is
15 created a duplication in numbering, reads as follows:

16 BOND REQUIRED.

17 (a) Except as otherwise provided in Section 14 of this act, a
18 provider that is required to be registered under the Uniform Debt-
19 Management Services Act shall file a surety bond with the
20 Administrator, which must:

21 (1) be in effect during the period of registration and for two
22 (2) years after the provider ceases providing debt-management
23 services to individuals in this state; and
24

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

5 (b) Subject to adjustment of the dollar amount pursuant to
6 subsection (f) of Section 32 of this act, a surety bond filed
7 pursuant to subsection (a) of this section must:

8 (1) be in the amount of Fifty Thousand Dollars (\$50,000.00) or
9 other larger or smaller amount that the Administrator determines is
10 warranted by the financial condition and business experience of the
11 provider, the history of the provider in performing debt-management
12 services, the risk to individuals, and any other factor the
13 Administrator considers appropriate;

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

17 (3) have payment conditioned upon noncompliance of the provider
18 or its agent with the Uniform Debt-Management Services Act.

19 (c) If the principal amount of a surety bond is reduced by
20 payment of a claim or a judgment, the provider shall immediately
21 notify the Administrator and, within thirty (30) days after notice
22 by the Administrator, file a new or additional surety bond in an
23 amount set by the Administrator. The amount of the new or
24 additional bond must be at least the amount of the bond immediately

1 before payment of the claim or judgment. If for any reason a surety
2 terminates a bond, the provider shall immediately file a new surety
3 bond in the amount of Fifty Thousand Dollars (\$50,000.00) or other
4 amount determined pursuant to subsection (b) of this section.

5 (d) The Administrator or an individual may obtain satisfaction
6 out of the surety bond procured pursuant to this section if:

7 (1) the Administrator assesses expenses under paragraph (1) of
8 subsection (b) of Section 32 of this act, issues a final order under
9 paragraph (2) of subsection (a) of Section 33 of this act, or
10 recovers a final judgment under paragraph (4) or (5) of subsection
11 (a) or subsection (d) of Section 33 of this act; or

12 (2) an individual recovers a final judgment pursuant to
13 subsection (a), (b), or paragraph (1), (2), or (4) of subsection (c)
14 of Section 35 of this act.

15 (e) If claims against a surety bond exceed or are reasonably
16 expected to exceed the amount of the bond, the Administrator, on the
17 initiative of the Administrator or on petition of the surety, shall,
18 unless the proceeds are adequate to pay all costs, judgments, and
19 claims, distribute the proceeds in the following order:

20 (1) to satisfaction of a final order or judgment under
21 paragraph (2), (4), or (5) of subsection (a) or subsection (d) of
22 Section 33 of this act;

23

24

1 (2) to final judgments recovered by individuals pursuant to
2 subsection (a), (b), or paragraph (1), (2) or (4) of subsection (c)
3 of Section 35 of this act, pro rata;

4 (3) to claims of individuals established to the satisfaction of
5 the Administrator, pro rata; and

6 (4) if a final order or judgment is issued under subsection (a)
7 of Section 33 of this act, to the expenses charged pursuant to
8 paragraph (1) of subsection (b) of Section 32 of this act.

9 SECTION 14. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 184 of Title 24, unless there is
11 created a duplication in numbering, reads as follows:

12 BOND REQUIRED: SUBSTITUTE.

13 (a) Instead of the surety bond required by Section 13 of this
14 act, a provider may deliver to the Administrator, in the amount
15 required by subsection (b) of Section 13 of this act, and, except as
16 otherwise provided in subparagraph (A) of paragraph (2) of this
17 subsection, payable or available to this state and to individuals
18 who reside in this state when they agree to receive debt-management
19 services from the provider, as their interests may appear, if the
20 provider or its agent does not comply with the Uniform Debt-
21 Management Services Act:

22 (1) a certificate of insurance:

23 (A) issued by an insurance company authorized to do
24 business in this state and rated at least A or

1 equivalent by a nationally recognized rating
2 organization approved by the Administrator; and

3 (B) with no deductible, or if the provider supplies a bond
4 in the amount of Five Thousand Dollars (\$5,000.00), a
5 deductible not exceeding Five Thousand Dollars
6 (\$5,000.00); or

7 (2) with the approval of the Administrator:

8 (A) an irrevocable letter of credit, issued or confirmed
9 by a bank approved by the Administrator, payable upon
10 presentation of a certificate by the Administrator
11 stating that the provider or its agent has not
12 complied with the Uniform Debt-Management Services
13 Act; or

14 (B) bonds or other obligations of the United States or
15 guaranteed by the United States or bonds or other
16 obligations of this state or a political subdivision
17 of this state, to be deposited and maintained with a
18 bank approved by the Administrator for this purpose.

19 (b) If a provider furnishes a substitute pursuant to subsection
20 (a) of this section, the provisions of subsections (a), (c), (d),
21 and (e) of Section 13 of this act apply to the substitute.

22 SECTION 15. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 185 of Title 24, unless there is
24 created a duplication in numbering, reads as follows:

1 REQUIREMENT OF GOOD FAITH. A provider shall act in good faith
2 in all matters under the Uniform Debt-Management Services Act.

3 SECTION 16. NEW LAW A new section of law to be codified
4 in the Oklahoma Statutes as Section 186 of Title 24, unless there is
5 created a duplication in numbering, reads as follows:

6 CUSTOMER SERVICE. A provider that is required to be registered
7 under the Uniform Debt-Management Services Act shall maintain a
8 toll-free communication system, staffed at a level that reasonably
9 permits an individual to speak to a certified counselor, certified
10 debt specialist, or customer-service representative, as appropriate,
11 during ordinary business hours.

12 SECTION 17. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 187 of Title 24, unless there is
14 created a duplication in numbering, reads as follows:

15 PREREQUISITES FOR PROVIDING DEBT-MANAGEMENT SERVICES.

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

22 (1) free of additional charge if the individual enters into an
23 agreement;

24

1 (2) for a charge if the individual does not enter into an
2 agreement; and

3 (3) for a charge if the individual enters into an agreement,
4 using the following terminology, as applicable, and format:

5 Set-up fee _____

6 dollar amount of fee

7 Monthly service fee _____

8 dollar amount of fee or method of
9 determining amount

10 Settlement fee _____

11 dollar amount of fee or method of
12 determining amount

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

15 _____

16 (item) dollar amount or method of determining amount

17 _____

18 (item) dollar amount or method of determining amount

19 (b) A provider may not furnish debt-management services unless
20 the provider, through the services of a certified counselor or
21 certified debt specialist:

22 (1) provides the individual with reasonable education about the
23 management of personal finance;

24 (2) has prepared a financial analysis; and

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

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

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

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

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

15 (1) provide the individual with a copy of the analysis and plan
16 required by subsection (b) of this section in a record that
17 identifies the provider and that the individual may keep whether or
18 not the individual assents to the agreement;

19 (2) inform the individual of the availability, at the
20 individual's option, of assistance by a toll-free communication
21 system or in person to discuss the financial analysis and plan
22 required by subsection (b) of this section; and

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

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

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

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

10 (D) all other creditors.

11 (d) Before an individual assents to an agreement, the provider
12 shall inform the individual, in a record that contains nothing else,
13 that is given separately, and that the individual may keep whether
14 or not the individual assents to the agreement:

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

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

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

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

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

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

7 (e) If a provider may receive payments from an individual's
8 creditors and the plan contemplates that the individual's creditors
9 will reduce finance charges or fees for late payment, default, or
10 delinquency, the provider may comply with subsection (d) of this
11 section by providing the following disclosure, surrounded by black
12 lines:

13 IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

17 (2) Using a debt-management plan may make it harder for you to
18 obtain credit.

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

21 _____
22 Name and business address of provider

23 (f) If a provider will not receive payments from an
24 individual's creditors and the plan contemplates that the

1 individual's creditors will reduce finance charges or fees for late
2 payment, default, or delinquency, a provider may comply with
3 subsection (d) of this section by providing the following
4 disclosure, surrounded by black lines:

5 IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

9 (2) Using a debt-management plan may make it harder for you to
10 obtain credit.

11 _____

12 Name and business address of provider

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

17 IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

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

- 22 X hurt your credit rating or credit scores;
- 23 X lead your creditors to increase finance and other
- 24 charges; and

1 X lead your creditors to undertake activity, including
2 lawsuits, to collect the debts.

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

5
6 _____
7 Name and business address of provider

8 SECTION 18. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 188 of Title 24, unless there is
10 created a duplication in numbering, reads as follows:

11 COMMUNICATION BY ELECTRONIC OR OTHER MEANS.

12 (a) In this section:

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

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

18 (b) A provider may satisfy the requirements of Section 17, 19,
19 or 27 of this act by means of the Internet or other electronic means
20 if the provider obtains a consumer's consent in the manner provided
21 by Section 101(c)(1) of the federal act.

22 (c) The disclosures and materials required by Sections 17, 19,
23 and 27 of this act shall be presented in a form that is capable of
24 being accurately reproduced for later reference.

1 (d) With respect to disclosure by means of an Internet website,
2 the disclosure of the information required by subsection (d) of
3 Section 17 of this act must appear on one or more screens that:

4 (1) contain no other information; and

5 (2) the individual must see before proceeding to assent to
6 formation of an agreement.

7 (e) At the time of providing the materials and agreement
8 required by subsections (c) and (d) of Section 17 and Sections 19
9 and 27 of this act, a provider shall inform the individual that upon
10 electronic, telephonic, or written request, it will send the
11 individual a written copy of the materials, and shall comply with a
12 request as provided in subsection (f) of this section.

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

24

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

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

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

8 (3) the names of its principal officers.

9 (h) Subject to subsection (i) of this section, if a consumer
10 who has consented to electronic communication in the manner provided
11 by Section 101 of the federal act withdraws consent as provided in
12 the federal act, a provider may terminate its agreement with the
13 consumer.

14 (i) If a provider wishes to terminate an agreement with a
15 consumer pursuant to subsection (h) of this section, it shall notify
16 the consumer that it will terminate the agreement unless the
17 consumer, within thirty (30) days after receiving the notification,
18 consents to electronic communication in the manner provided in
19 Section 101(c) of the federal act. If the consumer consents, the
20 provider may terminate the agreement only as permitted by
21 subparagraph (G) of paragraph (6) of subsection (a) of Section 19 of
22 this act.

23

24

1 SECTION 19. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 189 of Title 24, unless there is
3 created a duplication in numbering, reads as follows:

4 FORM AND CONTENTS OF AGREEMENT.

5 (a) An agreement must:

6 (1) be in a record;

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

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

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

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

14 (6) disclose:

15 (A) the services to be provided;

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

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

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

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

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

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

11 (F) how the provider will comply with its obligations
12 under subsection (a) of Section 27 of this act;

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

16 (H) that the individual may cancel the agreement as
17 provided in Section 20 of this act;

18 (I) that the individual may contact the Administrator with
19 any questions or complaints regarding the provider;
20 and

21 (J) the address, telephone number, and Internet address or
22 website of the Administrator.

23 (b) For purposes of paragraph (5) of subsection (a) of this
24 section, delivery of an electronic record occurs when it is made

1 available in a format in which the individual may retrieve, save,
2 and print it and the individual is notified that it is available.

3 (c) If the Administrator supplies the provider with any
4 information required under subparagraph (J) of paragraph (6) of
5 subsection (a) of this section, the provider may comply with that
6 requirement only by disclosing the information supplied by the
7 Administrator.

8 (d) An agreement must provide that:

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

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

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

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

24

1 (2) the individual authorizes any bank in which the provider or
2 its agent has established a trust account to disclose to the
3 Administrator any financial records relating to the trust account;
4 and

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

8 (A) the identity of the creditor; and

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

11 (e) An agreement may confer on a provider a power of attorney
12 to settle the individual's debt for no more than fifty percent (50%)
13 of the principal amount of the debt. An agreement may not confer a
14 power of attorney to settle a debt for more than fifty percent (50%)
15 of that amount, but may confer a power of attorney to negotiate with
16 creditors of the individual on behalf of the individual. An
17 agreement must provide that the provider will obtain the assent of
18 the individual after a creditor has assented to a settlement for
19 more than fifty percent (50%) of the principal amount of the debt.

20 (f) An agreement may not:

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

23 (2) except as permitted by Section 2 of the Federal Arbitration
24 Act, 9 U.S.C., Section 2, as amended, or the Uniform Arbitration Act

1 contain a provision that modifies or limits otherwise available
2 forums or procedural rights, including the right to trial by jury,
3 that are generally available to the individual under law other than
4 the Uniform Debt-Management Services Act;

5 (3) contain a provision that restricts the individual's
6 remedies under the Uniform Debt-Management Services Act or law other
7 than the Uniform Debt-Management Services Act; or

8 (4) contain a provision that:

9 (A) limits or releases the liability of any person for not
10 performing the agreement or for violating the Uniform
11 Debt-Management Services Act; or

12 (B) indemnifies any person for liability arising under the
13 agreement or the Uniform Debt-Management Services Act.

14 (g) All rights and obligations specified in subsection (d) of
15 this section and Section 20 of this act exist even if not provided
16 in the agreement. A provision in an agreement which violates
17 subsection (d), (e), or (f) of this section is void.

18 SECTION 20. NEW LAW A new section of law to be codified
19 in the Oklahoma Statutes as Section 190 of Title 24, unless there is
20 created a duplication in numbering, reads as follows:

21 CANCELLATION OF AGREEMENT; WAIVER.

22 (a) An individual may cancel an agreement before midnight of
23 the third business day after the individual assents to it, unless
24 the agreement does not comply with subsection (b) of this section or

1 Section 19 or 28 of this act, in which event the individual may
2 cancel the agreement within thirty (30) days after the individual
3 assents to it. To exercise the right to cancel, the individual must
4 give notice in a record to the provider. Notice by mail is given
5 when mailed.

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

8 Notice of Right to Cancel

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

13 To cancel this agreement during this period, send an e-mail to
14 _____

15 E-mail address of provider

16 or mail or deliver a signed, dated copy of this notice, or any other
17 written notice to _____

18 Name of provider

19 at _____

20 Address of provider

21 before midnight on _____.

22 Date

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

1 You also may terminate this agreement at any later time, but we
2 may not be required to refund fees you have paid us.

3 I cancel this agreement,

4 _____

5 Print your name

6 _____

7 Signature

8 _____

9 Date

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

19 SECTION 21. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 191 of Title 24, unless there is
21 created a duplication in numbering, reads as follows:

22 REQUIRED LANGUAGE. Unless the Administrator, by rule, provides
23 otherwise, the disclosures and documents required by the Uniform
24 Debt-Management Services Act must be in English. If a provider

1 communicates with an individual primarily in a language other than
2 English, the provider must furnish a translation into the other
3 language of the disclosures and documents required by the Uniform
4 Debt-Management Services Act.

5 SECTION 22. NEW LAW A new section of law to be codified
6 in the Oklahoma Statutes as Section 192 of Title 24, unless there is
7 created a duplication in numbering, reads as follows:

8 TRUST ACCOUNT.

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

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

20 (c) A provider shall:

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

23

24

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

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

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

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

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

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

19 (f) If a provider has established a trust account pursuant to
20 subsection (a) of this section, the provider shall reconcile the
21 trust account at least once a month. The reconciliation must
22 compare the cash balance in the trust account with the sum of the
23 balances in each individual's account. If the provider or its
24

1 designee has more than one trust account, each trust account must be
2 individually reconciled.

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

10 (h) If an individual terminates an agreement or it becomes
11 reasonably apparent to a provider that a plan has failed, the
12 provider shall promptly refund to the individual all money paid by
13 or on behalf of the individual which has not been paid to creditors,
14 less fees that are payable to the provider under Section 23 of this
15 act.

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

21 SECTION 23. NEW LAW A new section of law to be codified
22 in the Oklahoma Statutes as Section 193 of Title 24, unless there is
23 created a duplication in numbering, reads as follows:

24 FEES AND OTHER CHARGES.

1 (a) A provider may not impose directly or indirectly a fee or
2 other charge on an individual or receive money from or on behalf of
3 an individual for debt-management services except as permitted by
4 this section.

5 (b) A provider may not impose charges or receive payment for
6 debt-management services until the provider and the individual have
7 signed an agreement that complies with Sections 19 and 28 of this
8 act.

9 (c) If an individual assents to an agreement, a provider may
10 not impose a fee or other charge for educational or counseling
11 services, or the like, except as otherwise provided in this
12 subsection and subsection (d) of Section 28 of this act. The
13 Administrator may authorize a provider to charge a fee based on the
14 nature and extent of the educational or counseling services
15 furnished by the provider.

16 (d) Subject to adjustment of dollar amounts pursuant to
17 subsection (f) of Section 32 of this act, the following rules apply:

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

21 (A) a fee not exceeding Fifty Dollars (\$50.00) for
22 consultation, obtaining a credit report, setting up an
23 account, and the like; and
24

1 (B) a monthly service fee, not to exceed Ten Dollars
2 (\$10.00) times the number of creditors remaining in a
3 plan at the time the fee is assessed, but not more
4 than Fifty Dollars (\$50.00) in any month.

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

8 (A) subject to subsection (d) of Section 19 of this act, a
9 fee for consultation, obtaining a credit report,
10 setting up an account, and the like, in an amount not
11 exceeding the lesser of Four Hundred Dollars (\$400.00)
12 and four percent (4%) of the debt in the plan at the
13 inception of the plan; and

14 (B) a monthly service fee, not to exceed Ten Dollars
15 (\$10.00) times the number of creditors remaining in a
16 plan at the time the fee is assessed, but not more
17 than Fifty Dollars (\$50.00) in any month.

18 (3) A provider may not impose or receive fees under both
19 paragraphs (1) and (2) of this subsection.

20 (4) Except as otherwise provided in subsection (d) of Section
21 28 of this act, if an individual does not assent to an agreement, a
22 provider may receive for educational and counseling services it
23 provides to the individual a fee not exceeding One Hundred Dollars
24 (\$100.00) or, with the approval of the Administrator, a larger fee.

1 The Administrator may approve a fee larger than One Hundred Dollars
2 (\$100.00) if the nature and extent of the educational and counseling
3 services warrant the larger fee.

4 (e) If, before the expiration of ninety (90) days after the
5 completion or termination of educational or counseling services, an
6 individual assents to an agreement, the provider shall refund to the
7 individual any fee paid pursuant to paragraph (4) of subsection (d)
8 of this section.

9 (f) Except as otherwise provided in subsections (c) and (d) of
10 this section, if an agreement contemplates that creditors will
11 settle an individual's debts for less than the principal amount of
12 the debt, compensation for services in connection with settling a
13 debt may not exceed, with respect to each debt:

14 (1) thirty percent (30%) of the excess of the principal amount
15 of the debt over the amount paid the creditor pursuant to the
16 agreement, less

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

19 (A) the fee charged pursuant to subparagraph (A) of
20 paragraph (2) of subsection (d) of this section; and

21 (B) the aggregate of fees charged pursuant to subparagraph
22 (B) of paragraph (2) of subsection (d) of this
23 section.

24

1 (g) Subject to adjustment of the dollar amount pursuant to
2 subsection (f) of Section 32 of this act, if a payment to a provider
3 by an individual under the Uniform Debt-Management Services Act is
4 dishonored, a provider may impose a reasonable charge on the
5 individual, not to exceed the lesser of Twenty-five Dollars (\$25.00)
6 and the amount permitted by law other than the Uniform Debt-
7 Management Services Act.

8 SECTION 24. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 194 of Title 24, unless there is
10 created a duplication in numbering, reads as follows:

11 VOLUNTARY CONTRIBUTIONS. A provider may not solicit a voluntary
12 contribution from an individual or an affiliate of the individual
13 for any service provided to the individual. A provider may accept
14 voluntary contributions from an individual but, until thirty (30)
15 days after completion or termination of a plan, the aggregate amount
16 of money received from or on behalf of the individual may not exceed
17 the total amount the provider may charge the individual under
18 Section 23 of this act.

19 SECTION 25. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 195 of Title 24, unless there is
21 created a duplication in numbering, reads as follows:

22 VOIDABLE AGREEMENTS.

23 (a) If a provider imposes a fee or other charge or receives
24 money or other payments not authorized by Section 23 or 24 of this

1 act the individual may void the agreement and recover as provided in
2 Section 35 of this act.

3 (b) If a provider is not registered as required by the Uniform
4 Debt-Management Services Act when an individual assents to an
5 agreement, the agreement is voidable by the individual.

6 (c) If an individual voids an agreement under subsection (b) of
7 this section, the provider does not have a claim against the
8 individual for breach of contract or for restitution.

9 SECTION 26. NEW LAW A new section of law to be codified
10 in the Oklahoma Statutes as Section 196 of Title 24, unless there is
11 created a duplication in numbering, reads as follows:

12 TERMINATION OF AGREEMENTS.

13 (a) If an individual who has entered into an agreement fails
14 for sixty (60) days to make payments required by the agreement, a
15 provider may terminate the agreement.

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

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

20 (2) sixty-five percent (65%) of any portion of the set-up fee
21 received pursuant to paragraph (2) of subsection (d) of Section 23
22 of this act which has not been credited against settlement fees.

23

24

1 SECTION 27. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 197 of Title 24, unless there is
3 created a duplication in numbering, reads as follows:

4 PERIODIC REPORTS AND RETENTION OF RECORDS.

5 (a) A provider shall provide the accounting required by
6 subsection (b) of this section:

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

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

9 (A) at least once each month; and

10 (B) within five (5) business days after a request by an
11 individual, but the provider need not comply with more
12 than one request in any calendar month.

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

16 (1) the amount of money received from the individual since the
17 last report;

18 (2) the amounts and dates of disbursement made on the
19 individual's behalf, or by the individual upon the direction of the
20 provider, since the last report to each creditor listed in the plan;

21 (3) the amounts deducted from the amount received from the
22 individual;

23 (4) the amount held in reserve; and
24

1 (5) if, since the last report, a creditor has agreed to accept
2 as payment in full an amount less than the principal amount of the
3 debt owed by the individual:

4 (A) the total amount and terms of the settlement;

5 (B) the amount of the debt when the individual assented to
6 the plan;

7 (C) the amount of the debt when the creditor agreed to the
8 settlement; and

9 (D) the calculation of a settlement fee.

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

16 SECTION 28. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 198 of Title 24, unless there is
18 created a duplication in numbering, reads as follows:

19 PROHIBITED ACTS AND PRACTICES.

20 (a) A provider may not, directly or indirectly:

21 (1) misappropriate or misapply money held in trust;

22 (2) settle a debt on behalf of an individual for more than
23 fifty percent (50%) of the principal amount of the debt owed a
24

1 creditor, unless the individual assents to the settlement after the
2 creditor has assented;

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

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

9 (5) initiate a transfer from an individual's account at a bank
10 or with another person unless the transfer is:

11 (A) a return of money to the individual; or

12 (B) before termination of an agreement, properly
13 authorized by the agreement and the Uniform Debt-
14 Management Services Act, and for:

15 (i) payment to one or more creditors pursuant to an
16 agreement; or

17 (ii) payment of a fee;

18 (6) offer a gift or bonus, premium, reward, or other
19 compensation to an individual for executing an agreement;

20 (7) offer, pay, or give a gift or bonus, premium, reward, or
21 other compensation to a person for referring a prospective customer,
22 if the person making the referral has a financial interest in the
23 outcome of debt-management services provided to the customer, unless
24 neither the provider nor the person making the referral communicates

1 to the prospective customer the identity of the source of the
2 referral;

3 (8) receive a bonus, commission, or other benefit for referring
4 an individual to a person;

5 (9) structure a plan in a manner that would result in a
6 negative amortization of any of an individual's debts, unless a
7 creditor that is owed a negatively amortizing debt agrees to refund
8 or waive the finance charge upon payment of the principal amount of
9 the debt;

10 (10) compensate its employees on the basis of a formula that
11 incorporates the number of individuals the employee induces to enter
12 into agreements;

13 (11) settle a debt or lead an individual to believe that a
14 payment to a creditor is in settlement of a debt to the creditor
15 unless, at the time of settlement, the individual receives a
16 certification by the creditor that the payment is in full settlement
17 of the debt;

18 (12) make a representation that:

19 (A) the provider will furnish money to pay bills or
20 prevent attachments;

21 (B) payment of a certain amount will permit satisfaction
22 of a certain amount or range of indebtedness; or
23
24

1 (C) participation in a plan will or may prevent
2 litigation, garnishment, attachment, repossession,
3 foreclosure, eviction, or loss of employment;

4 (13) misrepresent that it is authorized or competent to furnish
5 legal advice or perform legal services;

6 (14) represent in its agreements, disclosures required by the
7 Uniform Debt-Management Services Act, advertisements, or Internet
8 website that it is:

9 (A) a not-for-profit entity unless it is organized and
10 properly operating as a not-for-profit entity under
11 the law of the state in which it was formed; or

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

17 (15) take a confession of judgment or power of attorney to
18 confess judgment against an individual; or

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

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

24 (1) purchase a debt or obligation of the individual;

1 (2) receive from or on behalf of the individual:

2 (A) a promissory note or other negotiable instrument other
3 than a check or a demand draft; or

4 (B) a postdated check or demand draft;

5 (3) lend money or provide credit to the individual, except as a
6 deferral of a settlement fee at no additional expense to the
7 individual;

8 (4) obtain a mortgage or other security interest from any
9 person in connection with the services provided to the individual;

10 (5) except as permitted by federal law, disclose the identity
11 or identifying information of the individual or the identity of the
12 individual's creditors, except to:

13 (A) the Administrator, upon proper demand;

14 (B) a creditor of the individual, to the extent necessary
15 to secure the cooperation of the creditor in a plan;

16 or

17 (C) the extent necessary to administer the plan;

18 (6) except as otherwise provided in subsection (f) of Section
19 23 of this act, provide the individual less than the full benefit of
20 a compromise of a debt arranged by the provider;

21 (7) charge the individual for or provide credit or other
22 insurance, coupons for goods or services, membership in a club,
23 access to computers or the Internet, or any other matter not
24

1 directly related to debt-management services or educational services
2 concerning personal finance; or

3 (8) furnish legal advice or perform legal services, unless the
4 person furnishing that advice to or performing those services for
5 the individual is licensed to practice law.

6 (c) The Uniform Debt-Management Services Act does not authorize
7 any person to engage in the practice of law.

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

14 (e) Unless a person supplies goods, services, or facilities
15 generally and supplies them to the provider at a cost no greater
16 than the cost the person generally charges to others, a provider may
17 not purchase goods, services, or facilities from the person if an
18 employee or a person that the provider should reasonably know is an
19 affiliate of the provider:

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

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

22 SECTION 29. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 199 of Title 24, unless there is
24 created a duplication in numbering, reads as follows:

1 NOTICE OF LITIGATION. No later than thirty (30) days after a
2 provider has been served with notice of a civil action for violation
3 of the Uniform Debt-Management Services Act by or on behalf of an
4 individual who resides in this state at either the time of an
5 agreement or the time the notice is served, the provider shall
6 notify the Administrator in a record that it has been sued.

7 SECTION 30. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 200 of Title 24, unless there is
9 created a duplication in numbering, reads as follows:

10 ADVERTISING.

11 (a) If the agreements of a provider contemplate that creditors
12 will reduce finance charges or fees for late payment, default, or
13 delinquency and the provider advertises debt-management services, it
14 shall disclose, in an easily comprehensible manner, that using a
15 debt-management plan may make it harder for the individual to obtain
16 credit.

17 (b) If the agreements of a provider contemplate that creditors
18 will settle for less than the full principal amount of debt and the
19 provider advertises debt-management services, it shall disclose, in
20 an easily comprehensible manner, the information specified in
21 paragraphs (3) and (4) of subsection (d) of Section 17 of this act.

22 SECTION 31. NEW LAW A new section of law to be codified
23 in the Oklahoma Statutes as Section 201 of Title 24, unless there is
24 created a duplication in numbering, reads as follows:

1 LIABILITY FOR THE CONDUCT OF OTHER PERSONS. If a provider
2 delegates any of its duties or obligations under an agreement or the
3 Uniform Debt-Management Services Act to another person, including an
4 independent contractor, the provider is liable for conduct of the
5 person which, if done by the provider, would violate the agreement
6 or the Uniform Debt-Management Services Act.

7 SECTION 32. NEW LAW A new section of law to be codified
8 in the Oklahoma Statutes as Section 202 of Title 24, unless there is
9 created a duplication in numbering, reads as follows:

10 POWERS OF ADMINISTRATOR.

11 (a) The Administrator may act on the Administrator's own
12 initiative or in response to complaints and may receive complaints,
13 take action to obtain voluntary compliance with the Uniform Debt-
14 Management Services Act, refer cases to the Attorney General, and
15 seek or provide remedies as provided in the Uniform Debt-Management
16 Services Act.

17 (b) The Administrator may investigate and examine, in this
18 state or elsewhere, by subpoena or otherwise, the activities, books,
19 accounts, and records of a person that provides or offers to provide
20 debt-management services, or a person to which a provider has
21 delegated its obligations under an agreement or the Uniform Debt-
22 Management Services Act, to determine compliance with the Uniform
23 Debt-Management Services Act. Information that identifies
24 individuals who have agreements with the provider shall not be

1 disclosed to the public. In connection with the investigation, the
2 Administrator may:

3 (1) charge the person the reasonable expenses necessarily
4 incurred to conduct the examination;

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

8 (3) seek a court order authorizing seizure from a bank at which
9 the person maintains a trust account required by Section 22 of this
10 act, any or all money, books, records, accounts, and other property
11 of the provider that is in the control of the bank and relates to
12 individuals who reside in this state.

13 (c) The Administrator may adopt rules to implement the
14 provisions of the Uniform Debt-Management Services Act in accordance
15 with the Administrative Procedures Act.

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

21 (e) The Administrator, by rule, shall establish reasonable fees
22 to be paid by providers for the expense of administering the Uniform
23 Debt-Management Services Act.

24

1 (f) The Administrator, by rule, shall adopt dollar amounts
2 instead of those specified in Sections 2, 5, 9, 13, 23, 33, and 35
3 of this act to reflect inflation, as measured by the United States
4 Bureau of Labor Statistics Consumer Price Index for All Urban
5 Consumers or, if that index is not available, another index adopted
6 by rule by the Administrator. The Administrator shall adopt a base
7 year and adjust the dollar amounts, effective on July 1 of each
8 year, if the change in the index from the base year, as of December
9 31 of the preceding year, is at least ten percent (10%). The dollar
10 amount must be rounded to the nearest One Hundred Dollars (\$100.00),
11 except that the amounts in Section 23 of this act must be rounded to
12 the nearest dollar.

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

16 SECTION 33. NEW LAW A new section of law to be codified
17 in the Oklahoma Statutes as Section 203 of Title 24, unless there is
18 created a duplication in numbering, reads as follows:

19 ADMINISTRATIVE REMEDIES.

20 (a) The Administrator may enforce the Uniform Debt-Management
21 Services Act and rules adopted under the Uniform Debt-Management
22 Services Act by taking one or more of the following actions:

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

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

4 (3) subject to adjustment of the dollar amount pursuant to
5 subsection (f) of Section 32 of this act, imposing on a provider or
6 a person that has caused a violation a civil penalty not exceeding
7 Ten Thousand Dollars (\$10,000.00) for each violation;

8 (4) prosecuting a civil action to:

9 (A) enforce an order;

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

12 (5) intervening in an action brought under Section 35 of this
13 act.

14 (b) Subject to adjustment of the dollar amount pursuant to
15 subsection (f) of Section 32 of this act, if a person violates or
16 knowingly authorizes, directs, or aids in the violation of a final
17 order issued under paragraph (1) or (2) of subsection (a) of this
18 section, the Administrator may impose a civil penalty not exceeding
19 Twenty Thousand Dollars (\$20,000.00) for each violation.

20 (c) The Administrator may maintain an action to enforce the
21 Uniform Debt-Management Services Act in any county.

22 (d) The Administrator may recover the reasonable costs of
23 enforcing the Uniform Debt-Management Services Act under subsections
24 (a) through (c) of this section, including attorney fees based on

1 the hours reasonably expended and the hourly rates for attorneys of
2 comparable experience in the community.

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

10 SECTION 34. NEW LAW A new section of law to be codified
11 in the Oklahoma Statutes as Section 204 of Title 24, unless there is
12 created a duplication in numbering, reads as follows:

13 SUSPENSION, REVOCATION, OR NONRENEWAL OF REGISTRATION.

14 (a) In this section, "insolvent" means:

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

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

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

20 (b) The Administrator may suspend, revoke, or deny renewal of a
21 provider's registration if:

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

1 (2) the provider has committed a material violation of the
2 Uniform Debt-Management Services Act or a rule or order of the
3 Administrator under the Uniform Debt-Management Services Act;

4 (3) the provider is insolvent;

5 (4) the provider or an employee or affiliate of the provider
6 has refused to permit the Administrator to make an examination
7 authorized by this act, failed to comply with paragraph (2) of
8 subsection (b) of Section 32 of this act within fifteen (15) days
9 after request, or made a material misrepresentation or omission in
10 complying with paragraph (2) of subsection (b) of Section 32 of this
11 act; or

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

14 (c) If a provider does not comply with subsection (f) of
15 Section 22 of this act or if the Administrator otherwise finds that
16 the public health or safety or general welfare requires emergency
17 action, the Administrator may order a summary suspension of the
18 provider's registration, effective on the date specified in the
19 order.

20 (d) If the Administrator suspends, revokes, or denies renewal
21 of the registration of a provider, the Administrator may seek a
22 court order authorizing seizure of any or all of the money in a
23 trust account required by Section 22 of this act, books, records,
24

1 accounts, and other property of the provider which are located in
2 this state.

3 (e) If the Administrator suspends or revokes a provider's
4 registration, the provider may appeal and request a hearing pursuant
5 to the Administrative Procedures Act.

6 SECTION 35. NEW LAW A new section of law to be codified
7 in the Oklahoma Statutes as Section 205 of Title 24, unless there is
8 created a duplication in numbering, reads as follows:

9 PRIVATE ENFORCEMENT.

10 (a) If an individual voids an agreement pursuant to subsection
11 (b) of Section 25 of this act, the individual may recover in a civil
12 action all money paid or deposited by or on behalf of the individual
13 pursuant to the agreement, except amounts paid to creditors, in
14 addition to the recovery under paragraphs (3) and (4) of subsection
15 (c) of this section.

16 (b) If an individual voids an agreement pursuant to subsection
17 (a) of Section 25 of this act, the individual may recover in a civil
18 action three times the total amount of the fees, charges, money, and
19 payments made by the individual to the provider, in addition to the
20 recovery under paragraph (4) of subsection (c) of this section.

21 (c) Subject to subsection (d) of this section, an individual
22 with respect to whom a provider violates the Uniform Debt-Management
23 Services Act may recover in a civil action from the provider and any
24 person that caused the violation:

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

3 (2) except as otherwise provided in subsection (d) of this
4 section and subject to adjustment of the dollar amount pursuant to
5 subsection (f) of Section 32 of this act, with respect to a
6 violation of Section 17, 19, 20, 21, 22, 23, 24, 27, or subsection
7 (a), (b), or (d) of Section 28 of this act, the greater of the
8 amount recoverable under paragraph (1) of this subsection or Five
9 Thousand Dollars (\$5,000.00);

10 (3) punitive damages; and

11 (4) reasonable attorney fees and costs.

12 (d) In a class action, except for a violation of paragraph (5)
13 of subsection (a) of Section 28 of this act, the minimum damages
14 provided in paragraph (2) of subsection (c) of this section do not
15 apply.

16 (e) In addition to the remedy available under subsection (c) of
17 this section, if a provider violates an individual's rights under
18 Section 20 of this act, the individual may recover in a civil action
19 all money paid or deposited by or on behalf of the individual
20 pursuant to the agreement, except for amounts paid to creditors.

21 (f) A provider is not liable under this section for a violation
22 of the Uniform Debt-Management Services Act if the provider proves
23 that the violation was not intentional and resulted from a good-
24 faith error notwithstanding the maintenance of procedures reasonably

1 adapted to avoid the error. An error of legal judgment with respect
2 to a provider's obligations under the Uniform Debt-Management
3 Services Act is not a good-faith error. If, in connection with a
4 violation, the provider has received more money than authorized by
5 an agreement or the Uniform Debt-Management Services Act, the
6 defense provided by this subsection is not available unless the
7 provider refunds the excess within two (2) business days of learning
8 of the violation.

9 (g) The Administrator shall assist an individual in enforcing a
10 judgment against the surety bond or other security provided under
11 Section 13 or 14 of this act.

12 SECTION 36. NEW LAW A new section of law to be codified
13 in the Oklahoma Statutes as Section 206 of Title 24, unless there is
14 created a duplication in numbering, reads as follows:

15 VIOLATION OF CONSUMER PROTECTION ACT. If an act or practice of
16 a provider violates both the Uniform Debt-Management Services Act
17 and the Oklahoma Consumer Protection Act, an individual may not
18 recover under both for the same act or practice.

19 SECTION 37. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 207 of Title 24, unless there is
21 created a duplication in numbering, reads as follows:

22 STATUTE OF LIMITATIONS.

23 (a) An action or proceeding brought pursuant to subsection (a),
24 (b), or (c) of Section 33 of this act must be commenced within four

1 years after the conduct that is the basis of the Administrator's
2 complaint.

3 (b) An action brought pursuant to Section 35 of this act must
4 be commenced within two (2) years after the latest of:

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

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

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

10 (4) the provider's last accounting to the individual pursuant
11 to subsection (a) of Section 27 of this act;

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

15 (6) termination of actions or proceedings by the Administrator
16 with respect to a violation of the Uniform Debt-Management Services
17 Act.

18 (c) The period prescribed in paragraph (5) of subsection (b) of
19 this section is tolled during any period during which the provider
20 or, if different, the defendant has materially and willfully
21 misrepresented information required by this act to be disclosed to
22 the individual, if the information so misrepresented is material to
23 the establishment of the liability of the defendant under the
24 Uniform Debt-Management Services Act.

1 SECTION 38. NEW LAW A new section of law to be codified
2 in the Oklahoma Statutes as Section 208 of Title 24, unless there is
3 created a duplication in numbering, reads as follows:

4 UNIFORMITY OF APPLICATION AND CONSTRUCTION. In applying and
5 construing the Uniform Debt-Management Services Act, consideration
6 must be given to the need to promote uniformity of the law with
7 respect to its subject matter among states that enact it.

8 SECTION 39. NEW LAW A new section of law to be codified
9 in the Oklahoma Statutes as Section 209 of Title 24, unless there is
10 created a duplication in numbering, reads as follows:

11 RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL
12 COMMERCE ACT. The Uniform Debt-Management Services Act modifies,
13 limits, and supersedes the federal Electronic Signatures in Global
14 and National Commerce Act (15 U.S.C., Section 7001 et seq.) but does
15 not modify, limit, or supersede Section 101(c) of that act (15
16 U.S.C., Section 7001(c)) or authorize electronic delivery of any of
17 the notices described in Section 103(b) of that act (15 U.S.C.,
18 Section 7003(b)).

19 SECTION 40. NEW LAW A new section of law to be codified
20 in the Oklahoma Statutes as Section 210 of Title 24, unless there is
21 created a duplication in numbering, reads as follows:

22 TRANSITIONAL PROVISIONS; APPLICATION TO EXISTING TRANSACTIONS.

23 Transactions entered into before the Uniform Debt-Management
24 Services Act takes effect and the rights, duties, and interests

1 resulting from them may be completed, terminated, or enforced as
2 required or permitted by a law amended, repealed, or modified by the
3 Uniform Debt-Management Services Act as though the amendment,
4 repeal, or modification had not occurred.

5 SECTION 41. REPEALER 24 O.S. 2001, Sections 131, 132, as
6 amended by Section 1, Chapter 171, O.S.L. 2002, 133, 134, 135, 136,
7 137, 138, 139, 140, 141, as amended by Section 2, Chapter 171,
8 O.S.L. 2002, 142, 143, 144, 145, 146, 147 and 148 (24 O.S. Supp.
9 2009, Sections 132 and 141), are hereby repealed.

10 SECTION 42. This act shall become effective January 1, 2011.

11

12 52-2-8795 SD 01/05/10

13

14

15

16

17

18

19

20

21

22

23

24