

CHAPTER.....

AN ACT relating to trade practices; enacting the Uniform Debt-Management Services Act; repealing the existing provisions governing the regulation of debt adjusters; and providing other matters properly relating thereto.

Legislative Counsel’s Digest:

Existing law provides for the regulation of debt adjusters by the Commissioner of Financial Institutions. (Chapter 676 of NRS) This bill repeals those provisions and enacts the Uniform Debt-Management Services Act, which provides for the regulation of providers of debt-management services by the Commissioner of Financial Institutions.

Sections 26-38 of this bill provide for the registration of providers of debt-management services, which includes providers of credit counseling, providers that develop and implement debt-management plans and providers of debt settlement services. No provider may enter into an agreement with any debtor in this State without registering as a consumer debt-management service in this State. Registration requires submission of detailed information concerning the service, including, without limitation, its financial condition, the identity of principals, locations at which service will be offered, the form for agreements with debtors and business history in other jurisdictions. To register, a service must have an effective insurance policy against fraud, dishonesty, theft and the like in an amount not less than \$250,000. It must also provide a security bond of a minimum of \$50,000 which has the Commissioner as a beneficiary. If a registration substantially duplicates one in another state, the service may offer proof of registration in that other state to satisfy the registration requirements in this State. A satisfactory application will result in a certificate to do business from the Commissioner. A yearly renewal is required.

Sections 39-49 of this bill govern agreements between debtors and providers of debt-management services. To enter into agreements with debtors, there is a disclosure requirement respecting fees and services to be offered, and the risks and benefits of entering into such a contract. The service must offer counseling services from a certified counselor or certified debt specialist, and a plan must be created by the counselor or debt specialist for debt-management service to commence. The contents of the agreements and fees that may be charged are set forth in **sections 39-49**. There is a penalty-free 3-day right of rescission on the part of the debtor. In addition, the debtor may cancel the agreement after 30 days, but may be subject to fees if that occurs. The service may terminate the agreement if required payments are delinquent for at least 60 days. Any payments for creditors received from a debtor must be kept in a trust account that may not be used to hold any other funds of the service. There are strict accounting requirements and periodic reporting requirements respecting funds held.

Section 50 of this bill prohibits specific acts on the part of a service, including, without limitation, misappropriation of funds in trust, settlement for more than 50 percent of a debt with a creditor without a debtor’s consent, gifts or premiums to enter into an agreement and representation that settlement has occurred without certification from a creditor. **Sections 51-59** of this bill provide that the enforcement of the provisions of this bill occurs at two levels, the Commissioner and the individual level. The Commissioner has investigative power, power to order an individual to cease and desist, power to assess a civil penalty up to \$10,000 and power to bring a civil action. An individual may bring a civil action for



compensatory damages, including, without limitation, triple damages, if a provider of debt-management services obtains payments not authorized by the provisions of this bill, and may seek punitive damages and attorney's fees. A service has a good faith mistake defense against liability. The statute of limitations pertaining to an action by the Commissioner is 4 years, and 2 years for a private right of action. **Section 58** of this bill provides that a violation of a provision of this bill constitutes a deceptive trade practice and that, for such a violation, an individual may recover pursuant to the provisions of this bill or the provisions of existing law relating to deceptive trade practices.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Title 56 of NRS is hereby amended by adding thereto a new chapter to consist of the provisions set forth as sections 2 to 61, inclusive, of this act.

Sec. 2. *This chapter may be cited as the Uniform Debt-Management Services Act.*

Sec. 3. *As used in this chapter, unless the context otherwise requires, the words and terms defined in sections 4 to 24, inclusive, of this act have the meanings ascribed to them in those sections.*

Sec. 4. *"Affiliate" means:*

1. With respect to an individual:

(a) The spouse of the individual;

(b) A sibling of the individual or the spouse of a sibling;

(c) An individual or the spouse of an individual who is a lineal ancestor or lineal descendant of the individual or the individual's spouse;

(d) An aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece or grandnephew, whether related by the whole or the half blood or adoption, or the spouse of any of them; or

(e) Any other individual occupying the residence of the individual; and

2. With respect to an entity:

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

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

(c) A director of, or an individual performing similar functions with respect to, the entity;

(d) Subject to adjustment of the dollar amount pursuant to subsection 6 of section 54 of this act, a person that receives or



received more than \$25,000 from the entity in either the current year or the preceding year or a person that owns more than 10 percent of, or an individual who is employed by or is a director of, a person that receives or received more than \$25,000 from the entity in either the current year or the preceding year;

(e) An officer or director of, or an individual performing similar functions with respect to, a person described in paragraph (a);

(f) The spouse of, or an individual occupying the residence of, an individual described in paragraphs (a) to (e), inclusive; or

(g) An individual who has the relationship specified in paragraph (d) of subsection 1 to an individual or the spouse of an individual described in paragraphs (a) to (e), inclusive.

Sec. 5. *“Agreement” means an agreement between a provider and an individual for the performance of debt-management services.*

Sec. 6. *“Bank” means a financial institution, including, without limitation, a commercial bank, savings bank, savings and loan association, credit union and trust company, engaged in the business of banking, chartered under federal or state law and regulated by a federal or state banking regulatory authority.*

Sec. 7. *“Business address” means the physical location of a business, including, without limitation, the name and number of a street.*

Sec. 8. *“Certified counselor” means an individual certified by a training program or certifying organization, approved by the Commissioner, that authenticates the competence of individuals providing education and assistance to other individuals in connection with debt-management services in which an agreement contemplates that creditors will reduce finance charges or fees for late payment, default or delinquency.*

Sec. 9. *“Certified debt specialist” means an individual certified by a training program or certifying organization, approved by the Commissioner, that authenticates the competence of individuals providing education and assistance to other individuals in connection with debt settlement services.*

Sec. 10. *“Commissioner” means the Commissioner of Financial Institutions.*

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

Sec. 11.5. *“Credit counseling” means providing education and assistance to an individual concerning debts owed by the*



individual which may include, without limitation, the development and implementation of a debt-management plan.

Sec. 12. *“Day” means calendar day.*

Sec. 12.5. *“Debt-management plan” means a plan which contemplates that:*

1. Regular, periodic payments will be made to a provider by or on behalf of an individual to whom debt-management services are being provided; and

2. The individual’s creditors will reduce financing charges or fees for late payment, default or delinquency.

↳ The term does not include a plan which contemplates that creditors of the individual will settle debts for less than the principal amount of the debt.

Sec. 13. *“Debt-management services” means services as an intermediary between an individual and one or more creditors of the individual for the purpose of obtaining concessions and includes credit counseling, the development and implementation of debt-management plans and debt settlement services. The term does not include:*

1. Legal services provided in an attorney-client relationship by an attorney licensed or otherwise authorized to practice law in this State;

2. Accounting services provided in an accountant-client relationship by a certified public accountant licensed to provide accounting services in this State; or

3. Financial-planning services provided in a financial planner-client relationship by a member of a financial-planning profession whose members the Commissioner, by regulation, determines are:

(a) Licensed by this State;

(b) Subject to a disciplinary mechanism;

(c) Subject to a code of professional responsibility; and

(d) Subject to a continuing education requirement.

Sec. 13.5. *“Debt settlement services” means debt-management services which contemplate that:*

1. Regular, periodic payments will be made by or on behalf of the individual to whom the services are being provided;

2. The individual will accumulate such payments in a bank account which is insured by the Federal Deposit Insurance Corporation, owned by the individual and not controlled by the provider; and

3. The individual will use the accumulated amount of the payments made pursuant to subsection 1 to make payments to:



(a) The provider for any fees charged by the provider pursuant to section 45 of this act; and

(b) Creditors in order to settle the debts of the individual for less than the principal amount of the debt.

Sec. 14. *“Entity” means a person other than an individual.*

Sec. 15. *“Good faith” means honesty in fact and the observance of reasonable standards of fair dealing.*

Sec. 16. *“Person” means an individual, corporation, business trust, estate, trust, partnership, limited-liability company, association, joint venture or any other legal or commercial entity. The term does not include a public corporation, government or governmental subdivision, agency or instrumentality.*

Sec. 17. *“Plan” means a program or strategy in which a provider furnishes debt-management services to an individual and which includes a schedule of payments to be made by or on behalf of the individual and used to pay debts owed by the individual.*

Sec. 18. *“Principal amount of the debt” means the amount of a debt at the time of an agreement.*

Sec. 19. *“Provider” means a person that provides, offers to provide or agrees to provide debt-management services directly or through others.*

Sec. 20. *“Record” means information which is inscribed on a tangible medium or which is stored in an electronic or other medium and is retrievable in perceivable form.*

Sec. 21. *“Settlement fee” means a charge imposed on or paid by an individual in connection with a creditor’s assent to accept in full satisfaction of a debt an amount less than the principal amount of the debt.*

Sec. 22. *“Sign” means, with present intent to authenticate or adopt a record:*

1. To execute or adopt a tangible symbol; or

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

Sec. 23. *“State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.*

Sec. 24. *“Trust account” means an account held by a provider that is:*

1. Established in an insured bank;

2. Separate from other accounts of the provider or its designee;



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

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

Sec. 25. 1. *This chapter does not apply to an agreement with an individual who the provider has no reason to know resides in this State at the time of the agreement.*

2. *This chapter does not apply to a provider to the extent that the provider:*

(a) *Provides or agrees to provide debt-management, educational or counseling services to an individual who the provider has no reason to know resides in this State at the time the provider agrees to provide the services; or*

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

3. *This chapter does not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person's business or profession:*

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

(b) *A bank;*

(c) *An affiliate, as defined in paragraph (a) of subsection 2 of section 4 of this act, of a bank if the affiliate is regulated by a federal or state banking regulatory authority; or*

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

Sec. 26. 1. *Except as otherwise provided in subsection 2, a provider may not provide debt-management services to an individual who it reasonably should know resides in this State at the time it agrees to provide the services, unless the provider is registered under this chapter.*

2. *If a provider is registered under this chapter, subsection 1 does not apply to an employee or agent of the provider.*

3. *The Commissioner shall maintain and publicize a list of the names of all registered providers.*

Sec. 27. 1. *An application for registration as a provider must be in a form prescribed by the Commissioner.*



2. *Subject to adjustment of dollar amounts pursuant to subsection 6 of section 54 of this act, an application for registration as a provider must be accompanied by:*

(a) The fee established by the Commissioner;

(b) The bond required by section 35 of this act;

(c) If the debt-management services to be provided by the provider will include the development and implementation of debt-management plans, identification of all trust accounts required by section 44 of this act and an irrevocable consent authorizing the Commissioner to review and examine the trust accounts;

(d) Evidence of insurance in the amount of \$250,000:

(1) Against the risks of dishonesty, fraud, theft and other misconduct on the part of the applicant or a director, employee or agent of the applicant;

(2) Issued by an insurance company authorized to do business in this State and rated at least A or equivalent by a nationally recognized rating organization approved by the Commissioner;

(3) With a deductible not exceeding \$5,000;

(4) Payable for the benefit of the applicant, this State and individuals who are residents of this State, as their interests may appear; and

(5) Not subject to cancellation by the applicant or the insurer until 60 days after written notice has been given to the Commissioner;

(e) Proof of compliance with NRS 360.760 to 360.798, inclusive; and

(f) If the applicant is exempt from taxation, evidence of nonprofit and tax-exempt status applicable to the applicant under the Internal Revenue Code, 26 U.S.C. § 501.

Sec. 28. *An application for registration must be signed under oath and include:*

1. The applicant's name, principal business address and telephone number and all other business addresses in this State, electronic mail addresses and Internet website addresses;

2. All names under which the applicant conducts business;

3. The address of each location in this State at which the applicant will provide debt-management services or a statement that the applicant will have no such location;

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



5. *Identification of every jurisdiction in which, during the 5 years immediately preceding the application:*

(a) *The applicant or any of its officers or directors have been licensed or registered to provide debt-management services; or*

(b) *Individuals have resided when they received debt-management services from the applicant;*

6. *A statement describing, to the extent it is known or should be known by the applicant, any material civil or criminal judgment or litigation and any material administrative or enforcement action by a governmental agency in any jurisdiction against the applicant, any of its officers, directors, owners or agents or any person who is authorized to have access to the trust account required by section 44 of this act;*

7. *The applicant's financial statements for each of the 2 years immediately preceding the application or, if it has not been in operation for the 2 years preceding the application, for the period of its existence, which must be audited by an accountant licensed to conduct audits if the applicant is claiming nonprofit or tax-exempt status or if the applicant's business practices involve holding, accessing or directing the funds of an individual;*

8. *Evidence of accreditation by an independent accrediting organization approved by the Commissioner;*

9. *Evidence that, within 12 months after initial employment, each of the applicant's counselors becomes certified as a certified counselor or certified debt specialist;*

10. *A description of the three most commonly used educational programs that the applicant provides or intends to provide to individuals who reside in this State and a copy of any materials used or to be used in those programs;*

11. *A description of the applicant's financial analysis and initial budget plan, including, without limitation, any form or electronic model used to evaluate the financial condition of individuals;*

12. *A copy of each form of agreement that the applicant will use with individuals who reside in this State;*

13. *The schedule of fees and charges that the applicant will use with individuals who reside in this State;*

14. *A complete set of the fingerprints of every officer of the applicant and every employee or agent of the applicant who is authorized to have access to the trust account required by section 44 of this act and written permission from each individual submitting a complete set of fingerprints authorizing the Commissioner to forward the fingerprints to the Central*



Repository for Nevada Records of Criminal History for submission to the Federal Bureau of Investigation for its report;

15. The names and addresses of all employers of each director during the 10 years immediately preceding the application;

16. A description of any ownership interest of at least 10 percent by a director, owner or employee of the applicant in:

(a) Any affiliate of the applicant; or

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

17. If the applicant is exempt from taxation, a statement of the amount of compensation of the applicant's five most highly compensated employees for each of the 3 years immediately preceding the application or, if it has not been in operation for the 3 years preceding the application, for the period of its existence;

18. The identity of each director who is an affiliate, as defined in subsection 1 of section 4 of this act or paragraph (a), (b), (d), (e), (f) or (g) of subsection 2 of section 4 of this act, of the applicant; and

19. Any other information that the Commissioner reasonably requires to perform the Commissioner's duties under section 31 of this act.

Sec. 29. *An applicant or registered provider shall notify the Commissioner within 10 days after a change in the information specified in paragraph (d) or (f) of subsection 2 of section 27 of this act or subsection 1, 3, 6, 12 or 13 of section 28 of this act.*

Sec. 30. *1. Except as otherwise provided in subsection 2, the Commissioner shall make the information in an application for registration as a provider available to the public.*

2. Except as otherwise provided in NRS 239.0115, the information required by subsections 7, 14 and 17 of section 28 of this act and the addresses required by subsection 4 of section 28 of this act are confidential and not subject to inspection by the general public.

Sec. 31. *1. Except as otherwise provided in subsections 3 and 4, the Commissioner shall issue a certificate of registration as a provider to a person that complies with sections 27 and 28 of this act.*

2. If an applicant has otherwise complied with sections 27 and 28 of this act, including a timely effort to obtain the information required by subsection 14 of section 28 of this act, but the information has not been received, the Commissioner may



issue a temporary certificate of registration. The temporary certificate expires not later than 180 days after issuance.

3. The Commissioner may deny registration if:

(a) The application contains information that is materially erroneous or incomplete;

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

(c) The applicant or any of its officers, directors or owners have defaulted in the payment of money collected for others; or

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

4. The Commissioner shall deny registration if, with respect to an applicant that is organized as a nonprofit entity or has obtained tax-exempt status under the Internal Revenue Code, 26 U.S.C. § 501, the applicant's board of directors is not independent of the applicant's employees and agents.

5. Subject to adjustment of the dollar amount pursuant to subsection 6 of section 54 of this act, a board of directors is not independent for purposes of subsection 4 if more than one-fourth of its members:

(a) Are affiliates of the applicant, as defined in subsection 1 of section 4 of this act or paragraph (a), (b), (d), (e), (f) or (g) of subsection 2 of section 4 of this act; or

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

Sec. 32. *1. The Commissioner shall approve or deny an initial registration as a provider within 120 days after an application is filed. In connection with a request pursuant to subsection 19 of section 28 of this act for additional information, the Commissioner may extend the 120-day period for not more than 60 days. Within 7 days after denying an application, the Commissioner, in a record, shall inform the applicant of the reasons for the denial.*

2. If the Commissioner denies an application for registration as a provider or does not act on an application within the time prescribed in subsection 1, the applicant may appeal and request a hearing pursuant to NRS 233B.121 to 233B.150, inclusive.



3. *Subject to subsection 4 of section 33 of this act and section 56 of this act, a registration as a provider is valid for 1 year.*

Sec. 33. 1. *A provider must obtain a renewal of its registration annually.*

2. *An application for renewal of registration as a provider must be in a form prescribed by the Commissioner, signed under oath, and:*

(a) *Be filed not fewer than 30 days and not more than 60 days before the registration expires;*

(b) *Be accompanied by the fee established by the Commissioner and the bond required by section 35 of this act;*

(c) *Contain the matter required for initial registration as a provider by subsections 8 and 9 of section 28 of this act and a financial statement, audited by an accountant licensed to conduct audits, for the applicant's fiscal year immediately preceding the application;*

(d) *Disclose any changes in the information contained in the applicant's application for registration or its immediately previous application for renewal, as applicable, and if an application is otherwise complete and the applicant has made a timely effort to obtain the information required by subsection 14 of section 28 of this act but the information has not been received, the Commissioner may issue a temporary renewal of registration which expires not later than 180 days after issuance;*

(e) *Supply evidence of insurance in an amount equal to the larger of \$250,000 or the highest daily balance in the trust account required by section 44 of this act during the 6-month period immediately preceding the application:*

(1) *Against risks of dishonesty, fraud, theft and other misconduct on the part of the applicant or a director, employee or agent of the applicant;*

(2) *Issued by an insurance company authorized to do business in this State and rated at least A or equivalent by a nationally recognized rating organization approved by the Commissioner;*

(3) *With a deductible not exceeding \$5,000;*

(4) *Payable for the benefit of the applicant, this State and the individuals who are residents of this State, as their interests may appear; and*

(5) *Not subject to cancellation by the applicant or the insurer until 60 days after written notice has been given to the Commissioner;*



(f) If the applicant has developed and implemented debt-management plans, disclose:

(1) The total amount of money received by the applicant pursuant to plans during the preceding 12 months from or on behalf of individuals who reside in this State and the total amount of money distributed to creditors of those individuals during that period; and

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

(g) Provide any other information that the Commissioner reasonably requires to perform the Commissioner's duties under this section.

3. Except as otherwise provided in this subsection, the Commissioner shall make the information in an application for renewal of registration as a provider available to the public. Except as otherwise provided in NRS 239.0115, the information required by subsections 7, 14 and 17 of section 28 of this act and the addresses required by subsection 4 of section 28 of this act are confidential and not subject to inspection by the general public.

4. If a registered provider files a timely and complete application for renewal of registration, the registration remains effective until the Commissioner, in a record, notifies the applicant of a denial and states the reasons for the denial.

5. If the Commissioner denies an application for renewal of registration as a provider, the applicant, within 30 days after receiving notice of the denial, may appeal and request a hearing pursuant to NRS 233B.121 to 233B.150, inclusive. Subject to section 56 of this act, while the appeal is pending, the applicant must continue to provide debt-management services to individuals with whom it has agreements. If the denial is affirmed, subject to the Commissioner's order and section 56 of this act, the applicant must continue to provide debt-management services to individuals with whom it has agreements until, with the approval of the Commissioner, it transfers the agreements to another registered provider or returns to the individuals all unexpended money that is under the applicant's control.

Sec. 34. If a provider holds a license or certificate of registration in another state authorizing it to provide debt-management services, the provider may submit a copy of that license or certificate and the application for it instead of an application in the form prescribed by subsection 1 of section 27 of



this act, section 28 of this act or subsection 2 of section 33 of this act. The Commissioner shall accept the application and the license or certificate from the other state as an application for registration as a provider or for renewal of registration as a provider, as appropriate, in this State if:

1. The application in the other state contains information substantially similar to or more comprehensive than that required in an application submitted in this State;

2. The applicant provides the information required by subsections 1, 3, 10, 12 and 13 of section 28 of this act; and

3. The applicant, under oath, certifies that the information contained in the application is current or, to the extent it is not current, supplements the application to make the information current.

Sec. 35. *1. Except as otherwise provided in section 36 of this act, a provider that is required to be registered under this chapter shall file a surety bond with the Commissioner, which must:*

(a) Be continuously in effect during the period of registration and for 2 years after the provider ceases providing debt-management services to individuals in this State; and

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

2. Subject to adjustment of the dollar amount pursuant to subsection 6 of section 54 of this act, a surety bond filed pursuant to subsection 1 must:

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

(b) Be issued by a bonding, surety or insurance company authorized to do business in this State and rated at least A by a nationally recognized rating organization; and

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

3. If the principal amount of a surety bond is reduced by payment of a claim or a judgment, the provider shall immediately notify the Commissioner and, within 30 days after notice by the Commissioner, file a new or additional surety bond in an amount



set by the Commissioner. The amount of the new or additional bond must be at least the amount of the bond immediately before payment of the claim or judgment. If for any reason a surety terminates a bond, the provider shall immediately file a new surety bond in the amount of \$50,000 or other larger amount determined pursuant to subsection 2.

4. The Commissioner or an individual may obtain satisfaction out of the surety bond procured pursuant to this section if:

(a) The Commissioner assesses expenses under paragraph (a) of subsection 2 of section 54 of this act, issues a final order under paragraph (b) of subsection 1 of section 55 of this act or recovers a final judgment under paragraph (d) or (e) of subsection 1 of section 55 of this act or subsection 4 of section 55 of this act; or

(b) An individual recovers a final judgment pursuant to subsection 1 or 2 of section 57 of this act or paragraph (a), (b) or (d) of subsection 3 of section 57 of this act.

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

(a) To satisfaction of a final order or judgment under paragraph (b), (d) or (e) of subsection 1 of section 55 of this act or subsection 4 of section 55 of this act;

(b) To final judgments recovered by individuals pursuant to subsection 1 or 2 of section 57 of this act or paragraph (a), (b) or (d) of subsection 3 of section 57 of this act, pro rata;

(c) To claims of individuals established to the satisfaction of the Commissioner, pro rata; and

(d) If a final order or judgment is issued under subsection 1 of section 55 of this act, to the expenses charged pursuant to paragraph (a) of subsection 2 of section 54 of this act.

Sec. 36. *1. Instead of the surety bond required by section 35 of this act, a provider may deliver to the Commissioner, in the amount required by subsection 2 of section 35 of this act, and, except as otherwise provided in subparagraph (1) of paragraph (b), payable or available to this State and to individuals who reside in this State when they agree to receive debt-management services from the provider, as their interests may appear, if the provider or its agent does not comply with this chapter:*



(a) A certificate of insurance issued by an insurance company authorized to do business in this State and rated at least A or equivalent by a nationally recognized rating organization, approved by the Commissioner and with no deductible, or, if the provider supplies a bond in the amount of \$5,000, a deductible not exceeding \$5,000; or

(b) With the approval of the Commissioner:

(1) An irrevocable letter of credit, issued or confirmed by a bank approved by the Commissioner, payable upon presentation of a certificate by the Commissioner stating that the provider or its agent has not complied with this chapter; or

(2) Bonds or other obligations of the United States or guaranteed by the United States or bonds or other obligations of this State or a political subdivision of this State, to be deposited and maintained with a bank approved by the Commissioner for this purpose.

2. If a provider furnishes a substitute pursuant to subsection 1, the provisions of subsections 1, 3, 4 and 5 of section 35 of this act apply to the substitute.

Sec. 37. *1. A provider shall act in good faith in all matters under this chapter.*

2. A provider who holds funds on behalf of an individual to whom it provides debt-management services shall act as a fiduciary with respect to those funds.

Sec. 38. *A provider that is required to be registered under this chapter shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a certified counselor, certified debt specialist or customer service representative, as appropriate, during ordinary business hours.*

Sec. 39. *1. Before providing debt-management services, a registered provider shall give the individual an itemized list of goods and services and the charges for each. The list must be clear and conspicuous, be in a record the individual may keep whether or not the individual assents to an agreement and describe the goods and services the provider offers:*

(a) Free of additional charge if the individual enters into an agreement;

(b) For a charge if the individual does not enter into an agreement; and

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



<i>Set-up fee</i>	<u>dollar amount of fee</u>
<i>Monthly service fee</i>	<u>dollar amount of fee or method of determining amount</u>
<i>Settlement fee</i>	<u>dollar amount of fee or method of determining amount</u>
<i>Goods and services in connection with a plan:</i>	<i>in addition to those provided in connection with a plan:</i>
<u>(item)</u>	<u>dollar amount or method of determining amount</u>
<u>(item)</u>	<u>dollar amount or method of determining amount</u>

2. A provider may not furnish debt-management services unless the provider, through the services of a certified counselor or certified debt specialist:

(a) Provides the individual with reasonable education about the management of personal finance;

(b) Has prepared a financial analysis; and

(c) If the provider will develop and implement a debt-management plan and the individual is to make regular, periodic payments:

(1) Has prepared a plan for the individual;

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

(3) Believes that each creditor of the individual listed as a participating creditor in the plan will accept payment of the individual's debts as provided in the plan.

3. Before an individual assents to an agreement, a provider shall:

(a) Provide the individual with a copy of the analysis and plan required by subsection 2 in a record which identifies the provider and which the individual may keep whether or not the individual assents to the agreement;

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



(c) If the agreement contemplates that the provider will develop and implement a debt-management plan and with respect to all creditors identified by the individual or otherwise known by the provider to be creditors of the individual, provide the individual with a list of:

(1) Creditors that the provider expects to participate in the plan and grant concessions;

(2) Creditors that the provider expects to participate in the plan but not grant concessions;

(3) Creditors that the provider expects not to participate in the plan; and

(4) All other creditors.

4. Before an individual assents to an agreement, the provider shall inform the individual in a separate record which the individual may keep:

(a) Of the name and business address of the provider;

(b) That plans are not suitable for all individuals and the individual may ask the provider about other ways, including, without limitation, bankruptcy, to deal with indebtedness;

(c) That establishment of a plan may adversely affect the individual's credit rating or credit scores;

(d) That nonpayment of debt may lead creditors to increase finance and other charges or undertake collection activity, including, without limitation, litigation;

(e) Unless it is not true, that the provider may receive compensation from the creditors of the individual; and

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

5. If a provider may receive payments from an individual's creditors and the plan contemplates that the provider will develop and implement a debt-management plan, the provider may comply with subsection 4 by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

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



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

Name and business address of provider

6. If a provider will not receive payments from an individual's creditors and the plan contemplates that the provider will develop and implement a debt-management plan, a provider may comply with subsection 4 by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

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

Name and business address of provider

7. If an agreement contemplates that a provider will provide debt settlement services, the provider may comply with subsection 4 by providing the following disclosure, surrounded by black lines:

IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

(2) Nonpayment of your debts under our program may:
Hurt your credit rating or credit scores;
Lead your creditors to increase finance and other charges; and

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

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

Name and business address of provider

Sec. 40. *1. A provider may satisfy the requirements of section 39, 41 or 49 of this act by means of the Internet or other*



electronic means if the provider obtains a consumer's consent in the manner provided by section 101(c)(1) of the federal act.

2. The disclosures and materials required by section 39, 41 or 49 of this act must be presented in a form that is capable of being accurately reproduced for later reference.

3. With respect to disclosure by means of an Internet website, the disclosure of the information required by subsection 4 of section 39 of this act must appear on one or more screens that:

(a) Contain no other information; and

(b) The individual must see before proceeding to assent to formation of an agreement.

4. At the time of providing the materials and agreement required by subsections 3 and 4 of section 39 of this act and sections 41 and 49 of this act, a provider shall inform the individual that upon electronic, telephonic or written request, it will send the individual a written copy of the materials, and shall comply with a request as provided in subsection 5.

5. If a provider is requested, before the expiration of 90 days after an agreement is completed or terminated, to send a written copy of the materials required by subsections 3 and 4 of section 39 of this act or section 41 or 49 of this act, the provider shall send them at no charge within 3 business days after the request, but the provider need not comply with a request more than once per calendar month or if it reasonably believes the request is made for purposes of harassment. If a request is made more than 90 days after an agreement is completed or terminated, the provider shall send within a reasonable time a written copy of the materials requested.

6. A provider that maintains an Internet website shall disclose on the home page of its website or on a page that is clearly and conspicuously connected to the home page by a link that clearly reveals its contents:

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

(b) Its principal business address, telephone number and electronic mail address, if any; and

(c) The names of its principal officers.

7. Subject to subsection 8, if a consumer who has consented to electronic communication in the manner provided by section 101 of the federal act withdraws consent as provided in the federal act, a provider may terminate its agreement with the consumer.

8. If a provider wishes to terminate an agreement with a consumer pursuant to subsection 7, it shall notify the consumer that it will terminate the agreement unless the consumer, within



30 days after receiving the notification, consents to electronic communication in the manner provided in section 101(c) of the federal act. If the consumer consents, the provider may terminate the agreement only as permitted by subparagraph (6) of paragraph (f) of subsection 1 of section 41 of this act.

9. As used in this section:

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

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

Sec. 41. 1. An agreement must:

(a) Be in a record;

(b) Be dated and signed by the provider and the individual;

(c) Include the name of the individual and the address where the individual resides;

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

(e) Be provided to the individual before the individual assents to the agreement; and

(f) Disclose:

(1) The services to be provided, including, without limitation, whether the provider will provide credit counseling, develop and implement a debt-management plan, provide debt settlement services or provide any combination of these services;

(2) The amount, or method of determining the amount, of all fees, individually itemized, to be paid by the individual;

(3) If the agreement contemplates that the provider will develop and implement a debt-management plan or provide debt settlement services, the schedule of payments to be made by or on behalf of the individual, including the amount of each payment, the date on which each payment is due and an estimate of the date of the final payment;

(4) If the agreement contemplates that the provider will develop and implement a debt-management plan and a plan provides for regular periodic payments to creditors:

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

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



(III) Each creditor that the provider believes will not participate in the plan and to which the provider will not direct payment;

(5) If the agreement contemplates that the provider will develop and implement a debt-management plan or provide debt settlement services, how the provider will comply with its obligations under subsection 1 of section 49 of this act;

(6) That the provider may terminate the agreement for good cause, upon return of unexpended money of the individual;

(7) That the individual may cancel the agreement as provided in section 42 of this act;

(8) That the individual may terminate a plan at any time without incurring any liability as provided in subparagraph (4) of paragraph (a) of subsection 4;

(9) That the individual may contact the Commissioner with any questions or complaints regarding the provider; and

(10) The address, telephone number and Internet address of the website of the Commissioner.

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

3. If the Commissioner supplies the provider with any information required under subparagraph 10 of paragraph (f) of subsection 1, the provider may comply with that requirement only by disclosing the information supplied by the Commissioner.

4. An agreement must provide that:

(a) The individual has a right to terminate the agreement at any time, without penalty or obligation or the payment of any termination fee, by giving the provider written or electronic notice, in which event:

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

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

(3) All powers of attorney granted by the individual to the provider are revoked and ineffective; and



(4) The provider will cease charging a monthly service fee, other than a monthly service fee which became due before the termination of the agreement.

(b) The individual authorizes any bank in which the provider or its agent has established a trust account to disclose to the Commissioner any financial records relating to the trust account;

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

(1) The identity of the creditor; and

(2) The right of the individual to modify or terminate the agreement; and

(d) The individual may terminate a plan at any time without incurring any liability.

5. If an agreement contemplates that the provider will provide debt settlement services, the agreement may confer on a provider a power of attorney to settle the individual's debt for not more than 50 percent of the outstanding amount of the debt. The agreement may not confer a power of attorney to settle a debt for more than 50 percent of that amount, but may confer a power of attorney to negotiate with creditors of the individual on behalf of the individual. The agreement must provide that the provider will obtain the assent of the individual after a creditor has assented to a settlement for more than 50 percent of the outstanding amount of the debt.

6. An agreement may not:

(a) Provide for application of the law of any jurisdiction other than the United States and this State;

(b) Except as permitted by section 2 of the Federal Arbitration Act, 9 U.S.C. § 2, or NRS 38.206 to 38.248, inclusive, contain a provision that modifies or limits otherwise available forums or procedural rights, including, without limitation, the right to trial by jury, that are generally available to the individual under law other than this chapter;

(c) Contain a provision that restricts the individual's remedies under this chapter or law other than this chapter; or

(d) Contain a provision that:

(1) Limits or releases the liability of any person for not performing the agreement or for violating this chapter; or

(2) Indemnifies any person for liability arising under the agreement or this chapter.

7. All rights and obligations specified in subsection 4 and section 42 of this act exist even if not provided in the agreement. A



provision in an agreement which violates subsection 4, 5 or 6 is void.

Sec. 42. 1. *An individual may cancel an agreement before midnight of the third business day after the individual assents to it, unless the agreement does not comply with subsection 2 or section 41 or 50 of this act, in which event the individual may cancel the agreement within 30 days after the individual assents to it. To exercise the right to cancel, the individual must give notice in a record to the provider. Notice by mail is given when mailed.*

2. *An agreement must be accompanied by a form that contains in boldface type, surrounded by bold black lines:*

NOTICE OF RIGHT TO CANCEL

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

To cancel this agreement during this period, send an e-mail to _____ (e-mail address of provider) or mail or deliver a signed, dated copy of this notice, or any other written notice to _____ (name of provider) at _____ (address of provider) before midnight on _____ (date).

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

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

I cancel this agreement,

Print your name

Signature

Date

3. *If a personal financial emergency necessitates the disbursement of an individual's money to one or more of the individual's creditors before the expiration of 3 days after an agreement is signed, an individual may waive the right to cancel. To waive the right, the individual must send or deliver a signed, dated statement in the individual's own words describing the circumstances that necessitate a waiver. The waiver must explicitly*



waive the right to cancel. A waiver by means of a standard form record is void.

Sec. 43. *Unless the Commissioner, by regulation, provides otherwise, the disclosures and documents required by this chapter must be in English. If a provider communicates with an individual primarily in a language other than English, the provider must furnish a translation into the other language of the disclosures and documents required by this chapter.*

Sec. 44. 1. *All money paid to a provider by or on behalf of an individual for distribution to creditors pursuant to a plan is held in trust. Within 2 business days after receipt, the provider shall deposit the money in a trust account established for the benefit of individuals to whom the provider is furnishing debt-management services.*

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

3. A provider shall:

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

(b) Disburse money paid by or on behalf of the individual to creditors of the individual as disclosed in the agreement, except that the provider may delay payment to the extent that a payment by the individual is not final; and

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

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

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

6. If a provider has established a trust account pursuant to subsection 1, the provider shall reconcile the trust account at least once a month. The reconciliation must compare the cash balance in the trust account with the sum of the balances in each individual's account. If the provider or its designee has more than



one trust account, each trust account must be individually reconciled.

7. If a provider discovers, or has a reasonable suspicion of, embezzlement or other unlawful appropriation of money held in trust, the provider immediately shall notify the Commissioner by a method approved by the Commissioner. Unless the Commissioner, by regulation, provides otherwise, within 5 days thereafter, the provider shall give notice to the Commissioner describing the remedial action taken or to be taken.

8. If an individual terminates an agreement or it becomes reasonably apparent to a provider that a plan has failed, the provider shall promptly refund to the individual all money paid by or on behalf of the individual which has not been paid to creditors, less fees that are payable to the provider under section 45 of this act.

9. Before relocating a trust account from one bank to another, a provider shall inform the Commissioner of the name, business address and telephone number of the new bank. As soon as practicable, the provider shall inform the Commissioner of the account number of the trust account at the new bank.

Sec. 45. *1. A provider may not impose directly or indirectly a fee or other charge on an individual or receive money from or on behalf of an individual for debt-management services except as permitted by this section.*

2. A provider may not impose charges or receive payment for debt-management services until the provider and the individual have signed an agreement that complies with sections 41 and 50 of this act.

3. If an individual assents to an agreement, a provider may not impose a fee or other charge for educational or counseling services or the like, except as otherwise provided in this subsection and subsection 5 of section 50 of this act. The Commissioner may authorize a provider to charge a fee based on the nature and extent of the educational or counseling services furnished by the provider.

4. Subject to adjustment of dollar amounts pursuant to subsection 6 of section 54 of this act, the following rules apply:

(a) If an individual assents to a plan which contemplates that creditors will reduce finance charges or fees for late payment, default or delinquency, the provider may charge, not including money provided by creditors to support educational or counseling services concerning personal finance provided by nonprofit entities:



(1) A fee not to exceed \$50 for consultation, obtaining a credit report, setting up an account and the like; and

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

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

(1) Subject to subsection 4 of section 41 of this act, a fee for consultation, obtaining a credit report, setting up an account and the like, in an amount not to exceed the lesser of \$400 and 4 percent of the debt in the plan at the inception of the plan; and

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

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

(d) Except as otherwise provided in subsection 5 of section 50 of this act, if an individual does not assent to an agreement, a provider may receive for educational or counseling services it provides to the individual a fee not to exceed \$100 or, with the approval of the Commissioner, a larger fee. The Commissioner may approve a fee larger than \$100 if the nature and extent of the educational or counseling services warrant the larger fee.

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

6. Except as otherwise provided in subsections 3 and 4, if an agreement contemplates that creditors will settle an individual's debts for less than the principal amount of the debt, compensation for services in connection with settling debt may not exceed one of the following applicable settlement fee limits, the terms of which must be clearly disclosed in the agreement:

(a) With respect to agreements in which a flat settlement fee is charged based on the overall amount of included debt, the total aggregate amount of fees charged to an individual under this chapter, including fees charged under subparagraphs (1) and (2) of paragraph (b) of subsection 4, may not exceed 17 percent of the principal amount of debt included in the agreement at the agreement's inception. The flat settlement fee authorized under this paragraph must be assessed in equal monthly payments over



not less than half of the length of the plan, as estimated at the plan's inception, unless:

(1) Voluntarily accelerated by the individual in a separate record; and

(2) Offers of settlement by creditors have been obtained on at least half of the outstanding debt included in the agreement.

(b) With respect to agreements in which fees are calculated as a percentage of the amount saved by an individual, a settlement fee may not exceed 30 percent of the excess of the outstanding amount of each debt over the amount actually paid to the creditor, as calculated at the time of settlement. Settlement fees authorized under this paragraph must become billable only as debts are settled, and the total aggregate amount of fees charged to an individual under this paragraph, including fees charged under subparagraphs (1) and (2) of paragraph (b) of subsection 4, may not exceed 20 percent of the principal amount of debt included in the agreement at the agreement's inception.

↳ A provider may not impose or receive fees under both paragraphs (a) and (b).

7. Subject to adjustment of the dollar amount pursuant to subsection 6 of section 54 of this act, if a payment to a provider by an individual under this chapter is dishonored, a provider may impose a reasonable charge on the individual, not to exceed the lesser of \$25 and the amount permitted by law other than this chapter.

Sec. 46. *A provider may not solicit a voluntary contribution from an individual or an affiliate of the individual for any service provided to the individual. A provider may accept voluntary contributions from an individual but, until 30 days after completion or termination of a plan, the aggregate amount of money received from or on behalf of the individual may not exceed the total amount the provider may charge the individual under section 45 of this act.*

Sec. 47. *1. If a provider imposes a fee or other charge or receives money or other payments not authorized by section 45 or 46 of this act, the individual may void the agreement and recover as provided in section 57 of this act.*

2. If a provider is not registered as required by this chapter when an individual assents to an agreement, the agreement is voidable by the individual.

3. If an individual voids an agreement under subsection 2, the provider does not have a claim against the individual for breach of contract or for restitution.



Sec. 48. 1. *If an individual who has entered into an agreement fails for 60 days to make payments required by the agreement, a provider may terminate the agreement.*

2. *If a provider or an individual terminates an agreement, the provider shall immediately return to the individual:*

(a) Any money of the individual held in trust for the benefit of the individual; and

(b) If the agreement contemplated that the provider would provide debt settlement services, sixty-five percent of any portion of the set-up fee received pursuant to paragraph (b) of subsection 4 of section 45 of this act which has not been credited against settlement fees.

Sec. 49. 1. *If an agreement contemplates that a provider will develop and implement a debt-management plan or provide debt settlement services, the provider shall provide the accounting required by subsection 2:*

(a) Upon cancellation or termination of the agreement; and

(b) Before cancellation or termination of the agreement:

(1) At least once each month; and

(2) Within 5 business days after a request by an individual, but the provider need not comply with more than one request in any calendar month.

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

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

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

(c) The amounts deducted from the amount received from the individual;

(d) The amount held in reserve; and

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

(1) The total amount and terms of the settlement;

(2) The amount of the debt when the individual assented to the plan;

(3) The amount of the debt when the creditor agreed to the settlement; and

(4) The calculation of a settlement fee.



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

Sec. 50. 1. A provider may not, directly or indirectly:

(a) Misappropriate or misapply money held in trust;

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

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

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

(e) Initiate a transfer from an individual's account at a bank or with another person unless the transfer is:

(1) A return of money to the individual; or

(2) Before termination of an agreement, properly authorized by the agreement and this chapter and for:

(I) Payment to one or more creditors pursuant to an agreement; or

(II) Payment of a fee;

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

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

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

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



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

(k) Settle a debt or lead an individual to believe that a payment to a creditor is in settlement of a debt to the creditor unless, at the time of settlement, the individual receives a certification by the creditor that the payment is in full settlement of the debt or is part of a payment plan, the terms of which are included in the certification, that on completion will lead to full settlement of the debt;

(l) Make a representation that:

(1) The provider will furnish money to pay bills or prevent attachments;

(2) Payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or

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

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

(n) Represent in its agreements, disclosures required by this chapter, advertisements or Internet website that it is a not-for-profit entity unless it is organized and properly operating as a not-for-profit entity under the law of the state in which it was formed or a tax-exempt entity unless it has received certification of tax-exempt status from the Internal Revenue Service and is properly operating as a not-for-profit entity under the law of the state in which it was formed;

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

(p) Employ an unfair, unconscionable or deceptive act or practice, including, without limitation, the knowing omission of any material information;

(q) Receive any compensation from the creditors of an individual, unless the compensation is a donation for the operating costs of the provider; or

(r) If the provider furnishes debt settlement services, represent that the provider is able to prevent telephone calls from creditors.

2. If a provider furnishes debt-management services to an individual, the provider may not, directly or indirectly:

(a) Purchase a debt or obligation of the individual;

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



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

(2) A postdated check or demand draft;

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

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

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

(1) The Commissioner, upon proper demand;

(2) A creditor of the individual, to the extent necessary to secure the cooperation of the creditor in a plan; or

(3) The extent necessary to administer the plan;

(f) Except as otherwise provided in subsection 6 of section 45 of this act, provide the individual less than the full benefit of a compromise of a debt arranged by the provider;

(g) Charge the individual for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet or any other matter not directly related to debt-management services or educational or counseling services concerning personal finance, except to the extent such services are expressly authorized by the Commissioner;

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

(i) With respect to debt settlement services:

(1) Have an ownership interest in, or any control of, the settlement account of an individual to whom the provider is providing debt settlement services; or

(2) Provide debt settlement services with respect to a secured debt, a debt which was at any time a secured debt or a loan to which chapter 604A of NRS applies or include a secured debt, debt which was at any time a secured debt or a loan to which chapter 604A of NRS applies in the calculation of the provider's fee.

3. A provider, or an employee, officer or agent of a provider, may not provide legal services or advice or represent that the provider, or an employee, officer or agent of the provider, is authorized or competent to provide legal services or advice, unless the person providing legal services or advice, or about whom the



representations concerning the provision of legal services or advice were made, is authorized to practice law in this State. As used in this subsection, "legal services or advice" include, without limitation, an analysis of the rights of a creditor or debtor with respect to a debt, advice concerning a response to legal filings or actions and predictions of the likely outcome of litigation or arbitration concerning a debt.

4. This chapter does not authorize any person to engage in the practice of law.

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

6. Unless a person supplies goods, services or facilities generally and supplies them to the provider at a cost no greater than the cost the person generally charges to others, a provider may not purchase goods, services or facilities from the person if an employee or a person that the provider should reasonably know is an affiliate of the provider:

(a) Owns more than 10 percent of the person; or

(b) Is an employee or affiliate of the person.

Sec. 51. Not later than 30 days after a provider has been served with notice of a civil action for violation of this chapter by or on behalf of an individual who resides in this State at either the time of an agreement or the time the notice is served, the provider shall notify the Commissioner in a record that it has been sued.

Sec. 52. 1. If the agreements of a provider contemplate that the provider will develop and implement a debt-management plan and the provider advertises debt-management services, it shall disclose, in an easily comprehensible manner, that using a debt-management plan may make it harder for the individual to obtain credit.

2. If the agreements of a provider contemplate that the provider will provide debt settlement services and the provider advertises debt settlement services, it shall disclose, in an easily comprehensible manner, the information specified in paragraphs (c) and (d) of subsection 4 of section 39 of this act.

Sec. 53. If a provider delegates any of its duties or obligations under an agreement or this chapter to another person, including, without limitation, an independent contractor, the



provider is liable for conduct of the person which, if done by the provider, would violate the agreement or this chapter.

Sec. 54. *1. The Commissioner may act on his own initiative or in response to complaints and may receive complaints, take action to obtain voluntary compliance with this chapter, refer cases to the Attorney General and seek or provide remedies as provided in this chapter.*

2. The Commissioner may investigate and examine, in this State or elsewhere, by subpoena or otherwise, the activities, books, accounts and records of a person that provides or offers to provide debt-management services, or a person to which a provider has delegated its obligations under an agreement or this chapter, to determine compliance with this chapter. Information that identifies individuals who have agreements with the provider must not be disclosed to the public. In connection with the investigation, the Commissioner may:

(a) Charge the person the reasonable expenses necessarily incurred to conduct the examination;

(b) Require or permit a person to file a statement under oath as to all the facts and circumstances of a matter to be investigated; and

(c) Seek a court order authorizing seizure from a bank at which the person maintains a trust account required by section 44 of this act, any or all money, books, records, accounts and other property of the provider that is in the control of the bank and relates to individuals who reside in this State.

3. The Commissioner may adopt regulations to implement the provisions of this chapter.

4. The Commissioner may enter into cooperative arrangements with any other federal or state agency having authority over providers and may exchange with any of those agencies information about a provider, including, without limitation, information obtained during an examination of the provider.

5. The Commissioner, by regulation, shall establish reasonable fees to be paid by providers for the expense of administering this chapter. The Commissioner may, in his discretion, establish a reduced fee schedule for providers that are qualified nonprofit entities.

6. The Commissioner, by regulation, shall adopt dollar amounts instead of those specified in sections 4, 27, 31, 35, 45, 55 and 57 of this act to reflect inflation, as measured by the Consumer Price Index for All Urban Consumers, published by the



United States Department of Labor, or, if that Index is not available, another index adopted by regulation by the Commissioner. The Commissioner shall adopt a base year and adjust the dollar amounts, effective on July 1 of each year, if the change in the index from the base year, as of December 31 of the preceding year, is at least 10 percent. The dollar amount must be rounded to the nearest \$100, except that the amounts in section 45 of this act must be rounded to the nearest dollar.

7. The Commissioner shall notify registered providers of any change in dollar amounts made pursuant to subsection 6 and make that information available to the public.

8. The Commissioner, by regulation, may:

(a) Require a provider to make additional disclosures before an individual assents to an agreement, including, without limitation, disclosures that:

(1) Nothing in the agreement requires the individual's creditors to accept payments pursuant to a plan.

(2) Nothing in the agreement prevents creditors of the individual from pursuing collection efforts, including, without limitation, telephone calls for the purpose of collecting a debt, and that creditors may sue the individual for any debt that remains unpaid.

(3) The provider cannot provide legal services or advice and, if the individual is sued, the individual should seek legal services or advice.

(4) The provider is not a credit repair organization and does not claim that the plan will have a positive impact on the credit score of the individual.

(5) If an agreement contemplates that a provider will develop and implement a debt-management plan, a creditor may be included in the debt-management plan even if the creditor does not make a contribution.

(b) Establish any requirements and prohibitions with respect to advertising by providers which do not violate the Nevada Constitution or the Constitution of the United States. Such regulations may include, without limitation, a requirement that a provider submit all advertising used by the provider to the Commissioner within 30 days after the first publication of the advertisement.

Sec. 55. 1. The Commissioner may enforce this chapter and regulations adopted under this chapter by taking one or more of the following actions:



(a) *Ordering a provider or a director, employee or other agent of a provider to cease and desist from any violations;*

(b) *Ordering a provider or a person that has caused a violation to correct the violation, including, without limitation, making restitution of money or property to a person aggrieved by a violation;*

(c) *Subject to adjustment of the dollar amount pursuant to subsection 6 of section 54 of this act, imposing on a provider or a person that has caused a violation a civil penalty not to exceed \$10,000 for each violation;*

(d) *Prosecuting a civil action to:*

(1) *Enforce an order; or*

(2) *Obtain restitution or an injunction or other equitable relief, or both; or*

(e) *Intervening in an action brought under section 57 of this act.*

2. *Subject to adjustment of the dollar amount pursuant to subsection 6 of section 54 of this act, if a person violates or knowingly authorizes, directs or aids in the violation of a final order issued under paragraph (a) or (b) of subsection 1, the Commissioner may impose a civil penalty not to exceed \$20,000 for each violation.*

3. *The Commissioner may maintain an action to enforce this chapter in any county.*

4. *The Commissioner may recover the reasonable costs of enforcing this chapter under subsections 1, 2 and 3, including, without limitation, attorney's fees based on the hours reasonably expended and the hourly rates for attorneys of comparable experience in the community.*

5. *In determining the amount of a civil penalty to impose under subsection 1 or 2, the Commissioner shall consider the seriousness of the violation, the good faith of the violator, any previous violations by the violator, the deleterious effect of the violation on the public, the net worth of the violator and any other factor the Commissioner considers relevant to the determination of the civil penalty.*

Sec. 56. 1. *The Commissioner may suspend, revoke or deny renewal of a provider's registration if:*

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

(b) *The provider has committed a material violation of this chapter or a rule or order of the Commissioner under this chapter;*



(c) *The provider is insolvent;*

(d) *The provider or an employee or affiliate of the provider has refused to permit the Commissioner to make an examination authorized by this chapter, failed to comply with paragraph (b) of subsection 2 of section 54 of this act within 15 days after request, or made a material misrepresentation or omission in complying with paragraph (b) of subsection 2 of section 54 of this act; or*

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

2. *If a provider does not comply with subsection 6 of section 44 of this act or if the Commissioner otherwise finds that the public health or safety or general welfare requires emergency action, the Commissioner may order a summary suspension of the provider's registration, effective on the date specified in the order.*

3. *If the Commissioner suspends, revokes or denies renewal of the registration of a provider, the Commissioner may seek a court order authorizing seizure of any or all of the money in a trust account required by section 44 of this act, books, records, accounts and other property of the provider which are located in this State.*

4. *If the Commissioner suspends or revokes a provider's registration, the provider may appeal and request a hearing pursuant to NRS 233B.121 to 233B.150, inclusive.*

5. *As used in this section, "insolvent" means:*

(a) *Having generally ceased to pay debts in the ordinary course of business other than as a result of good faith dispute;*

(b) *Being unable to pay debts as they become due; or*

(c) *Being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C. §§ 101 et seq.*

Sec. 57. 1. *If an individual voids an agreement pursuant to subsection 2 of section 47 of this act, the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except amounts paid to creditors, in addition to the recovery under paragraph (c) and (d) of subsection 3.*

2. *If an individual voids an agreement pursuant to subsection 1 of section 47 of this act, the individual may recover in a civil action three times the total amount of the fees, charges, money and payments made by the individual to the provider, in addition to the recovery under paragraph (d) of subsection 3.*



3. *Subject to subsection 4, an individual with respect to whom a provider violates this chapter may recover in a civil action from the provider and any person that caused the violation:*

(a) *Compensatory damages for injury, including, without limitation, noneconomic injury, caused by the violation;*

(b) *Except as otherwise provided in subsection 4 and subject to adjustment of the dollar amount pursuant to subsection 6 of section 54 of this act, with respect to a violation of section 39, 41 to 46, inclusive, or 49 of this act or subsection 1, 2 or 5 of section 50 of this act, the greater of the amount recoverable under paragraph (a) or \$5,000;*

(c) *Punitive damages; and*

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

4. *In a class action, except for a violation of paragraph (e) of subsection 1 of section 50 of this act, the minimum damages provided in paragraph (b) of subsection 3 do not apply.*

5. *In addition to the remedy available under subsection 3, if a provider violates an individual's rights under section 42 of this act, the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except for amounts paid to creditors.*

6. *A provider is not liable under this section for a violation of this chapter if the provider proves that the violation was not intentional and resulted from a good faith error notwithstanding the maintenance of procedures reasonably adapted to avoid the error. An error of legal judgment with respect to a provider's obligations under this chapter is not a good faith error. If, in connection with a violation, the provider has received more money than authorized by an agreement or this chapter, the defense provided by this subsection is not available unless the provider refunds the excess within 2 business days after learning of the violation.*

7. *The Commissioner shall assist an individual in enforcing a judgment against the surety bond or other security provided under section 35 or 36 of this act.*

Sec. 58. *1. A violation of a provision of this chapter constitutes a deceptive trade practice for the purposes of NRS 598.0903 to 598.0999, inclusive.*

2. If an act or practice of a provider violates both a provision of this chapter and a provision of chapter 598 of NRS, an individual may not recover under both for the same act or practice.



Sec. 59. 1. *An action or proceeding brought pursuant to subsection 1, 2 or 3 of section 55 of this act must be commenced within 4 years after the conduct that is the basis of the Commissioner's complaint.*

2. An action brought pursuant to section 57 of this act must be commenced within 2 years after the latest of:

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

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

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

(d) The provider's last accounting to the individual pursuant to subsection 1 of section 49 of this act;

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

(f) Termination of actions or proceedings by the Commissioner with respect to a violation of the chapter.

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

Sec. 60. *In applying and construing the Uniform Debt-Management Services Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.*

Sec. 61. *This chapter modifies, limits and supersedes the federal Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §§ 7001 et seq., but does not modify, limit or supersede section 101(c) of that act, 15 U.S.C. § 7001(c), or authorize electronic delivery of any of the notices described in section 103(b) of that act, 15 U.S.C. § 7003(b).*

Sec. 62. NRS 598.741 is hereby amended to read as follows:

598.741 As used in NRS 598.741 to 598.787, inclusive, unless the context otherwise requires:

1. "Buyer" means a natural person who is solicited to purchase or who purchases the services of an organization which provides credit services.

2. "Commissioner" means the Commissioner of Consumer Affairs.



3. "Division" means the Consumer Affairs Division of the Department of Business and Industry.

4. "Extension of credit" means the right to defer payment of debt or to incur debt and defer its payment, offered or granted primarily for personal, family or household purposes.

5. "Organization":

(a) Means a person who, with respect to the extension of credit by others, sells, provides or performs, or represents that he can or will sell, provide or perform, any of the following services, in return for the payment of money or other valuable consideration:

(1) Improving a buyer's credit record, history or rating.

(2) Obtaining an extension of credit for a buyer.

(3) Providing counseling or assistance to a person in establishing or effecting a plan for the payment of his indebtedness, unless that counseling or assistance is provided by and is within the scope of the authorized practice of a ~~debt adjuster licensed~~ **provider of debt-management services registered pursuant to ~~chapter 676 of NRS.~~ sections 2 to 61, inclusive, of this act.**

(4) Providing advice or assistance to a buyer with regard to subparagraph (1) or (2).

(b) Does not include:

(1) A person organized, chartered or holding a license or authorization certificate to make loans or extensions of credit pursuant to the laws of this state or the United States who is subject to regulation and supervision by an officer or agency of this state or the United States.

(2) A bank, credit union or savings and loan institution whose deposits or accounts are eligible for insurance by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund or a private insurer approved pursuant to NRS 678.755.

(3) A person licensed as a real estate broker by this state where the person is acting within the course and scope of that license, unless the person is rendering those services in the course and scope of employment by or other affiliation with an organization.

(4) A person licensed to practice law in this state where the person renders services within the course and scope of his practice as an attorney at law, unless the person is rendering those services in the course and scope of employment by or other affiliation with an organization.

(5) A broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading



Commission where the broker-dealer is acting within the course and scope of such regulation.

(6) A person ~~licensed~~ *registered* as a ~~debt adjuster~~ *provider of debt-management services* pursuant to ~~chapter 676 of NRS.~~ *sections 2 to 61, inclusive, of this act.*

(7) A reporting agency.

6. "Reporting agency" means a person who, for fees, dues or on a cooperative nonprofit basis, regularly engages in whole or in part in the business of assembling or evaluating information regarding the credit of or other information regarding consumers to furnish consumer reports to third parties, regardless of the means or facility of commerce used to prepare or furnish the consumer reports. The term does not include:

(a) A person solely for the reason that he conveys a decision regarding whether to guarantee a check in response to a request by a third party;

(b) A person who obtains or creates a consumer report and provides the report or information contained in it to a subsidiary or affiliate; or

(c) A person licensed pursuant to chapter 463 of NRS.

Sec. 63. NRS 645F.380 is hereby amended to read as follows:

645F.380 The provisions of NRS 645F.300 to 645F.450, inclusive, do not apply to, and the terms "foreclosure consultant" and "foreclosure purchaser" do not include:

1. An attorney at law rendering services in the performance of his duties as an attorney at law;

2. A ~~person, firm, company or corporation licensed to engage in the business of debt adjustment pursuant to chapter 676 of NRS while engaging in that business;~~ *provider of debt-management services registered pursuant to sections 2 to 61, inclusive, of this act while providing debt-management services pursuant to sections 2 to 61, inclusive, of this act;*

3. A person licensed as a real estate broker, broker-salesman or salesman pursuant to chapter 645 of NRS while acting under the authority of that license;

4. A person or the authorized agent of a person acting under the provisions of a program sponsored by the Federal Government, this State or a local government, including, without limitation, the Department of Housing and Urban Development, the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association or the Federal Home Loan Bank;

5. A person who holds or is owed an obligation secured by a mortgage or other lien on a residence in foreclosure if the person



performs services in connection with this obligation or lien and the obligation or lien did not arise as the result of or as part of a proposed foreclosure reconveyance;

6. Any person doing business under the laws of this State or of the United States relating to banks, trust companies, savings and loan associations, industrial loan and thrift companies, regulated lenders, credit unions, insurance companies, or a mortgagee which is a United States Department of Housing and Urban Development approved mortgagee and any subsidiary or affiliate of those persons, and any agent or employee of those persons while engaged in the business of those persons;

7. A person licensed as an escrow agent, title agent, mortgage agent, mortgage broker or mortgage banker pursuant to chapter 645A, 692A, 645B or 645E of NRS, respectively, while acting under the authority of his license;

8. A nonprofit agency or organization that offers credit counseling or advice to a homeowner of a residence in foreclosure or a person in default on a loan; or

9. A judgment creditor of the homeowner whose claim accrued before the recording of the notice of the pendency of an action for foreclosure against the homeowner pursuant to NRS 14.010 or the recording of the notice of default and election to sell pursuant to NRS 107.080.

Sec. 64. NRS 658.098 is hereby amended to read as follows:

658.098 1. On a quarterly or other regular basis, the Commissioner shall collect an assessment pursuant to this section from each:

(a) Check-cashing service or deferred deposit loan service that is supervised pursuant to chapter 604A of NRS;

(b) Collection agency that is supervised pursuant to chapter 649 of NRS;

(c) Bank that is supervised pursuant to chapters 657 to 668, inclusive, of NRS;

(d) Trust company that is supervised pursuant to chapter 669 of NRS;

(e) Development corporation that is supervised pursuant to chapter 670 of NRS;

(f) Corporation for economic revitalization and diversification that is supervised pursuant to chapter 670A of NRS;

(g) Person engaged in the business of selling or issuing checks or of receiving for transmission or transmitting money or credits that is supervised pursuant to chapter 671 of NRS;



(h) Savings and loan association that is supervised pursuant to chapter 673 of NRS;

(i) Person engaged in the business of lending that is supervised pursuant to chapter 675 of NRS;

(j) ~~Person engaged in the business of debt adjusting that is supervised pursuant to chapter 676 of NRS;~~

~~(k)~~ Thrift company that is supervised pursuant to chapter 677 of NRS; and

~~(4)~~ (k) Credit union that is supervised pursuant to chapter 678 of NRS.

2. The Commissioner shall determine the total amount of all assessments to be collected from the entities identified in subsection 1, but that amount must not exceed the amount necessary to recover the cost of legal services provided by the Attorney General to the Commissioner and to the Division of Financial Institutions. The total amount of all assessments collected must be reduced by any amounts collected by the Commissioner from an entity for the recovery of the costs of legal services provided by the Attorney General in a specific case.

3. The Commissioner shall collect from each entity identified in subsection 1 an assessment that is based on:

(a) A portion of the total amount of all assessments as determined pursuant to subsection 2, such that the assessment collected from an entity identified in subsection 1 shall bear the same relation to the total amount of all assessments as the total assets of that entity bear to the total of all assets of all entities identified in subsection 1; or

(b) Any other reasonable basis adopted by the Commissioner.

4. The assessment required by this section is in addition to any other assessment, fee or cost required by law to be paid by an entity identified in subsection 1.

5. Money collected by the Commissioner pursuant to this section must be deposited in the State Treasury pursuant to the provisions of NRS 658.091.

Sec. 65. NRS 676.010, 676.015, 676.020, 676.030, 676.040, 676.050, 676.060, 676.070, 676.080, 676.100, 676.110, 676.120, 676.125, 676.130, 676.135, 676.140, 676.150, 676.160, 676.170, 676.180, 676.190, 676.200, 676.205, 676.207, 676.210, 676.220, 676.230, 676.235, 676.240, 676.250, 676.260, 676.270, 676.280, 676.290, 676.295, 676.300, 676.310, 676.320, 676.330, 676.335 and 676.340 are hereby repealed.

Sec. 66. Transactions entered into before July 1, 2010, and the rights, duties and interests resulting from them may be completed,



terminated or enforced as required or permitted by a law amended, repealed or modified by this act as though the amendment, repeal or modification had not occurred.

Sec. 67. This act becomes effective:

1. Upon passage and approval for the purpose of adopting regulations and performing any other preparatory administrative tasks that are necessary to carry out the provisions of this act; and
2. On July 1, 2010, for all other purposes.

