

1 **UTAH DIVISION OF CONSUMER PROTECTION**

2 **AMENDMENTS**

3 2012 GENERAL SESSION

4 STATE OF UTAH

5 **Chief Sponsor: Derek E. Brown**

6 Senate Sponsor: Patricia W. Jones

7

8 **LONG TITLE**

9 **General Description:**

10 This bill modifies provisions relating to matters under the jurisdiction of the Utah
11 Division of Consumer Protection.

12 **Highlighted Provisions:**

13 This bill:

14 ▶ modifies what constitutes a deceptive act or practice for purposes of the Consumer
15 Sales Practices Act and modifies a provision relating to service of process under
16 that act;

17 ▶ modifies dollar threshold amounts for purposes of plans subject to the Business
18 Opportunity Disclosure Act;

19 ▶ modifies the definition of "telephone solicitation" for purposes of the Telephone
20 Fraud Prevention Act; and

21 ▶ modifies the Uniform Debt-Management Services Act, including to:

22 • modify provisions relating to an application for registration as a
23 debt-management service provider, renewal application, and the suspension,
24 revocation, or nonrenewal of registration;

25 • modify provisions relating to bonds required to be provided by registered
26 providers;

27 • modify a provision relating to prerequisites before providing debt-management
28 services;

29 • modify provisions relating to debt-management service agreements;

- 30 • modify provisions relating to fees and other charges;
- 31 • repeal a provision relating to cancellation of an agreement and replace it with a
- 32 provision relating to terminating an agreement;
- 33 • repeal a provision relating to termination of an agreement and replace it with a
- 34 provision relating to retention of records;
- 35 • modify a provision relating to required accountings;
- 36 • modify provisions relating to prohibited acts and provider liability; and
- 37 • modify administrative remedy provisions; and
- 38 ▶ makes technical changes.

39 **Money Appropriated in this Bill:**

40 None

41 **Other Special Clauses:**

42 None

43 **Utah Code Sections Affected:**

44 **AMENDS:**

- 45 **13-11-4**, as last amended by Laws of Utah 2010, Chapter 54
- 46 **13-11-6**, as last amended by Laws of Utah 2010, Chapter 378
- 47 **13-15-2**, as last amended by Laws of Utah 2001, Chapter 196
- 48 **13-26-2**, as last amended by Laws of Utah 2005, Chapter 18
- 49 **13-42-102**, as enacted by Laws of Utah 2006, Chapter 154
- 50 **13-42-105**, as last amended by Laws of Utah 2010, Chapter 378
- 51 **13-42-106**, as last amended by Laws of Utah 2010, Chapter 378
- 52 **13-42-107**, as enacted by Laws of Utah 2006, Chapter 154
- 53 **13-42-110**, as last amended by Laws of Utah 2008, Chapter 382
- 54 **13-42-111**, as last amended by Laws of Utah 2010, Chapters 218 and 378
- 55 **13-42-112**, as last amended by Laws of Utah 2008, Chapter 382
- 56 **13-42-113**, as last amended by Laws of Utah 2010, Chapter 378
- 57 **13-42-114**, as last amended by Laws of Utah 2009, Chapter 229

- 58 **13-42-117**, as last amended by Laws of Utah 2010, Chapter 378
- 59 **13-42-118**, as last amended by Laws of Utah 2010, Chapter 378
- 60 **13-42-119**, as last amended by Laws of Utah 2010, Chapter 378
- 61 **13-42-121**, as last amended by Laws of Utah 2010, Chapter 378
- 62 **13-42-122**, as last amended by Laws of Utah 2010, Chapter 378
- 63 **13-42-123**, as last amended by Laws of Utah 2009, Chapter 229
- 64 **13-42-127**, as enacted by Laws of Utah 2006, Chapter 154
- 65 **13-42-128**, as last amended by Laws of Utah 2009, Chapter 229
- 66 **13-42-130**, as last amended by Laws of Utah 2009, Chapter 229
- 67 **13-42-131**, as enacted by Laws of Utah 2006, Chapter 154
- 68 **13-42-132**, as last amended by Laws of Utah 2010, Chapter 378
- 69 **13-42-133**, as enacted by Laws of Utah 2006, Chapter 154
- 70 **13-42-134**, as last amended by Laws of Utah 2008, Chapter 382
- 71 **13-42-135**, as enacted by Laws of Utah 2006, Chapter 154
- 72 **13-42-137**, as last amended by Laws of Utah 2010, Chapter 378
- 73 **13-42-139**, as enacted by Laws of Utah 2006, Chapter 154

74 REPEALS AND REENACTS:

- 75 **13-42-120**, as last amended by Laws of Utah 2010, Chapter 378
- 76 **13-42-126**, as enacted by Laws of Utah 2006, Chapter 154



78 *Be it enacted by the Legislature of the state of Utah:*

79 Section 1. Section **13-11-4** is amended to read:

80 **13-11-4. Deceptive act or practice by supplier.**

81 (1) A deceptive act or practice by a supplier in connection with a consumer transaction
82 violates this chapter whether it occurs before, during, or after the transaction.

83 (2) Without limiting the scope of Subsection (1), a supplier commits a deceptive act or
84 practice if the supplier knowingly or intentionally:

- 85 (a) indicates that the subject of a consumer transaction has sponsorship, approval,

86 performance characteristics, accessories, uses, or benefits, if it has not;

87 (b) indicates that the subject of a consumer transaction is of a particular standard,
88 quality, grade, style, or model, if it is not;

89 (c) indicates that the subject of a consumer transaction is new, or unused, if it is not, or
90 has been used to an extent that is materially different from the fact;

91 (d) indicates that the subject of a consumer transaction is available to the consumer for
92 a reason that does not exist, including any of the following reasons falsely used in an
93 advertisement:

94 (i) "going out of business";

95 (ii) "bankruptcy sale";

96 (iii) "lost our lease";

97 (iv) "building coming down";

98 (v) "forced out of business";

99 (vi) "final days";

100 (vii) "liquidation sale";

101 (viii) "fire sale";

102 (ix) "quitting business"; or

103 (x) an expression similar to any of the expressions in Subsections (2)(d)(i) through
104 (ix);

105 (e) indicates that the subject of a consumer transaction has been supplied in accordance
106 with a previous representation, if it has not;

107 (f) indicates that the subject of a consumer transaction will be supplied in greater
108 quantity than the supplier intends;

109 (g) indicates that replacement or repair is needed, if it is not;

110 (h) indicates that a specific price advantage exists, if it does not;

111 (i) indicates that the supplier has a sponsorship, approval, or affiliation the supplier
112 does not have;

113 (j) (i) indicates that a consumer transaction involves or does not involve a warranty, a

114 disclaimer of warranties, particular warranty terms, or other rights, remedies, or obligations, if
115 the representation is false; or

116 (ii) fails to honor a warranty or a particular warranty term;

117 (k) indicates that the consumer will receive a rebate, discount, or other benefit as an
118 inducement for entering into a consumer transaction in return for giving the supplier the names
119 of prospective consumers or otherwise helping the supplier to enter into other consumer
120 transactions, if receipt of the benefit is contingent on an event occurring after the consumer
121 enters into the transaction;

122 (l) after receipt of payment for goods or services, fails to ship the goods or furnish the
123 services within the time advertised or otherwise represented or, if no specific time is advertised
124 or represented, fails to ship the goods or furnish the services within 30 days, unless within the
125 applicable time period the supplier provides the buyer with the option to:

126 (i) cancel the sales agreement and receive a refund of all previous payments to the
127 supplier if the refund is mailed or delivered to the buyer within 10 business days after the day
128 on which the seller receives written notification from the buyer of the buyer's intent to cancel
129 the sales agreement and receive the refund; or

130 (ii) extend the shipping date to a specific date proposed by the supplier;

131 (m) except as provided in Subsection (3)(b), fails to furnish a notice meeting the
132 requirements of Subsection (3)(a) of the purchaser's right to cancel a direct solicitation sale
133 within three business days of the time of purchase if:

134 (i) the sale is made other than at the supplier's established place of business pursuant to
135 the supplier's personal contact, whether through mail, electronic mail, facsimile transmission,
136 telephone, or any other form of direct solicitation; and

137 (ii) the sale price exceeds \$25;

138 (n) promotes, offers, or grants participation in a pyramid scheme as defined under Title
139 76, Chapter 6a, Pyramid Scheme Act;

140 (o) represents that the funds or property conveyed in response to a charitable
141 solicitation will be donated or used for a particular purpose or will be donated to or used by a

142 particular organization, if the representation is false;

143 (p) if a consumer indicates the consumer's intention of making a claim for a motor
144 vehicle repair against the consumer's motor vehicle insurance policy:

145 (i) commences the repair without first giving the consumer oral and written notice of:

146 (A) the total estimated cost of the repair; and

147 (B) the total dollar amount the consumer is responsible to pay for the repair, which
148 dollar amount may not exceed the applicable deductible or other copay arrangement in the
149 consumer's insurance policy; or

150 (ii) requests or collects from a consumer an amount that exceeds the dollar amount a
151 consumer was initially told the consumer was responsible to pay as an insurance deductible or
152 other copay arrangement for a motor vehicle repair under Subsection (2)(p)(i), even if that
153 amount is less than the full amount the motor vehicle insurance policy requires the insured to
154 pay as a deductible or other copay arrangement, unless:

155 (A) the consumer's insurance company denies that coverage exists for the repair, in
156 which case, the full amount of the repair may be charged and collected from the consumer; or

157 (B) the consumer misstates, before the repair is commenced, the amount of money the
158 insurance policy requires the consumer to pay as a deductible or other copay arrangement, in
159 which case, the supplier may charge and collect from the consumer an amount that does not
160 exceed the amount the insurance policy requires the consumer to pay as a deductible or other
161 copay arrangement;

162 (q) includes in any contract, receipt, or other written documentation of a consumer
163 transaction, or any addendum to any contract, receipt, or other written documentation of a
164 consumer transaction, any confession of judgment or any waiver of any of the rights to which a
165 consumer is entitled under this chapter;

166 (r) charges a consumer for a consumer transaction or a portion of a consumer
167 transaction that has not previously been agreed to by the consumer;

168 (s) solicits or enters into a consumer transaction with a person who lacks the mental
169 ability to comprehend the nature and consequences of:

- 170 (i) the consumer transaction; or
- 171 (ii) the person's ability to benefit from the consumer transaction;
- 172 (t) solicits for the sale of a product or service by providing a consumer with an
- 173 unsolicited check or negotiable instrument the presentment or negotiation of which obligates
- 174 the consumer to purchase a product or service, unless the supplier is:
 - 175 (i) a depository institution under Section 7-1-103;
 - 176 (ii) an affiliate of a depository institution; or
 - 177 (iii) an entity regulated under Title 7, Financial Institutions Act;
 - 178 (u) sends an unsolicited mailing to a person that appears to be a billing, statement, or
 - 179 request for payment for a product or service the person has not ordered or used, or that implies
 - 180 that the mailing requests payment for an ongoing product or service the person has not received
 - 181 or requested;
 - 182 (v) issues a gift certificate, instrument, or other record in exchange for payment to
 - 183 provide the bearer, upon presentation, goods or services in a specified amount without printing
 - 184 in a readable manner on the gift certificate, instrument, packaging, or record any expiration
 - 185 date or information concerning a fee to be charged and deducted from the balance of the gift
 - 186 certificate, instrument, or other record; or
 - 187 (w) misrepresents the geographical origin or location of the supplier's business [~~in~~
 - 188 ~~connection with the sale of cut flowers, flower arrangements, or floral products~~].
- 189 (3) (a) The notice required by Subsection (2)(m) shall:
 - 190 (i) be a conspicuous statement written in dark bold with at least 12-point type on the
 - 191 first page of the purchase documentation; and
 - 192 (ii) read as follows: "YOU, THE BUYER, MAY CANCEL THIS CONTRACT AT
 - 193 ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY (or time period
 - 194 reflecting the supplier's cancellation policy but not less than three business days) AFTER THE
 - 195 DATE OF THE TRANSACTION OR RECEIPT OF THE PRODUCT, WHICHEVER IS
 - 196 LATER".
 - 197 (b) A supplier is exempt from the requirements of Subsection (2)(m) if the supplier's

198 cancellation policy:

199 (i) is communicated to the buyer; and

200 (ii) offers greater rights to the buyer than Subsection (2)(m).

201 (4) (a) A gift certificate, instrument, or other record that does not print an expiration
202 date in accordance with Subsection (2)(v) does not expire.

203 (b) A gift certificate, instrument, or other record that does not include printed
204 information concerning a fee to be charged and deducted from the balance of the gift
205 certificate, instrument, or other record is not subject to the charging and deduction of the fee.

206 (c) Subsections (2)(v) and (4)(b) do not apply to a gift certificate, instrument, or other
207 record useable at multiple, unaffiliated sellers of goods or services if an expiration date is
208 printed on the gift certificate, instrument, or other record.

209 Section 2. Section **13-11-6** is amended to read:

210 **13-11-6. Service of process.**

211 (1) In addition to any other method provided by rule or statute, personal jurisdiction
212 over a supplier may be acquired in a civil action or proceeding instituted in the district court by
213 the service of process [~~in the following manner. If a~~] as provided in Subsection (3).

214 (2) (a) A supplier ~~that~~ engages in any act or practice in this state governed by this [~~act~~]
215 chapter, or engages in a consumer transaction subject to this [~~act, he~~] chapter, may designate an
216 agent upon whom service of process may be made in [~~this~~] the state. [~~The agent~~]

217 (b) A designation of an agent under Subsection (2)(a) shall be in writing and filed with
218 the Division of Corporations and Commercial Code.

219 (c) An agent designated under this Subsection (2) shall be a resident of or a corporation
220 authorized to do business in [~~this~~] the state. [~~The designation shall be in writing and filed with~~
221 the Division of Corporations and Commercial Code. If no]

222 (3) (a) Subject to Subsection (3)(b), process upon a supplier may be served as provided
223 in Section 16-17-301 if:

224 (i) a designation is ~~not~~ made and filed[;] under Subsection (2); or [if]

225 (ii) process cannot be served in [~~this~~] the state upon the designated agent[~~, whether or~~

226 ~~not the supplier is a resident of this state or is authorized to do business in this state, process~~
227 ~~may be served upon the director of the Division of Corporations and Commercial Code, but~~
228 ~~service upon him].~~

229 (b) Service upon a supplier is not effective unless the plaintiff promptly mails a copy of
230 the process and pleadings by registered or certified mail to the defendant at ~~[his]~~ the
231 defendant's last reasonably ascertainable address. ~~[An]~~

232 (c) The plaintiff shall file an affidavit of compliance with this section ~~[shall be filed]:~~

233 (i) with the clerk of the court; and

234 (ii) on or before the return day of the process, if any, or within any future time the court
235 allows.

236 Section 3. Section **13-15-2** is amended to read:

237 **13-15-2. Definitions.**

238 As used in this chapter:

239 (1) (a) "Assisted marketing plan" means the sale or lease of any products, equipment,
240 supplies, or services that are sold to the purchaser upon payment of an initial required
241 consideration of ~~[\$300]~~ \$500 or more for the purpose of enabling the purchaser to start a
242 business, and in which the seller represents:

243 (i) that the seller will provide locations or assist the purchaser in finding locations for
244 the use or operation of vending machines, racks, display cases, or other similar devices, or
245 currency operated amusement machines or devices, on premises neither owned nor leased by
246 the purchaser or seller;

247 (ii) that the seller will purchase any or all products made, produced, fabricated, grown,
248 or modified by the purchaser, using in whole or in part the supplies, services, or chattels sold to
249 the purchaser;

250 (iii) that the seller will provide the purchaser with a guarantee that the purchaser will
251 receive income from the assisted marketing plan that exceeds the price paid for the assisted
252 marketing plan, or repurchase any of the products, equipment, supplies, or chattels supplied by
253 the seller if the purchaser is dissatisfied with the assisted marketing plan; or

254 (iv) that upon payment by the purchaser of a fee or sum of money, which exceeds
255 [~~\$300~~] \$500 to the seller, the seller will provide a sales program or marketing program that will
256 enable the purchaser to derive income from the assisted marketing plan that exceeds the price
257 paid for the marketing plan.

258 (b) "Assisted marketing plan" does not include:

259 (i) the sale of an ongoing business when the owner of that business sells and intends to
260 sell only that one assisted marketing plan;

261 (ii) not-for-profit sale of sales demonstration equipment, materials, or samples for a
262 total price of [~~\$300~~] \$500 or less; or

263 (iii) the sale of a package franchise or a product franchise defined by and in compliance
264 with Federal Trade Commission rules governing franchise and business opportunity ventures.

265 (c) As used in Subsection (1)(a)(iii) "guarantee" means a written agreement, signed by
266 the purchaser and seller, disclosing the complete details and any limitations or exceptions of
267 the agreement.

268 (2) "Business opportunity" means an assisted marketing plan subject to this chapter.

269 (3) "Division" means the Division of Consumer Protection of the Department of
270 Commerce.

271 (4) (a) "Initial required consideration" means the total amount a purchaser is obligated
272 to pay under the terms of the assisted marketing plan, either prior to or at the time of delivery
273 of the products, equipment, supplies, or services, or within six months of the commencement
274 of operation of the assisted marketing plan by the purchaser. If payment is over a period of
275 time, "initial required consideration" means the sum of the down payment and the total
276 monthly payments.

277 (b) "Initial required consideration" does not mean the not-for-profit sale of sales
278 demonstration equipment, materials, or supplies for a total price of less than [~~\$300~~] \$500.

279 (5) "Person" means any natural person, corporation, partnership, organization,
280 association, trust, or any other legal entity.

281 (6) "Purchaser" means a person who becomes obligated to pay for an assisted

282 marketing plan.

283 (7) "Registered trademark" or "service mark" means a trademark, trade name, or
284 service mark registered with the United States Patent and Trademark Office, or Utah, or the
285 state of incorporation if a corporation.

286 (8) "Seller" means a person who sells or offers to sell an assisted marketing plan.

287 Section 4. Section **13-26-2** is amended to read:

288 **13-26-2. Definitions.**

289 As used in this chapter, unless the context otherwise requires:

290 (1) "Continuity plan" means a shipment, with the prior express consent of the buyer, at
291 regular intervals of similar special-interest products. A continuity plan is distinguished from a
292 subscription arrangement by no binding commitment period or purchase amount.

293 (2) "Division" means the Division of Consumer Protection.

294 (3) "Fictitious personal name" means a name other than an individual's true name. An
295 "individual's true name" is the name taken at birth unless changed by operation of law or by
296 civil action.

297 (4) "Material statement" or "material fact" means information that a person of ordinary
298 intelligence or prudence would consider important in deciding whether or not to accept an offer
299 extended through a telephone solicitation.

300 (5) "Premium" means a gift, bonus, prize, award, certificate, or other document by
301 which a prospective purchaser is given a right, chance, or privilege to purchase or receive
302 goods or services with a stated or represented value of \$25 or more as an inducement to a
303 prospective purchaser to purchase other goods or services.

304 (6) "Subscription arrangements," "standing order arrangements," "supplements," and
305 "series arrangements" mean products or services provided, with the prior express request or
306 consent of the buyer, for a specified period of time at a price dependent on the duration of
307 service and to complement an initial purchase.

308 (7) (a) "Telephone solicitation," "sale," "selling," or "solicitation of sale" means:

309 (i) a sale or solicitation of goods or services in which:

- 310 (A) (I) the seller solicits the sale over the telephone;
- 311 (II) the purchaser's agreement to purchase is made over the telephone; and
- 312 (III) the purchaser, over the telephone, pays for or agrees to commit to payment for
- 313 goods or services prior to or upon receipt by the purchaser of the goods or services;
- 314 (B) the solicitor, not exempt under Section 13-26-4, induces a prospective purchaser
- 315 over the telephone, to make and keep an appointment that directly results in the purchase of
- 316 goods or services by the purchaser that would not have occurred without the telephone
- 317 solicitation and inducement by the solicitor;
- 318 (C) the seller offers or promises a premium to a prospective purchaser if:
- 319 (I) the seller induces the prospective purchaser to initiate a telephone contact with the
- 320 telephone soliciting business; and
- 321 (II) the resulting solicitation meets the requirements of Subsection (7)(a); or
- 322 (D) the solicitor solicits a charitable donation involving the exchange of any premium,
- 323 prize, gift, ticket, subscription, or other benefit in connection with any appeal made for a
- 324 charitable purpose by an organization that is not otherwise exempt under Subsection
- 325 13-26-4(2)(b)(iv); or
- 326 (ii) a telephone solicitation as defined in Section 13-25a-102.
- 327 (b) "Telephone solicitation," "sale," "selling," or "solicitation of sale" does not include
- 328 a sale or solicitation that occurs solely through an Internet website without the use of a
- 329 telephone call.
- 330 ~~[(b)]~~ (c) A solicitation of sale or telephone solicitation is considered complete when
- 331 made, whether or not the person receiving the solicitation agrees to the sale or to make a
- 332 charitable donation.
- 333 (8) "Telephone soliciting business" means a sole proprietorship, partnership, limited
- 334 liability company, corporation, or other association of individuals engaged in a common effort
- 335 to conduct telephone solicitations.
- 336 (9) "Telephone solicitor" or "solicitor" means a person, partnership, limited liability
- 337 company, corporation, or other entity that:

338 (a) makes a telephone solicitation; or

339 (b) causes a telephone solicitation to be made.

340 Section 5. Section **13-42-102** is amended to read:

341 **13-42-102. Definitions.**

342 In this chapter:

343 (1) "Administrator" means the Division of Consumer Protection.

344 (2) "Affiliate":

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

346 (i) the spouse of the individual;

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

348 (iii) an individual or the spouse of an individual who is a lineal ancestor or lineal

349 descendant of the individual or the individual's spouse;

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

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

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

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

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

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

361 (iv) subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), a
362 person that receives or received more than \$25,000 from the entity for debt management
363 services in either the current year or the preceding year or a person that owns more than 10%
364 of, or an individual who is employed by or is a director of, a person that receives or received
365 more than \$25,000 from the entity for debt management services in either the current year or

366 the preceding year;

367 (v) an officer or director of, or an individual performing similar functions with respect
368 to, a person described in Subsection (2)(b)(i);

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

371 (vii) an individual who has the relationship specified in Subsection (2)(a)(iv) to an
372 individual or the spouse of an individual described in Subsections (2)(b)(i) through (v).

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

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

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

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

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

387 (8) "Day" means calendar day.

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

391 (a) legal services provided in an attorney-client relationship if:

392 (i) the services are provided by an attorney who:

393 (A) is licensed or otherwise authorized to practice law in this state; and

394 (B) provides legal services in representing the individual in the individual's relationship
395 with a creditor; and

396 (ii) there is no intermediary between the individual and the creditor other than the
397 attorney or an individual under the direct supervision of the attorney;

398 (b) accounting services provided in an accountant-client relationship if:

399 (i) the services are provided by a certified public accountant who:

400 (A) is licensed to provide accounting services in this state; [or] and

401 (B) provides accounting services in representing the individual in the individual's
402 relationship with a creditor; and

403 (ii) there is no intermediary between the individual and the creditor other than the
404 accountant or an individual under the direct supervision of the accountant; or

405 (c) financial-planning services provided in a financial planner-client relationship by a
406 member of a financial-planning profession [~~whose members~~] if:

407 (i) the administrator, by rule, determines that members are:

408 [~~(i)~~] (A) licensed by this state;

409 [~~(ii)~~] (B) subject to a disciplinary mechanism;

410 [~~(iii)~~] (C) subject to a code of professional responsibility; and

411 [~~(iv)~~] (D) subject to a continuing education requirement[-]; and

412 (ii) there is no intermediary between the individual and the creditor other than the
413 financial planner or an individual under the direct supervision of the financial planner.

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

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

417 (12) "Lead generator" means a person who, in the regular course of business, supplies a
418 provider with the name of a potential customer, directs a communication of an individual to a
419 provider, or otherwise refers a customer to a provider.

420 [~~(12)~~] (13) "Person" means an individual, corporation, business trust, estate, trust,
421 partnership, limited liability company, association, joint venture, or any other legal or

422 commercial entity. The term does not include a public corporation, government, or
423 governmental subdivision, agency, or instrumentality.

424 ~~[(13)]~~ (14) "Plan" means a program or strategy in which a provider furnishes
425 debt-management services to an individual and which includes a schedule of payments to be
426 made by or on behalf of the individual and used to pay debts owed by the individual.

427 ~~[(14)]~~ (15) "Principal amount of the debt" means the amount of a debt at the time of an
428 agreement.

429 ~~[(15)]~~ (16) "Provider" means a person that provides, offers to provide, or agrees to
430 provide debt-management services directly or through others.

431 ~~[(16)]~~ (17) "Record" means information that is inscribed on a tangible medium or that
432 is stored in an electronic or other medium and is retrievable in perceivable form.

433 ~~[(17)]~~ (18) "Settlement fee" means a charge imposed on or paid by an individual in
434 connection with a creditor's assent to accept in full satisfaction of a debt an amount less than
435 the principal amount of the debt.

436 ~~[(18)]~~ (19) "Sign" means, with present intent to authenticate or adopt a record:

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

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

440 ~~[(19)]~~ (20) "State" means a state of the United States, the District of Columbia, Puerto
441 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
442 jurisdiction of the United States.

443 ~~[(20)]~~ (21) "Trust account" means an account held by a provider that is:

444 (a) established in ~~[an insured]~~ a bank in which deposit accounts are insured;

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

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

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

450 Section 6. Section **13-42-105** is amended to read:

451 **13-42-105. Application for registration -- Form, fee, and accompanying**
452 **documents.**

453 (1) An application for registration as a provider shall be in a form prescribed by the
454 administrator.

455 (2) Subject to adjustment of dollar amounts pursuant to Subsection 13-42-132(6), an
456 application for registration as a provider shall be accompanied by:

457 (a) the fee established by the administrator in accordance with Section 63J-1-504;

458 (b) the bond required by Section 13-42-113;

459 (c) identification of all trust accounts ~~[required by]~~ subject to Section 13-42-122 and an
460 irrevocable consent authorizing the administrator to review and examine the trust accounts;

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

462 (i) against the risks of dishonesty, fraud, theft, and other misconduct on the part of the
463 applicant or a director, employee, or agent of the applicant;

464 (ii) issued by an insurance company authorized to do business in this state and rated at
465 least A or equivalent by a nationally recognized rating organization approved by the
466 administrator;

467 (iii) with a deductible not exceeding \$5,000;

468 (iv) payable ~~[for the benefit of]~~ to the applicant~~[-]~~ and this state~~[-]~~ and individuals who
469 are] for the benefit of the residents of this state, as their interests may appear; and

470 (v) not subject to cancellation by the applicant or the insurer until 60 days after written
471 notice has been given to the administrator;

472 (e) a record consenting to the jurisdiction of this state containing:

473 (i) the name, business address, and other contact information of its registered agent in
474 this state for purposes of service of process; or

475 (ii) the appointment of the administrator as agent of the provider for purposes of
476 service of process; and

477 (f) if the applicant is organized as a not-for-profit entity or ~~[is exempt from taxation]~~

478 has obtained tax exempt status under the Internal Revenue Code, 26 U.S.C. Sec. 501, evidence
479 of not-for-profit [~~and~~] or tax-exempt status [applicable to the applicant under the Internal
480 Revenue Code, 26 U.S.C. Section 501], or both.

481 (3) (a) The administrator may waive or reduce the insurance requirement in Subsection
482 [~~13-42-105~~](2)(d) if the provider does not:

483 (i) maintain control of a trust account or receive money paid by an individual pursuant
484 to a plan for distribution to creditors;

485 (ii) make payments to creditors on behalf of individuals;

486 (iii) collect fees by means of automatic payment from individuals; and

487 (iv) execute any powers of attorney that may be utilized by the provider to collect fees
488 from or expend funds on behalf of an individual.

489 (b) A waiver or reduction in insurance requirements allowed by the administrator under
490 Subsection (3)(a) shall balance the reduction in risk posed by a provider meeting the stated
491 requirements against any continued need for insurance against employee and director
492 dishonesty.

493 Section 7. Section **13-42-106** is amended to read:

494 **13-42-106. Application for registration -- Required information.**

495 An application for registration as a provider shall be signed under penalty of perjury
496 and include:

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

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

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

502 (4) the name and home address of each officer and director of the applicant and each
503 person that owns at least 10% of the applicant;

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

506 (a) the applicant or any of its officers or directors has been licensed or registered to
507 provide debt-management services; or

508 (b) individuals have resided when they received debt-management services from the
509 applicant;

510 (6) a statement describing, to the extent it is known or should be known by the
511 applicant, any material civil or criminal judgment or litigation and any material administrative
512 or enforcement action by a governmental agency in any jurisdiction against the applicant, any
513 of its officers, directors, owners, or agents, or any person who is authorized to have access to
514 the trust account required by Section 13-42-122;

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

518 (8) evidence of accreditation by an independent accrediting organization approved by
519 the administrator;

520 (9) evidence that, [~~within~~] no later than 12 months after initial employment, each of the
521 applicant's counselors becomes certified as a certified counselor;

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

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

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

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

531 (14) at the applicant's expense, the results of a criminal records check, including
532 fingerprints, conducted within the immediately preceding 12 months, covering every officer of
533 the applicant and every employee or agent of the applicant who is authorized to have access to

534 the trust account required by Section 13-42-122;

535 (15) the names and addresses of all employers of each director during the 10 years
536 immediately preceding the application;

537 (16) a description of any ownership interest of at least 10% by a director, owner, or
538 employee of the applicant in:

539 (a) any affiliate of the applicant; or

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

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

546 (18) the identity of each director who is an affiliate, as defined in Subsection
547 13-42-102(2)(a) or (2)(b)(i), (ii), (iv), (v), (vi), or (vii), of the applicant; and

548 (19) any other information that the administrator reasonably requires to perform the
549 administrator's duties under Section 13-42-109.

550 Section 8. Section **13-42-107** is amended to read:

551 **13-42-107. Application for registration -- Obligation to update information.**

552 An applicant or registered provider shall notify the administrator [~~within~~] no later than
553 10 days after a change in the information specified in Subsection 13-42-105(2)(d) or (f) or
554 Subsection 13-42-106(1), (3), (6), (12), or (13).

555 Section 9. Section **13-42-110** is amended to read:

556 **13-42-110. Certificate of registration -- Timing.**

557 (1) The administrator shall approve or deny an initial registration as a provider [~~within~~]
558 no later than 120 days after an application is filed. In connection with a request pursuant to
559 Subsection 13-42-106(19) for additional information, the administrator may extend the 120-day
560 period for not more than 60 days. Within seven days after denying an application, the
561 administrator, in a record, shall inform the applicant of the reasons for the denial.

562 (2) If the administrator denies an application for registration as a provider or does not
563 act on an application within the time prescribed in Subsection (1), the applicant may appeal and
564 request a hearing pursuant to Title 63G, Chapter 4, Administrative Procedures Act.

565 (3) Subject to Subsection 13-42-111(4) and Section 13-42-134, a registration as a
566 provider is valid for one year.

567 Section 10. Section **13-42-111** is amended to read:

568 **13-42-111. Renewal of registration.**

569 (1) A provider shall obtain a renewal of its registration annually.

570 (2) An application for renewal of registration as a provider shall be in a form
571 prescribed by the administrator, signed under penalty of perjury, and:

572 (a) be filed no fewer than 30 and no more than 60 days before the registration expires;

573 (b) be accompanied by the fee established by the administrator in accordance with
574 Section 63J-1-504 and the bond required by Section 13-42-113;

575 (c) contain the matter required for initial registration as a provider by Subsections
576 13-42-106(8) and (9) and a financial statement, audited by an accountant licensed to conduct
577 audits, for the applicant's fiscal year immediately preceding the application;

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

580 (e) supply evidence of insurance in an amount equal to the larger of \$250,000 or the
581 highest daily balance in the trust account required by Section 13-42-122 during the six-month
582 period immediately preceding the application:

583 (i) against risks of dishonesty, fraud, theft, and other misconduct on the part of the
584 applicant or a director, employee, or agent of the applicant;

585 (ii) issued by an insurance company authorized to do business in this state and rated at
586 least ~~[A]~~ A- or equivalent by a nationally recognized rating organization approved by the
587 administrator;

588 (iii) with a deductible not exceeding \$5,000;

589 (iv) payable ~~[for the benefit of]~~ to the applicant~~[-]~~ and this state~~[-]~~ and individuals who

590 are] for the benefit of the residents of this state, as their interests may appear; and

591 (v) not subject to cancellation by the applicant or the insurer until 60 days after written
592 notice has been given to the administrator;

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

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

599 (h) provide any other information that the administrator reasonably requires to perform
600 the administrator's duties under this section.

601 (3) Except for the information required by Subsections 13-42-106(7), (14), and (17)
602 and the addresses required by Subsection 13-42-106(4), the administrator shall make the
603 information in an application for renewal of registration as a provider available to the public.

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

607 (5) If the administrator denies an application for renewal of registration as a provider,
608 the applicant, [~~within~~] no later than 30 days after receiving notice of the denial, may appeal and
609 request a hearing pursuant to Title 63G, Chapter 4, Administrative Procedures Act. Subject to
610 Section 13-42-134, while the appeal is pending the applicant shall continue to provide
611 debt-management services to individuals with whom it has agreements. If the denial is
612 affirmed, subject to the administrator's order and Section 13-42-134, the applicant shall
613 continue to provide debt-management services to individuals with whom it has agreements
614 until, with the approval of the administrator, it transfers the agreements to another registered
615 provider or returns to the individuals all unexpended money that is under the applicant's
616 control.

617 (6) (a) The administrator may waive or reduce the insurance requirement in Subsection

618 (2)(e) if the provider does not:

619 (i) maintain control of a trust account or receive money paid by an individual pursuant
620 to a plan for distribution to creditors;

621 (ii) make payments to creditors on behalf of individuals;

622 (iii) collect fees by means of automatic payment from individuals; and

623 (iv) execute any powers of attorney that may be utilized by the provider to collect fees
624 from or expend funds on behalf of an individual.

625 (b) A waiver or reduction in insurance requirements allowed by the administrator under
626 Subsection (6)(a) shall balance the reduction in risk posed by a provider meeting the stated
627 requirements against any continued need for insurance against employee and director
628 dishonesty.

629 Section 11. Section **13-42-112** is amended to read:

630 **13-42-112. Registration in another state -- Rulemaking.**

631 (1) (a) Subject to rules made by the administrator, if a provider holds a license or
632 certificate of registration in another state authorizing it to provide debt-management services,
633 the provider may submit a copy of that license or certificate and the application for it instead of
634 an application in the form prescribed by Subsection 13-42-105(1), Section 13-42-106, or
635 Subsection 13-42-111(2).

636 (b) The administrator shall accept the application and the license or certificate from the
637 other state as an application for registration as a provider or for renewal of registration as a
638 provider, as appropriate, in this state if:

639 (i) the application in the other state contains information substantially similar to or
640 more comprehensive than that required in an application submitted in this state;

641 (ii) the applicant provides the information required by Subsections 13-42-105(2)(d) and
642 13-42-106(1), (3), (7), (10), (12), and (13);

643 (iii) the applicant, under penalty of perjury, certifies that the information contained in
644 the application is current or, to the extent it is not current, supplements the application to make
645 the information current; and

646 (iv) the applicant files a surety bond or substitute in accordance with Section
647 13-42-113 or 13-42-114 that is solely payable or available to this state and to individuals who
648 reside in this state.

649 (2) The administrator, in accordance with Title 63G, Chapter 3, Utah Administrative
650 Rulemaking Act, shall make rules designating the states in which a provider may have a license
651 or certificate that may be submitted to the administrator in compliance with this section.

652 Section 12. Section **13-42-113** is amended to read:

653 **13-42-113. Bond required.**

654 (1) Except as otherwise provided in Section 13-42-114, a provider that is required to be
655 registered under this chapter shall file a surety bond with the administrator, which shall:

656 (a) be in effect during the period of registration and for two years after the provider
657 ceases providing debt-management services to individuals in this state; and

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

661 (2) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), a
662 surety bond filed pursuant to Subsection (1) shall:

663 (a) be in the amount of \$100,000;

664 (b) be issued by a bonding, surety, or insurance company authorized to do business in
665 this state and rated at least [~~A~~] A- by a nationally recognized rating organization; and

666 (c) have payment conditioned [~~upon~~] on noncompliance of the provider or its agent
667 with this chapter.

668 (3) If the principal amount of a surety bond is reduced by payment of a claim or a
669 judgment, the provider shall immediately notify the administrator and, [~~within~~] no later than 30
670 days after notice by the administrator, file a new or additional surety bond in an amount to
671 comply with the \$100,000 requirement. If for any reason a surety terminates a bond, the
672 provider shall immediately file a new surety bond in the amount of \$100,000.

673 (4) The administrator or an individual may obtain satisfaction out of the surety bond

674 procured pursuant to this section if:

675 (a) the administrator assesses expenses under Subsection 13-42-132(2)(a), issues a
676 final order under Subsection 13-42-133(1)(b), or recovers a final judgment under Subsection
677 13-42-133(1)(d) or (e) or Subsection 13-42-133(4); or

678 (b) an individual recovers a final judgment pursuant to Subsection 13-42-135(1),
679 Subsection 13-42-135(2), or Subsection 13-42-135(3)(a), (b), or (d).

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

684 (a) to satisfaction of a final order or judgment under Subsection 13-42-133(1)(a), (d),
685 or (e) or Subsection 13-42-133(4);

686 (b) to final judgments recovered by individuals pursuant to Subsection 13-42-135(1),
687 Subsection 13-42-135(2), or Subsection 13-42-135(3)(a), (b) or (d), pro rata;

688 (c) to claims of individuals established to the satisfaction of the administrator, pro rata;
689 and

690 (d) if a final order or judgment is issued under Subsection 13-42-133(1), to the
691 expenses charged pursuant to Subsection 13-42-132(2)(a).

692 Section 13. Section **13-42-114** is amended to read:

693 **13-42-114. Bond required -- Substitute.**

694 (1) Instead of the surety bond required by Section 13-42-113, a provider, with the
695 approval of the administrator and in the amount required by Subsection (2), may deliver to the
696 administrator~~[-, in the amount required by Subsection 13-42-113(2), and, except as otherwise~~
697 ~~provided in Subsection (1)(c)(i), payable or available to this state and to individuals who reside~~
698 ~~in this state when they agree to receive debt-management services from the provider, as their~~
699 ~~interests may appear, if the provider or its agent does not comply with this chapter]:~~

700 [~~(a) a certificate of insurance:]~~

701 [~~(i) issued by an insurance company authorized to do business in this state and rated at~~

702 least A or equivalent by a nationally recognized rating organization approved by the
703 administrator; and]

704 [~~(ii) with no deductible, or if the provider supplies a bond in the amount of \$5,000, a~~
705 ~~deductible not exceeding \$5,000;~~]

706 [~~(b) a certificate of deposit issued or confirmed by a bank approved by the~~
707 ~~administrator, payable upon presentation of a certificate by the administrator stating that the~~
708 ~~provider or its agent has not complied with this chapter; or]~~

709 [~~(c) with the approval of the administrator.~~]

710 [(†) (a) an irrevocable letter of credit, issued or confirmed by a bank approved by the
711 administrator, payable ~~[upon]~~ on presentation of a certificate by the administrator stating that
712 the provider or its agent has not complied with this chapter; or

713 [(††) (b) bonds or other obligations of the United States or guaranteed by the United
714 States or bonds or other obligations of this state or a political subdivision of this state, to be;

715 (i) deposited and maintained with a bank approved by the administrator for this
716 purpose[-]; and

717 (ii) delivered by the bank to the administrator on presentation of a certificate by the
718 administrator stating that the provider or its agent has not complied with this chapter.

719 (2) If a provider furnishes a substitute pursuant to Subsection (1), ~~[the provisions of]~~
720 Subsections 13-42-113(1), (3), (4), and (5) apply to the substitute.

721 Section 14. Section **13-42-117** is amended to read:

722 **13-42-117. Prerequisites for providing debt-management services.**

723 (1) Before providing debt-management services, a ~~[registered]~~ provider shall give the
724 individual an itemized list of goods and services and the charges for each. The list shall be
725 clear and conspicuous, be in a record the individual may keep whether or not the individual
726 assents to an agreement, and describe the goods and services the provider offers:

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

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

729 (c) for a charge if the individual enters into an agreement, using the following

758 plan will accept payment of the individual's debts as provided in the plan.

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

760 (a) provide the individual with a copy of the analysis and plan required by Subsection
761 (2) in a record that identifies the provider and that the individual may keep whether or not the
762 individual assents to the agreement;

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

766 (c) with respect to all creditors identified by the individual or otherwise known by the
767 provider to be creditors of the individual, provide the individual with a list of:

768 (i) creditors that the provider expects to participate in the plan and grant concessions;

769 (ii) creditors that the provider expects to participate in the plan but not grant
770 concessions;

771 (iii) creditors that the provider expects not to participate in the plan; and

772 (iv) all other creditors.

773 (4) Before an individual assents to an agreement, the provider shall inform the
774 individual, in a separate record [~~that contains nothing else, that is given separately, and~~] that
775 the individual may keep whether or not the individual assents to the agreement:

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

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

779 (c) of the amount of time necessary to achieve the results that the provider represents to
780 be achievable;

781 (d) if the provider intends to include a settlement offer to any of the individual's
782 creditors or debt collectors:

783 (i) of the time by which the provider will make a bona fide settlement offer to any of
784 the individual's creditors or debt collectors; and

785 (ii) of the amount of money or the percentage of each outstanding debt that the

786 individual must accumulate before the provider will make a bona fide settlement offer to each
787 creditor or debt collector;

788 [~~e~~] (e) that establishment of a plan may adversely affect the individual's credit rating
789 or credit scores;

790 [~~f~~] (f) that nonpayment of debt may lead creditors to increase finance and other
791 charges or undertake collection activity, including litigation;

792 (g) if the provider requests or requires the individual to place money in an account at
793 an insured financial institution, that the individual:

794 (i) owns the funds held in the account;

795 (ii) may withdraw from the provider's plan at any time without penalty; and

796 (iii) is entitled to receive all money in the account, other than money that the provider
797 earns as provided in Section 13-42-123, at the time the individual withdraws from the
798 provider's plan;

799 [~~h~~] (h) unless it is not true, that the provider may receive compensation from the
800 creditors of the individual; and

801 [~~i~~] (i) that, unless the individual is insolvent, if a creditor settles for less than the full
802 amount of the debt, the plan may result in the creation of taxable income to the individual, even
803 though the individual does not receive any money.

804 (5) If a provider may receive payments from an individual's creditors and the plan
805 contemplates that the individual's creditors will reduce finance charges or fees for late payment,
806 default, or delinquency, the provider may comply with Subsection (4) by providing the
807 following disclosure, surrounded by black lines:

808 IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

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

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

813 _____

814 Name and business address of provider

815 (6) If a provider will not receive payments from an individual's creditors and the plan
816 contemplates that the individual's creditors will reduce finance charges or fees for late payment,
817 default, or delinquency, a provider may comply with Subsection (4) by providing the following
818 disclosure, surrounded by black lines:

819 IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

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

823 _____

824 Name and business address of provider

825 (7) If an agreement contemplates that creditors will settle debts for less than the full
826 principal amount of debt owed, a provider may comply with Subsection (4) by providing the
827 following disclosure, surrounded by black lines:

828 IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

831 (2) Nonpayment of your debts under our program may
832 hurt your credit rating or credit scores;
833 lead your creditors to increase finance and other charges; and
834 lead your creditors to undertake activity, including lawsuits, to collect the debts.

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

837 _____

838 Name and business address of provider

839 Section 15. Section **13-42-118** is amended to read:

840 **13-42-118. Communication by electronic or other means.**

841 (1) In this section:

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

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

846 (2) A provider may satisfy the requirements of Section 13-42-117, 13-42-119, or
847 13-42-127 by means of the Internet or other electronic means if the provider obtains a
848 consumer's consent in the manner provided by Section 101(c)(1) of the federal act.

849 (3) The disclosures and materials required by Sections 13-42-117, 13-42-119, and
850 13-42-127 shall be presented in a form that is capable of being accurately reproduced for later
851 reference.

852 (4) With respect to disclosure by means of an Internet website, the disclosure of the
853 information required by Subsection 13-42-117(4) shall appear on one or more screens that:

854 (a) contain no other information; and

855 (b) the individual is able to see before proceeding to assent to formation of an
856 agreement.

857 (5) At the time of providing the materials and agreement required by Subsections
858 13-42-117(3) and (4), Section 13-42-119, and Section 13-42-127, a provider shall inform the
859 individual that ~~upon~~ on electronic, telephonic, or written request, it will send the individual a
860 written copy of the materials, and shall comply with a request as provided in Subsection (6).

861 (6) If a provider is requested, before the expiration of 90 days after an agreement is
862 completed or terminated, to send a written copy of the materials required by Subsections
863 13-42-117(3) and (4), Section 13-42-119, or Section 13-42-127, the provider shall send them at
864 no charge ~~within~~ no later than three business days after the request, but the provider need not
865 comply with a request more than once per calendar month or if it reasonably believes the
866 request is made for purposes of harassment. If a request is made more than 90 days after an
867 agreement is completed or terminated, the provider shall send within a reasonable time a
868 written copy of the materials requested.

869 (7) A provider that maintains an Internet website shall disclose on the home page of its

870 website or on a page that is clearly and conspicuously connected to the home page by a link
871 that clearly reveals its contents:

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

873 (b) its principal business address, telephone number, and electronic-mail address, if
874 any; and

875 (c) the names of its principal officers.

876 (8) Subject to Subsection (9), if a consumer who has consented to electronic
877 communication in the manner provided by Section 101 of the federal act withdraws consent as
878 provided in the federal act, a provider may terminate its agreement with the consumer.

879 (9) If a provider wishes to terminate an agreement with a consumer pursuant to
880 Subsection (8), it shall notify the consumer that it will terminate the agreement unless the
881 consumer, [~~within~~] no later than 30 days after receiving the notification, consents to electronic
882 communication in the manner provided in Section 101(c) of the federal act. If the consumer
883 consents, the provider may terminate the agreement only as permitted by Subsection
884 13-42-119(1)(f)[~~(vii)~~](iv)(D).

885 Section 16. Section **13-42-119** is amended to read:

886 **13-42-119. Form and contents of agreement.**

887 (1) An agreement shall:

888 (a) be in a record;

889 (b) be dated and signed by the provider and the individual;

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

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

892 (e) be delivered to the individual immediately upon formation of the agreement; and

893 (f) disclose:

894 (i) the services to be provided;

895 (ii) the amount, or method of determining the amount, of all fees, individually
896 itemized, to be paid by the individual;

897 (iii) the schedule of payments to be made by or on behalf of the individual, including

898 the amount of each payment, the date on which each payment is due, and an estimate of the
899 date of the final payment;

900 (iv) if a plan provides for regular periodic payments to creditors:

901 (A) each creditor of the individual to which payment will be made, the amount owed to
902 each creditor, and any concessions the provider reasonably believes each creditor will offer;
903 [~~and~~]

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

906 [~~(v)~~] (C) each creditor that the provider believes will not participate in the plan and to
907 which the provider will not direct payment; and

908 (D) that the provider may terminate the agreement for good cause, upon return of
909 unexpended money of the individual;

910 (v) if a plan contemplates the settlement of the individual's debt for less than the
911 principal amount of the debt, an estimate of:

912 (A) the duration of the plan based on all enrolled debts;

913 (B) the length of time before the individual may reasonably expect a settlement offer;
914 and

915 (C) the amount of savings needed to accrue before the individual may reasonably
916 expect a settlement offer, expressed as either a dollar amount or a percentage, for each enrolled
917 debt;

918 (vi) how the provider will comply with its obligations under Subsection 13-42-127(1);

919 [~~(vii) that the provider may terminate the agreement for good cause, upon return of~~
920 ~~unexpended money of the individual;~~]

921 [~~(viii)~~] (vii) that the individual may [cancel the agreement as provided in Section
922 13-42-120] terminate the agreement at any time by giving written or electronic notice, and that,
923 if notice of termination is given, the individual will receive all unexpended money that the
924 provider or its designee has received from or on behalf of the individual for payment of a credit
925 and, except to the extent they have been earned, the provider's fees;

926 ~~[(ix)]~~ (viii) that the individual may contact the administrator with any questions or
927 complaints regarding the provider; and

928 ~~[(x)]~~ (ix) the address, telephone number, and Internet address or website of the
929 administrator.

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

933 (3) If the administrator supplies the provider with any information required under
934 Subsection (1)(f)~~[(x)]~~(ix), the provider may comply with that requirement only by disclosing
935 the information supplied by the administrator.

936 (4) An agreement shall provide that:

937 ~~[(a) the individual has a right to terminate the agreement at any time, without penalty
938 or obligation, by giving the provider written or electronic notice, in which event:]~~

939 ~~[(i) the provider will refund all unexpended money that the provider or its agent has
940 received from or on behalf of the individual for the reduction or satisfaction of the individual's
941 debt;]~~

942 ~~[(ii) with respect to an agreement that contemplates that creditors will settle debts for
943 less than the principal amount of debt, the provider will refund 65% of any portion of the
944 set-up fee that has not been credited against the settlement fee; and]~~

945 ~~[(iii) all powers of attorney granted by the individual to the provider are revoked and
946 ineffective;]~~

947 ~~[(b)]~~ (a) the individual authorizes any bank in which the provider or its agent has
948 established a trust account to disclose to the administrator any financial records relating to the
949 trust account; and

950 ~~[(c)]~~ (b) the provider will notify the individual ~~[within]~~ no later than five business days
951 after learning of a creditor's final decision to reject or withdraw from a plan and that this notice
952 will include:

953 (i) the identity of the creditor; and

954 (ii) the right of the individual to modify or terminate the agreement.

955 [~~(5)~~ An agreement may confer on a provider a power of attorney to settle the
956 individual's debt for no more than 50% of the principal amount of the debt. An agreement may
957 not confer a power of attorney to settle a debt for more than 50% of that amount, but may
958 confer a power of attorney to negotiate with creditors of the individual on behalf of the
959 individual. An agreement shall provide that the provider will obtain the assent of the
960 individual after a creditor has assented to a settlement for more than 50% of the principal
961 amount of the debt.]

962 [~~(6)~~] (5) An agreement may not:

963 (a) provide for application of the law of any jurisdiction other than the United States
964 and this state;

965 (b) except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. Section 2,
966 or Title 78B, Chapter 11, Utah Uniform Arbitration Act, contain a provision that modifies or
967 limits otherwise available forums or procedural rights, including the right to trial by jury, that
968 are generally available to the individual under law other than this chapter;

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

971 (d) contain a provision that:

972 (i) limits or releases the liability of any person for not performing the agreement or for
973 violating this chapter; or

974 (ii) indemnifies any person for liability arising under the agreement or this chapter.

975 [~~(7)~~] (6) [~~All rights and obligations specified in Subsection (4) and Section 13-42-120~~
976 exist even if not provided in the agreement.] A provision in an agreement which violates
977 Subsection [~~(4)~~], (4) or (5)[~~, or (6)~~] is void.

978 Section 17. Section 13-42-120 is repealed and reenacted to read:

979 **13-42-120. Termination of agreement.**

980 (1) An individual who is a party to an agreement may terminate the agreement at any
981 time, without penalty or obligation, by giving the provider notice in a record.

982 (2) A provider may terminate an agreement if an individual who is a party to the
983 agreement fails for 60 days to make a payment or deposit required by the agreement or if other
984 good cause exists.

985 (3) If an agreement is terminated:

986 (a) the provider, no later than seven business days after the termination, shall pay the
987 individual who is a party to the agreement all money the provider or its designee received from
988 or on behalf of the individual, other than:

989 (i) an amount properly disbursed to a creditor; and

990 (ii) fees earned pursuant to Section 13-42-123; and

991 (b) any power of attorney granted by the individual to the provider is revoked.

992 Section 18. Section **13-42-121** is amended to read:

993 **13-42-121. Required language.**

994 Unless the administrator, by rule, provides otherwise, the disclosures and documents
995 required by this chapter shall be in English. If a provider communicates with an individual
996 primarily in a language other than English, the provider shall furnish a translation [~~into~~] in the
997 other language of the disclosures and documents required by this chapter.

998 Section 19. Section **13-42-122** is amended to read:

999 **13-42-122. Trust account.**

1000 (1) All money paid to a provider by or on behalf of an individual for distribution to
1001 creditors pursuant to a plan is held in trust. [~~Within~~] No later than two business days after
1002 receipt, the provider shall deposit the money in a trust account established for the benefit of
1003 individuals to whom the provider is furnishing debt-management services.

1004 (2) A provider whose agreement contemplates the settlement of an individual's debt for
1005 less than the principal amount of the debt may request or require the individual to place money
1006 in an account to be used to pay a creditor or the provider's fees, or both, if:

1007 (a) the money is held in an insured account at a bank;

1008 (b) the individual owns the money held in the account and is paid any interest accrued
1009 on the account;

1010 (c) the entity administering the account is not the provider or an affiliate of the
1011 provider, unless the affiliate is described in Subsection 13-42-102(2)(b)(iv);

1012 (d) the entity administering the account does not give or accept any money or other
1013 compensation in exchange for a referral of business involving debt-management services; and

1014 (e) the individual may terminate the agreement at any time without penalty and on
1015 termination must receive all money in the account, other than money earned by the provider in
1016 compliance with this section.

1017 (3) If an agreement contemplates the reduction of finance charges or fees for late
1018 payment, default, or delinquency, and the provider complies with Subsection (1), the provider
1019 may request or require the individual to make payment to be used for both distribution to
1020 creditors and payment of the provider's fees.

1021 [~~(2)~~] (4) Money held in trust by a provider is not property of the provider or its
1022 designee. The money is not available to creditors of the provider or designee, except an
1023 individual from whom or on whose behalf the provider received money, to the extent that the
1024 money has not been disbursed to creditors of the individual.

1025 [~~(3)~~] (5) A provider shall:

1026 (a) maintain separate records of account for each individual to whom the provider is
1027 furnishing debt-management services;

1028 (b) disburse money paid by or on behalf of the individual to creditors of the individual
1029 as disclosed in the agreement, except that:

1030 (i) the provider may delay payment to the extent that a payment by the individual is not
1031 final; and

1032 (ii) if a plan provides for regular periodic payments to creditors, the disbursement shall
1033 comply with the due dates established by each creditor; and

1034 (c) promptly correct any payments that are not made or that are misdirected as a result
1035 of an error by the provider or other person in control of the trust account and reimburse the
1036 individual for any costs or fees imposed by a creditor as a result of the failure to pay or
1037 misdirection.

1038 [~~(4)~~] (6) A provider may not commingle money in a trust account established for the
1039 benefit of individuals to whom the provider is furnishing debt-management services with
1040 money of other persons.

1041 [~~(5)~~] (7) A trust account shall at all times have a cash balance equal to the sum of the
1042 balances of each individual's account.

1043 [~~(6)~~] (8) If a provider has established a trust account pursuant to Subsection (1), the
1044 provider shall reconcile the trust account at least once a month. The reconciliation shall
1045 compare the cash balance in the trust account with the sum of the balances in each individual's
1046 account. If the provider or its designee has more than one trust account, each trust account
1047 shall be individually reconciled.

1048 [~~(7)~~] (9) If a provider discovers, or has a reasonable suspicion of, embezzlement or
1049 other unlawful appropriation of money held in trust, the provider immediately shall notify the
1050 administrator by a method approved by the administrator. Unless the administrator by rule
1051 provides otherwise, [~~within~~] no later than five days thereafter, the provider shall give notice to
1052 the administrator describing the remedial action taken or to be taken.

1053 [~~(8)~~] (10) If an individual terminates an agreement or it becomes reasonably apparent
1054 to a provider that a plan has failed, the provider shall promptly refund to the individual all
1055 money paid by or on behalf of the individual which has not been paid to creditors, less fees that
1056 are payable to the provider under Section 13-42-123.

1057 [~~(9)~~] (11) Before relocating a trust account from one bank to another, a provider shall
1058 inform the administrator of the name, business address, and telephone number of the new bank.
1059 As soon as practicable, the provider shall inform the administrator of the account number of the
1060 trust account at the new bank.

1061 Section 20. Section **13-42-123** is amended to read:

1062 **13-42-123. Fees and other charges.**

1063 (1) A provider may not impose directly or indirectly a fee or other charge on an
1064 individual or receive money from or on behalf of an individual for debt-management services
1065 except as permitted by this section.

1066 (2) A provider may not impose charges or receive payment for debt-management
1067 services until the provider and the individual have signed an agreement that complies with
1068 Sections 13-42-119 and 13-42-128.

1069 (3) If an individual assents to an agreement, a provider may not impose a fee or other
1070 charge for educational ~~[or]~~, counseling, or similar services, [or the like,] except as otherwise
1071 provided in this ~~[Subsection (3)]~~ section and Subsection 13-42-128(4). The administrator may
1072 authorize a provider to charge a fee based on the nature and extent of the ~~[educational or~~
1073 counseling] services furnished by the provider.

1074 (4) ~~[Subject]~~ (a) Subsections (4)(b) through (d) are subject to adjustment of dollar
1075 amounts pursuant to Subsection 13-42-132(6)[, the following rules apply:].

1076 ~~[(a)]~~ (b) If an individual assents to a plan that contemplates that creditors will reduce
1077 finance charges or fees for late payment, default, or delinquency, the provider may charge:

1078 (i) a fee not exceeding \$50 for consultation, obtaining a credit report, setting up an
1079 account, and the like; and

1080 (ii) a monthly service fee, not to exceed \$10 times the number of accounts remaining in
1081 a plan at the time the fee is assessed, but not more than \$50 in any month.

1082 ~~[(b)]~~ (c) If an individual assents to an agreement that contemplates that creditors will
1083 settle debts for less than the principal amount of the debt, a provider may ~~[charge:]~~ not request
1084 or receive payment of any fee or consideration for the provider's service unless:

1085 ~~[(i) subject to Subsection 13-42-119(4), a fee for consultation, obtaining a credit report,~~
1086 ~~setting up an account, and the like, in an amount not exceeding the lesser of \$400 and 4% of~~
1087 ~~the debt in the plan at the inception of the plan; and]~~

1088 ~~[(ii) a monthly service fee, not to exceed \$10 times the number of accounts remaining~~
1089 ~~in a plan at the time the fee is assessed, but not more than \$50 in any month.]~~

1090 ~~[(c) A provider may not impose or receive fees under both Subsections (4)(a) and (b).]~~

1091 (i) the provider has renegotiated, settled, reduced, or otherwise altered the terms of at
1092 least one debt under an agreement executed by the individual;

1093 (ii) the individual has made at least one payment pursuant to that agreement between

1094 the individual and the creditor or debt collector; and

1095 (iii) the fee or consideration for any individual debt that is renegotiated, settled,
1096 reduced, or otherwise altered:

1097 (A) bears the same proportion to the total fee for renegotiating, settling, reducing, or
1098 altering the terms of the entire debt as the individual debt amount at the time the debt was
1099 enrolled in the service bears to the entire debt amount at the time the debt was enrolled in the
1100 service; or

1101 (B) is a percentage of the amount saved as a result of the renegotiation, settlement,
1102 reduction, or alteration, as calculated under Subsection (4)(e), which percentage may not
1103 change from one individual debt to another.

1104 (d) Except as otherwise provided in Subsection 13-42-128(4), if an individual does not
1105 assent to an agreement, a provider may receive for educational and counseling services it
1106 provides to the individual a fee not exceeding \$100 or, with the approval of the administrator, a
1107 larger fee. The administrator may approve a fee larger than \$100 if the nature and extent of the
1108 educational and counseling services warrant the larger fee.

1109 (e) For purposes of Subsection (4)(c)(iii)(B), the amount saved is calculated as the
1110 difference between the amount owed at the time the debt is enrolled in the service and the
1111 amount actually paid to satisfy the debt.

1112 (5) If, before the expiration of 90 days after the completion or termination of
1113 educational or counseling services, an individual assents to an agreement, the provider shall
1114 refund to the individual any fee paid pursuant to Subsection (4)(d).

1115 (6) [(a)] Except as otherwise provided in Subsections (3) and (4), if an agreement
1116 contemplates that creditors will settle an individual's debts for less than the principal amount of
1117 the debt[;]:

1118 (a) compensation for services in connection with settling a debt [may not exceed one of
1119 the following applicable settlement fee limits in Subsection (6)(b) or (c), the terms of which
1120 shall be clearly disclosed in the agreement.] shall be reasonable and clearly disclosed in the
1121 agreement; and

1122 (b) a fee for settling a debt may be collected only as the debt is settled.
1123 [~~(b) (i) With respect to agreements where a flat settlement fee is charged based on the~~
1124 ~~overall amount of included debt, total aggregate fees charged may not exceed 17% of the~~
1125 ~~principal amount of debt included in the agreement, including any fees charged under~~
1126 ~~Subsections (4)(b)(i) and (ii):]~~
1127 [~~(ii) The flat settlement fee authorized under this Subsection (6)(b) shall be assessed in~~
1128 ~~equal monthly payments over no less than half of the length of the plan, as estimated at the~~
1129 ~~plan's inception, unless:]~~
1130 [~~(A) payment is voluntarily accelerated by the individual in a separate record; and]~~
1131 [~~(B) at least half of the principal amount of overall debt included in the agreement at its~~
1132 ~~inception has been settled:]~~
1133 [~~(c) (i) With respect to agreements where fees are calculated as a percentage of the~~
1134 ~~amount saved by an individual, a settlement fee may not exceed 30% of the excess of the~~
1135 ~~outstanding amount of each debt over the amount actually paid to the creditor, as calculated at~~
1136 ~~the time of settlement:]~~
1137 [~~(ii) Settlement fees authorized under this Subsection (6)(c):]~~
1138 [~~(A) may be collected only as debts are settled; and]~~
1139 [~~(B) the total aggregate amount of fees charged to any individual under this chapter,~~
1140 ~~including fees charged under Subsections (4)(b)(i) and (ii), may not exceed 20% of the~~
1141 ~~principal amount of debt included in the agreement at the agreement's inception:]~~
1142 [~~(d) A provider may not impose or receive fees under both Subsections (6)(b) and (c):]~~
1143 (7) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), if
1144 a payment to a provider by an individual under this chapter is dishonored, a provider may
1145 impose a reasonable charge on the individual, not to exceed the lesser of \$25 and the amount
1146 permitted by law other than this chapter.
1147 Section 21. Section **13-42-126** is repealed and reenacted to read:
1148 **13-42-126. Retention of records.**
1149 (1) For each individual for whom a provider provides debt-management services, the

1150 provider shall maintain records for five years after the final payment made by the individual.

1151 (2) The provider shall produce a copy of the records to the individual within a
1152 reasonable time after a request for the records.

1153 (3) The provider may use electronic or other means of storage of the records.

1154 Section 22. Section **13-42-127** is amended to read:

1155 **13-42-127. Periodic reports and retention of records.**

1156 (1) A provider shall provide the accounting required by Subsection (2):

1157 (a) ~~upon~~ on cancellation or termination of an agreement; and

1158 (b) before cancellation or termination of any agreement:

1159 (i) at least once each month; and

1160 (ii) ~~within~~ no later than five business days after a request by an individual, but the
1161 provider need not comply with more than one request in any calendar month.

1162 (2) A provider, in a record, shall provide each individual for whom it has established a
1163 plan an accounting of the following information:

1164 (a) the amount in an account containing money paid by or on behalf of the individual
1165 for fees or distribution to a creditor, or both, as of the date one month before the date of the
1166 accounting;

1167 ~~[(a)]~~ (b) the amount [of money received from the individual] paid into the account
1168 since the last report;

1169 ~~[(b)]~~ (c) the amounts and dates of disbursement made on the individual's behalf, or by
1170 the individual ~~upon~~ on the direction of the provider, since the last report to each creditor
1171 listed in the plan;

1172 ~~[(c)]~~ (d) the amounts deducted, as fees or otherwise, from the amount [received from
1173 the individual] paid into the account since the last report;

1174 ~~[(d) the amount held in reserve; and]~~

1175 (e) if, since the last report, a creditor has agreed to accept as payment in full an amount
1176 less than the principal amount of the debt owed by the individual:

1177 (i) the total amount and terms of the settlement;

- 1178 (ii) the amount of the debt when the individual assented to the plan;
- 1179 (iii) the amount of the debt when the creditor agreed to the settlement; and
- 1180 (iv) the calculation of a settlement fee[-]; and
- 1181 (f) the amount in the account as of the date of the accounting.

1182 ~~[(3) A provider shall maintain records for each individual for whom it provides~~
 1183 ~~debt-management services for five years after the final payment made by the individual and~~
 1184 ~~produce a copy of them to the individual within a reasonable time after a request for them. The~~
 1185 ~~provider may use electronic or other means of storage of the records.]~~

1186 (3) If an agreement contemplates that a creditor will settle a debt for less than the
 1187 principal amount of the debt and the provider delegates performance of its duties under this
 1188 section to another person, the provider may provide the information required by Subsection
 1189 (2)(e) in a record separate from the record containing the other information required by
 1190 Subsection (2).

1191 Section 23. Section **13-42-128** is amended to read:

1192 **13-42-128. Prohibited acts and practices.**

1193 (1) A provider may not, directly or indirectly:

1194 (a) include a secured debt in a plan, except as authorized by law other than this chapter;

1195 ~~[(a)]~~ (b) misappropriate or misapply money held in trust;

1196 ~~[(b)]~~ (c) settle a debt on behalf of an individual [for more than 50% of the principal
 1197 amount of the debt owed a creditor], unless the individual assents to the settlement after the
 1198 creditor has assented;

1199 ~~[(c)]~~ (d) take a power of attorney that authorizes it to settle a debt[; unless the power of
 1200 attorney expressly limits the provider's authority to settle debts for not more than 50% of the
 1201 principal amount of the debt owed a creditor];

1202 ~~[(d)]~~ (e) exercise or attempt to exercise a power of attorney after an individual has
 1203 terminated an agreement;

1204 ~~[(e)]~~ (f) initiate a transfer from an individual's account at a bank or with another person
 1205 unless the transfer is:

1206 (i) a return of money to the individual; or
1207 (ii) before termination of an agreement, properly authorized by the agreement and this
1208 chapter, and for:
1209 (A) payment to one or more creditors pursuant to an agreement; or
1210 (B) payment of a fee;
1211 ~~[(f)]~~ (g) offer a gift or bonus, premium, reward, or other compensation to an individual
1212 for executing an agreement;
1213 ~~[(g)]~~ (h) offer, pay, or give a gift or bonus, premium, reward, or other compensation to
1214 a lead generator or other person for referring a prospective customer, if the person making the
1215 referral:
1216 (i) has a financial interest in the outcome of debt-management services provided to the
1217 customer, unless neither the provider nor the person making the referral communicates to the
1218 prospective customer the identity of the source of the referral; or
1219 (ii) compensates its employees on the basis of a formula that incorporates the number
1220 of individuals the employee refers to the provider;
1221 ~~[(h)]~~ (i) receive a bonus, commission, or other benefit for referring an individual to a
1222 person;
1223 ~~[(i)]~~ (j) structure a plan in a manner that would result in a negative amortization of any
1224 of an individual's debts, unless a creditor that is owed a negatively amortizing debt agrees to
1225 refund or waive the finance charge ~~[upon]~~ on payment of the principal amount of the debt;
1226 ~~[(j)]~~ (k) compensate its employees on the basis of a formula that incorporates the
1227 number of individuals the employee induces to enter into agreements;
1228 ~~[(k)]~~ (l) settle a debt or lead an individual to believe that a payment to a creditor is in
1229 settlement of a debt to the creditor unless, at the time of settlement, the individual~~[-(i)]~~
1230 receives a certification by the creditor that the payment:
1231 (i) is in full settlement of the debt; or
1232 (ii) is part of a ~~[payment]~~ settlement plan, the terms of which are included in the
1233 certification, ~~[which upon completion will result in full settlement of]~~ that, if completed

1234 according to its terms, will satisfy the debt;

1235 ~~[(t)]~~ (m) make a representation that:

1236 (i) the provider will furnish money to pay bills or prevent attachments;

1237 (ii) payment of a certain amount will permit satisfaction of a certain amount or range of

1238 indebtedness; or

1239 (iii) participation in a plan will or may prevent litigation, garnishment, attachment,

1240 repossession, foreclosure, eviction, or loss of employment;

1241 ~~[(m)]~~ (n) misrepresent that it is authorized or competent to furnish legal advice or

1242 perform legal services;

1243 ~~[(n)]~~ (o) represent in its agreements, disclosures required by this chapter,

1244 advertisements, or Internet website that it is:

1245 (i) a not-for-profit entity unless it is organized and properly operating as a

1246 not-for-profit entity under the law of the state in which it was formed; or

1247 (ii) a tax-exempt entity unless it has received certification of tax-exempt status from

1248 the Internal Revenue Service and is properly operating as a not-for-profit entity under the law

1249 of the state in which it was formed;

1250 ~~[(o)]~~ (p) take a confession of judgment or power of attorney to confess judgment

1251 against an individual;

1252 ~~[(p)]~~ (q) employ an unfair, unconscionable, or deceptive act or practice~~[-, including the~~

1253 ~~knowing omission of]~~;

1254 (r) knowingly omit any material information[;] or material aspect of any provider's

1255 service, including:

1256 (i) the amount of money or the percentage of the debt amount that an individual may

1257 save by using the provider's service;

1258 (ii) the amount of time necessary to achieve the results that the provider represents as

1259 achievable;

1260 (iii) the amount of money or the percentage of each outstanding debt that the individual

1261 is required to accumulate before the provider will:

1262 (A) initiate an attempt with the individual's creditors or debt collectors to negotiate,
1263 settle, or modify the terms of the individual's debt; or
1264 (B) make a bona fide offer to negotiate, settle, or modify the terms of the individual's
1265 debt;
1266 (iv) the effect of the service on:
1267 (A) an individual's creditworthiness; or
1268 (B) collection efforts of the individual's creditors or debt collectors;
1269 (v) the percentage or number of individuals who achieve the results that the provider
1270 represents are achievable; and
1271 (vi) whether a provider's service is offered or provided by a nonprofit entity; or
1272 ~~[(v)]~~ (s) make or use any untrue or misleading statement:
1273 (i) to the administrator; or
1274 (ii) in the provision of services subject to this chapter.
1275 (2) If a provider furnishes debt-management services to an individual, the provider may
1276 not, directly or indirectly:
1277 (a) purchase a debt or obligation of the individual;
1278 (b) receive from or on behalf of the individual:
1279 (i) a promissory note or other negotiable instrument other than a check or a demand
1280 draft; or
1281 (ii) a post-dated check or demand draft;
1282 (c) lend money or provide credit to the individual, ~~[except as]~~ unless the loan or credit
1283 is:
1284 (i) a deferral of a settlement fee at no additional expense to the individual; or
1285 (ii) through an affiliate that is licensed separately from the provider;
1286 (d) obtain a mortgage or other security interest from any person in connection with the
1287 services provided to the individual;
1288 (e) except as permitted by federal law, disclose the identity or identifying information
1289 of the individual or the identity of the individual's creditors, except to:

- 1290 (i) the administrator, ~~upon~~ on proper demand;
- 1291 (ii) a creditor of the individual, to the extent necessary to secure the cooperation of the
- 1292 creditor in a plan; or
- 1293 (iii) the extent necessary to administer the plan;
- 1294 (f) except as otherwise provided in Subsection 13-42-123~~(6)~~(4)(c), provide the
- 1295 individual less than the full benefit of a compromise of a debt arranged by the provider;
- 1296 (g) charge the individual for or provide credit or other insurance, coupons for goods or
- 1297 services, membership in a club, access to computers or the Internet, or any other matter not
- 1298 directly related to debt-management services or educational services concerning personal
- 1299 finance, except to the extent such services are expressly authorized by the administrator; or
- 1300 (h) furnish legal advice or perform legal services, unless the person furnishing that
- 1301 advice to or performing those services for the individual is licensed to practice law.
- 1302 (3) This chapter does not authorize any person to engage in the practice of law.
- 1303 (4) A provider may not receive a gift or bonus, premium, reward, or other
- 1304 compensation, directly or indirectly, for advising, arranging, or assisting an individual in
- 1305 connection with obtaining, an extension of credit or other service from a lender or service
- 1306 provider, except:
- 1307 (a) for educational or counseling services required in connection with a
- 1308 government-sponsored program~~[-];~~ or
- 1309 (b) as authorized in Subsection 13-42-123(4)(d).
- 1310 (5) Unless a person supplies goods, services, or facilities generally and supplies them
- 1311 to the provider at a cost no greater than the cost the person generally charges to others, a
- 1312 provider may not purchase goods, services, or facilities from the person if an employee or a
- 1313 person that the provider should reasonably know is an affiliate of the provider:
- 1314 (a) owns more than 10% of the person; or
- 1315 (b) is an employee or affiliate of the person.
- 1316 Section 24. Section **13-42-130** is amended to read:
- 1317 **13-42-130. Advertising.**

1318 (1) If a provider whose agreements contemplate that creditors will reduce finance
1319 charges or fees for late payment, default, or delinquency advertises debt-management services,
1320 it shall disclose, in an easily comprehensible manner, that using a debt-management plan may
1321 make it harder for the individual to obtain credit.

1322 (2) If a provider whose agreements contemplate that creditors will settle for less than
1323 the full principal amount of debt that advertises debt-management services, it shall disclose, in
1324 an easily comprehensible manner:

1325 (a) the information specified in Subsections 13-42-117(4)~~(e)~~(e) and ~~(f)~~(f); and

1326 (b) the provider's settlement fee structure, consistent with the limitations of Section
1327 13-42-123.

1328 Section 25. Section **13-42-131** is amended to read:

1329 **13-42-131. Provider liability for the conduct of other persons -- Prohibited**
1330 **conduct of person providing service to provider.**

1331 (1) If a provider delegates any of its duties or obligations under an agreement or this
1332 chapter to another person, including an independent contractor, the provider is liable for
1333 conduct of the person which, if done by the provider, would violate the agreement or this
1334 chapter.

1335 (2) A lead generator or other person that provides services to or for a provider may not
1336 engage in an unfair, unconscionable, or deceptive act or practice, including the knowing
1337 omission of any material information, with respect to an individual who the lead generator or
1338 other person has reason to believe is or may become a customer of the provider.

1339 Section 26. Section **13-42-132** is amended to read:

1340 **13-42-132. Powers of administrator.**

1341 (1) The administrator may act on its own initiative or in response to complaints and
1342 may receive complaints, take action to obtain voluntary compliance with this chapter, refer
1343 cases to the attorney general, and seek or provide remedies as provided in this chapter.

1344 (2) The administrator may investigate and examine, in this state or elsewhere, by
1345 subpoena or otherwise, the activities, books, accounts, and records of a person that provides or

1346 offers to provide debt-management services, or a person to which a provider has delegated its
1347 obligations under an agreement or this chapter, to determine compliance with this chapter.
1348 Information that identifies individuals who have agreements with the provider may not be
1349 disclosed to the public. In connection with the investigation, the administrator may:

1350 (a) charge the person the reasonable expenses necessarily incurred to conduct the
1351 examination;

1352 (b) require or permit a person to file a statement under oath as to all the facts and
1353 circumstances of a matter to be investigated; and

1354 (c) seek a court order authorizing seizure from a bank at which the person maintains [a
1355 trust] an account [~~required~~] contemplated by Section 13-42-122, any or all money, books,
1356 records, accounts, and other property of the provider that is in the control of the bank and
1357 relates to individuals who reside in this state.

1358 (3) The administrator may adopt rules to implement the provisions of this chapter in
1359 accordance with Title 63G, Chapter 3, Utah Administrative Rulemaking Act.

1360 (4) The administrator may enter into cooperative arrangements with any other federal
1361 or state agency having authority over providers and may exchange with any of those agencies
1362 information about a provider, including information obtained during an examination of the
1363 provider.

1364 (5) The administrator shall establish fees in accordance with Section 63J-1-504 to be
1365 paid by providers for the expense of administering this chapter.

1366 (6) The administrator, by rule, shall adopt dollar amounts instead of those specified in
1367 Sections 13-42-102, 13-42-105, 13-42-109, 13-42-113, 13-42-123, 13-42-133, and 13-42-135
1368 to reflect inflation, as measured by the United States Bureau of Labor Statistics Consumer
1369 Price Index for All Urban Consumers or, if that index is not available, another index adopted
1370 by rule by the administrator. The administrator shall adopt a base year and adjust the dollar
1371 amounts, effective on July 1 of each year, if the change in the index from the base year, as of
1372 December 31 of the preceding year, is at least 10%. The dollar amount shall be rounded to the
1373 nearest \$100, except that the amounts in Section 13-42-123 shall be rounded to the nearest

1374 dollar.

1375 (7) The administrator shall notify registered providers of any change in dollar amounts
1376 made pursuant to Subsection (6) and make that information available to the public.

1377 Section 27. Section **13-42-133** is amended to read:

1378 **13-42-133. Administrative remedies.**

1379 (1) The administrator may enforce this chapter and rules adopted under this chapter by
1380 taking one or more of the following actions:

1381 (a) ordering a provider, lead generator, person administering an account pursuant to
1382 Subsection 13-42-122(2), or [a] director, employee, or other agent of a provider to cease and
1383 desist from any violations;

1384 (b) ordering a provider, lead generator, person administering an account pursuant to
1385 Subsection 13-42-122(2), or [a] person that has caused a violation to correct the violation,
1386 including making restitution of money or property to a person aggrieved by a violation;

1387 (c) subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6),
1388 imposing on a provider, lead generator, person administering an account pursuant to
1389 Subsection 13-42-122(2), or [a] other person that [has caused] violates or causes a violation an
1390 administrative fine not exceeding \$10,000 for each violation;

1391 (d) prosecuting a civil action to:

1392 (i) enforce an order; or

1393 (ii) obtain restitution or [~~an injunction or other~~] equitable relief, or both; or

1394 (e) intervening in an action brought under Section 13-42-135.

1395 (2) Subject to adjustment of the dollar amount pursuant to Subsection 13-42-132(6), if
1396 a person violates or knowingly authorizes, directs, or aids in the violation of a final order
1397 issued under Subsection (1)(a) or (b), the administrator may impose an administrative fine not
1398 exceeding \$20,000 for each violation.

1399 (3) The administrator may maintain an action to enforce this chapter in any county.

1400 (4) The administrator may recover the reasonable costs of enforcing the chapter under
1401 Subsections (1) through (3), including [attorney's] attorney fees based on the hours reasonably

1402 expended and the hourly rates for attorneys of comparable experience in the community.

1403 (5) In determining the amount of an administrative fine to impose under Subsection (1)
1404 or (2), the administrator shall consider the seriousness of the violation, the good faith of the
1405 violator, any previous violations by the violator, the deleterious effect of the violation on the
1406 public, the net worth of the violator, and any other factor the administrator considers relevant to
1407 the determination of the administrative fine.

1408 (6) All money received through administrative fines imposed under this chapter shall
1409 be deposited in the Consumer Protection Education and Training Fund created by Section
1410 13-2-8.

1411 Section 28. Section ~~13-42-134~~ is amended to read:

1412 **13-42-134. Suspension, revocation, or nonrenewal of registration.**

1413 (1) In this section, "insolvent" means:

1414 (a) having generally ceased to pay debts in the ordinary course of business other than as
1415 a result of good-faith dispute;

1416 (b) being unable to pay debts as they become due; or

1417 (c) being insolvent within the meaning of the federal bankruptcy law, 11 U.S.C.

1418 [~~Section~~] Sec. 101 et seq.

1419 (2) The administrator may suspend, revoke, or deny renewal of a provider's registration
1420 if:

1421 (a) a fact or condition exists that, if it had existed when the registrant applied for
1422 registration as a provider, would have been a reason for denying registration;

1423 (b) the provider has committed a material violation of this chapter or a rule or order of
1424 the administrator under this chapter;

1425 (c) the provider is insolvent;

1426 (d) the provider [~~or~~], an employee or affiliate of the provider, a lead generator for the
1427 provider, a person administering an account for the provider pursuant to Subsection
1428 13-42-122(2), or a person to whom the provider has delegated its obligations under an
1429 agreement or this chapter has refused to permit the administrator to make an examination

1430 authorized by this chapter, failed to comply with Subsection 13-42-132(2)(b) [~~within~~] no later
1431 than 15 days after request, or made a material misrepresentation or omission in complying with
1432 Subsection 13-42-132(2)(b); or

1433 (e) the provider has not responded within a reasonable time and in an appropriate
1434 manner to communications from the administrator.

1435 (3) If a provider becomes insolvent, the provider shall continue to provide
1436 debt-management services to an individual with whom the provider has an agreement until:

1437 (a) with the administrator's approval, the provider transfers the agreement to another
1438 registered provider; or

1439 (b) the provider returns to the individual all unexpended money that is under the
1440 provider's control.

1441 [~~(3)~~] (4) If a provider does not comply with Subsection 13-42-122[~~(6)~~](8) or if the
1442 administrator otherwise finds that the public health or safety or general welfare requires
1443 emergency action, the administrator may order a summary suspension of the provider's
1444 registration, effective on the date specified in the order.

1445 [~~(4)~~] (5) If the administrator suspends, revokes, or denies renewal of the registration of
1446 a provider, the administrator may seek a court order authorizing seizure of any or all of the
1447 money in a trust account required by Section 13-42-122, books, records, accounts, and other
1448 property of the provider which are located in this state.

1449 [~~(5)~~] (6) If the administrator suspends or revokes a provider's registration, the provider
1450 may appeal and request a hearing pursuant to Title 63G, Chapter 4, Administrative Procedures
1451 Act.

1452 Section 29. Section **13-42-135** is amended to read:

1453 **13-42-135. Private enforcement.**

1454 (1) If an individual voids an agreement pursuant to Subsection 13-42-125(2), the
1455 individual may recover in a civil action all money paid or deposited by or on behalf of the
1456 individual pursuant to the agreement, except amounts paid to creditors, in addition to the
1457 recovery under Subsections (3)(c) and (d).

1458 (2) If an individual voids an agreement pursuant to Subsection 13-42-125(1), the
 1459 individual may recover in a civil action three times the total amount of the fees, charges,
 1460 money, and payments made by the individual to the provider, in addition to the recovery under
 1461 Subsection (3)(d).

1462 (3) Subject to Subsection (4), an individual with respect to whom a provider or other
 1463 person violates this chapter may recover in a civil action from the provider, the person, and any
 1464 person that caused the violation:

1465 (a) compensatory damages for injury, including noneconomic injury, caused by the
 1466 violation;

1467 (b) except as otherwise provided in Subsection (4) and subject to adjustment of the
 1468 dollar amount pursuant to Subsection 13-42-132(6), with respect to a violation of Section
 1469 13-42-117, 13-42-119, 13-42-120, 13-42-121, 13-42-122, 13-42-123, 13-42-124, 13-42-126, or
 1470 13-42-127, or Subsection 13-42-128(1), (2), or (4), the greater of the amount recoverable under
 1471 Subsection (3)(a) or \$5,000;

1472 (c) punitive damages; and

1473 (d) reasonable ~~[attorney's]~~ attorney fees and costs.

1474 (4) In a class action, except for a violation of Subsection 13-42-128(1)~~[(e)]~~(f), the
 1475 minimum damages provided in Subsection (3)(b) do not apply.

1476 ~~[(5) In addition to the remedy available under Subsection (3), if a provider violates an~~
 1477 ~~individual's rights under Section 13-42-120, the individual may recover in a civil action all~~
 1478 ~~money paid or deposited by or on behalf of the individual pursuant to the agreement, except for~~
 1479 ~~amounts paid to creditors.]~~

1480 ~~[(6)]~~ (5) A provider is not liable under this section for a violation of this chapter if the
 1481 provider proves that the violation was not intentional and resulted from a good-faith error
 1482 notwithstanding the maintenance of procedures reasonably adapted to avoid the error. An error
 1483 of legal judgment with respect to a provider's obligations under this chapter is not a good-faith
 1484 error. If, in connection with a violation, the provider has received more money than authorized
 1485 by an agreement or this chapter, the defense provided by this Subsection ~~[(6)]~~ (5) is not

1486 available unless the provider refunds the excess [~~within~~] no later than two business days of
1487 learning of the violation.

1488 [~~(7)~~] (6) The administrator shall assist an individual in enforcing a judgment against
1489 the surety bond or other security provided under Section 13-42-113 or 13-42-114.

1490 Section 30. Section **13-42-137** is amended to read:

1491 **13-42-137. Statute of limitations.**

1492 (1) An action or proceeding brought pursuant to Subsection 13-42-133(1), (2), or (3)
1493 shall be commenced [~~within~~] no later than four years after the conduct that is the basis of the
1494 administrator's complaint.

1495 (2) An action brought pursuant to Section 13-42-135 shall be commenced [~~within~~] no
1496 later than two years after the latest of:

1497 (a) the individual's last transmission of money to a provider;

1498 (b) the individual's last transmission of money to a creditor at the direction of the
1499 provider;

1500 (c) the provider's last disbursement to a creditor of the individual;

1501 (d) the provider's last accounting to the individual pursuant to Subsection
1502 13-42-127(1);

1503 (e) the date on which the individual discovered or reasonably should have discovered
1504 the facts giving rise to the individual's claim; or

1505 (f) termination of actions or proceedings by the administrator with respect to a
1506 violation of the chapter.

1507 (3) The period prescribed in Subsection (2)(e) is tolled during any period during which
1508 the provider or, if different, the defendant has materially and willfully misrepresented
1509 information required by this chapter to be disclosed to the individual, if the information so
1510 misrepresented is material to the establishment of the liability of the defendant under this
1511 chapter.

1512 Section 31. Section **13-42-139** is amended to read:

1513 **13-42-139. Relation to Electronic Signatures in Global and National Commerce**

1514 **Act.**

1515 This chapter modifies, limits, and supersedes the [~~federal~~] Electronic Signatures in
1516 Global and National Commerce Act, 15 U.S.C. Section 7001 et seq., but does not modify,
1517 limit, or supersede Section 101(c) of that act, 15 U.S.C. [~~Section~~] Sec. 7001(c), or authorize
1518 electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C.
1519 Section 7003(b).