

HOUSE JUDICIARY COMMITTEE SUBSTITUTE FOR  
HOUSE BILL 175

49TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2010

AN ACT

RELATING TO CONSUMER CREDIT COUNSELING; ENACTING THE UNIFORM  
DEBT-MANAGEMENT SERVICES ACT; REPEALING AND ENACTING SECTIONS  
OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. SHORT TITLE.--This act may be cited as the  
"Uniform Debt-Management Services Act".

Section 2. DEFINITIONS.--As used as in the Uniform  
Debt-Management Services Act:

A. "administrator" means the director of the  
financial institutions division of the regulation and licensing  
department or the director's designee;

B. "affiliate" means:

(1) with respect to an individual:

(a) the spouse of the individual;

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1 (b) a sibling of the individual or the  
2 spouse of a sibling;

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

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

10 (e) any other individual occupying the  
11 residence of the individual; and

12 (2) with respect to an entity:

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

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

18 (c) a director of or an individual  
19 performing similar functions with respect to the entity;

20 (d) subject to adjustment of the dollar  
21 amount pursuant to Subsection E of Section 31 of the Uniform  
22 Debt-Management Services Act, a person that receives or has  
23 received more than twenty-five thousand dollars (\$25,000) from  
24 the entity in either the current year or the preceding year or  
25 a person that owns more than ten percent of, or an individual

.181969.2

1 who is employed by or is a director of, a person that receives  
2 or has received more than twenty-five thousand dollars  
3 (\$25,000) from the entity in either the current year or the  
4 preceding year;

5 (e) an officer or director of, or an  
6 individual performing similar functions with respect to, a  
7 person described in Subparagraph (a) of this paragraph;

8 (f) the spouse of, or an individual  
9 occupying the residence of, an individual described in  
10 Subparagraphs (a) through (e) of this paragraph; or

11 (g) an individual who has the  
12 relationship specified in Subparagraph (d) of Paragraph (1) of  
13 this subsection to an individual or the spouse of an individual  
14 described in Subparagraphs (a) through (e) of this paragraph;

15 C. "agreement" means an agreement between a  
16 provider and an individual for the performance of  
17 debt-management services;

18 D. "bank" means a financial institution, including  
19 a commercial bank, savings bank, savings and loan association,  
20 credit union and trust company, engaged in the business of  
21 banking, chartered pursuant to federal or state law and  
22 regulated by a federal or state banking regulatory authority;

23 E. "business address" means the physical location  
24 of a business, including the name and number of a street;

25 F. "certified counselor" means an individual

.181969.2

1 certified by a training program or certifying organization,  
2 approved by the administrator, that authenticates the  
3 competence of individuals providing education and assistance to  
4 other individuals in connection with debt-management services  
5 in which an agreement contemplates that creditors will reduce  
6 finance charges or fees for late payment, default or  
7 delinquency;

8 G. "certified debt specialist" means an individual  
9 certified by a training program or certifying organization,  
10 approved by the administrator, that authenticates the  
11 competence of individuals providing education and assistance to  
12 other individuals in connection with debt-management services  
13 in which an agreement contemplates that creditors will settle  
14 debts for less than the full principal amount of debt owed;

15 H. "concessions" means assent to repayment of a  
16 debt on terms more favorable to an individual than the terms of  
17 the contract between the individual and a creditor, except that  
18 for purposes of the computation of any fee for debt settlement  
19 services, "concessions" means the amount by which a completed  
20 final settlement of a debt is less than the principal amount of  
21 that debt at the time of the agreement for debt settlement  
22 services;

23 I. "day" means a calendar day;

24 J. "debt-management services" means services as an  
25 intermediary between an individual and one or more creditors of

1 the individual for the purpose of obtaining concessions, but  
2 does not include:

3 (1) legal services provided in an  
4 attorney-client relationship by an attorney licensed or  
5 otherwise authorized to practice law in New Mexico;

6 (2) accounting services provided in an  
7 accountant-client relationship by a certified public accountant  
8 licensed to provide accounting services in New Mexico; or

9 (3) financial-planning services provided in a  
10 financial planner-client relationship by a member of a  
11 financial-planning profession whose members the administrator,  
12 by rule, determines are:

- 13 (a) licensed by New Mexico;
- 14 (b) subject to a disciplinary mechanism;
- 15 (c) subject to a code of professional  
16 responsibility; and
- 17 (d) subject to a continuing education  
18 requirement;

19 K. "entity" means a person other than an  
20 individual;

21 L. "good faith" means honesty in fact and the  
22 observance of reasonable standards of fair dealing;

23 M. "person" means an individual, corporation,  
24 business trust, estate, trust, partnership, limited liability  
25 company, association, joint venture or any other legal or

.181969.2

1 commercial entity. "Person" does not include a public  
2 corporation, government or governmental subdivision, agency or  
3 instrumentality;

4 N. "plan" means a program or strategy in which a  
5 provider furnishes debt-management services to an individual  
6 and that includes a schedule of payments to be made by or on  
7 behalf of the individual and used to pay debts owed by the  
8 individual. Every "plan" is a part of an "agreement", but not  
9 every "agreement" meets the additional requirements of a "plan"  
10 as defined in this subsection;

11 O. "principal amount of the debt" means the amount  
12 of a debt at the time of an agreement;

13 P. "provider" means a person that provides, offers  
14 to provide or agrees to provide debt-management services  
15 directly or through others, or any person to whom a provider  
16 delegates all or a material part of its obligation under an  
17 agreement or under the Uniform Debt-Management Services Act;

18 Q. "record" means information that is inscribed on  
19 a tangible medium or that is stored in an electronic or other  
20 medium and is retrievable in perceivable form;

21 R. "settlement fee" means a charge imposed on or  
22 paid by an individual in connection with a creditor's assent to  
23 accept in full satisfaction of a debt an amount less than the  
24 principal amount of the debt;

25 S. "sign" means, with present intent to

1 authenticate or adopt a record:

2 (1) to execute or adopt a tangible symbol; or

3 (2) to attach to or logically associate with  
4 the record an electronic sound, symbol or process;

5 T. "state" means a state of the United States, the  
6 District of Columbia, Puerto Rico, the United States Virgin  
7 Islands or any territory or insular possession subject to the  
8 jurisdiction of the United States; and

9 U. "trust account" means an account held by a  
10 provider that is:

11 (1) established in an insured bank;

12 (2) separate from other accounts of the  
13 provider or its designee;

14 (3) designated as a trust account or other  
15 account designated to indicate that the money in the account is  
16 not the money of the provider or its designee; and

17 (4) used to hold money of one or more  
18 individuals for disbursement to creditors of the individuals.

19 Section 3. EXEMPT AGREEMENTS AND PERSONS.--

20 A. The Uniform Debt-Management Services Act does  
21 not apply to an agreement with an individual if a provider has  
22 no reason to know that the individual resides in New Mexico at  
23 the time of the agreement.

24 B. The Uniform Debt-Management Services Act does  
25 not apply to a provider to the extent that the provider:

.181969.2

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1                   (1) provides or agrees to provide  
2 debt-management, educational or counseling services to an  
3 individual if the provider has no reason to know that the  
4 individual resides in New Mexico at the time the provider  
5 agrees to provide the services; or

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

9                   C. The Uniform Debt-Management Services Act does  
10 not apply to the following persons or their employees when the  
11 person or the employee is engaged in the regular course of the  
12 person's business or profession:

13                   (1) a judicial officer, a person acting  
14 pursuant to an order of a court or an administrative agency or  
15 an assignee for the benefit of creditors;

16                   (2) a bank;

17                   (3) an affiliate of a bank if the affiliate is  
18 regulated by a federal or state banking regulatory authority;  
19 or

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

24                   Section 4. REGISTRATION REQUIRED.--

25                   A. Except as otherwise provided in Subsection B of  
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1 this section, a provider shall not provide debt-management  
2 services to an individual whom it reasonably should know  
3 resides in New Mexico at the time it agrees to provide the  
4 services, unless the provider is registered pursuant to the  
5 Uniform Debt-Management Services Act.

6 B. If a provider is registered pursuant to the  
7 Uniform Debt-Management Services Act, Subsection A of this  
8 section does not apply to an employee or agent of the provider.

9 C. The administrator shall maintain and publicize a  
10 list of the names of all registered providers.

11 Section 5. APPLICATION FOR REGISTRATION--FORM, FEE AND  
12 ACCOMPANYING DOCUMENTS.--

13 A. An application for registration as a provider  
14 shall be in a form prescribed by the administrator.

15 B. Subject to adjustment of dollar amounts pursuant  
16 to Subsection E of Section 31 of the Uniform Debt-Management  
17 Services Act, an application for registration as a provider  
18 shall be accompanied by:

19 (1) the one-thousand-dollar (\$1,000)  
20 application fee;

21 (2) the bond required by Section 12 of the  
22 Uniform Debt-Management Services Act;

23 (3) identification of all trust accounts  
24 required by Section 21 of the Uniform Debt-Management Services  
25 Act and an irrevocable consent authorizing the administrator to

.181969.2

1 review and examine the trust accounts;

2 (4) evidence of insurance in the amount of two  
3 hundred fifty thousand dollars (\$250,000):

4 (a) against the risks of dishonesty,  
5 fraud, theft and other misconduct on the part of the applicant  
6 or a director, employee or agent of the applicant;

7 (b) issued by an insurance company  
8 authorized to do business in New Mexico and rated at least A or  
9 equivalent by a nationally recognized rating organization  
10 approved by the administrator;

11 (c) with a deductible not exceeding five  
12 thousand dollars (\$5,000);

13 (d) payable for the benefit of the  
14 applicant, New Mexico and the individuals who are residents of  
15 New Mexico, as their interests may appear; and

16 (e) not subject to cancellation by the  
17 applicant or the insurer until sixty days after written notice  
18 has been given to the administrator;

19 (5) proof of compliance with the applicable  
20 law of New Mexico governing either the formation in New Mexico  
21 of the applicant or the qualification to do business in New  
22 Mexico by the applicant, together with the name and business  
23 address of the applicant's registered agent in New Mexico for  
24 the service of process; and

25 (6) if the applicant is organized as a

1 not-for-profit entity or is exempt from taxation pursuant to  
2 the Internal Revenue Code of 1986, 26 U.S.C. Section 501, as  
3 amended, evidence of not-for-profit status or tax-exempt status  
4 or both, if applicable.

5 Section 6. APPLICATION FOR REGISTRATION--REQUIRED  
6 INFORMATION.--An application for registration shall be signed,  
7 upon oath or affirmation, and include:

8 A. the applicant's name, principal business address  
9 and telephone number and all other business addresses in New  
10 Mexico, electronic-mail addresses and internet web site  
11 addresses;

12 B. all names under which the applicant conducts  
13 business;

14 C. the address of each location in New Mexico at  
15 which the applicant will provide debt-management services or a  
16 statement that the applicant will have no such location;

17 D. the name and home address of each officer and  
18 director of the applicant and each person that owns at least  
19 ten percent of the applicant;

20 E. identification of every jurisdiction in which,  
21 during the five years immediately preceding the application:

22 (1) the applicant or any of its officers or  
23 directors has been licensed or registered to provide debt-  
24 management services; or

25 (2) individuals have resided when they

.181969.2

1 received debt-management services from the applicant;

2 F. a statement describing, to the extent it is  
3 known or should be known by the applicant, any material civil  
4 or criminal judgment or litigation and any material  
5 administrative or enforcement action by a governmental agency  
6 in any jurisdiction against the applicant, any of its officers,  
7 directors, owners or agents, or any person who is authorized to  
8 have access to the trust account required by Section 21 of the  
9 Uniform Debt-Management Services Act;

10 G. the applicant's financial statements, audited by  
11 an accountant licensed to conduct audits, for each of the two  
12 years immediately preceding the application or, if it has not  
13 been in operation for the two years preceding the application,  
14 for the period of its existence;

15 H. evidence of accreditation by an independent  
16 accrediting organization approved by the administrator;

17 I. evidence that, within twelve months after  
18 initial employment, each of the applicant's counselors becomes  
19 certified as a certified counselor or certified debt  
20 specialist;

21 J. a description of the three most commonly used  
22 educational programs that the applicant provides or intends to  
23 provide to individuals who reside in New Mexico and a copy of  
24 any materials used or to be used in those programs;

25 K. a description of the applicant's financial

1 analysis and initial budget plan, including any form or  
2 electronic model, used to evaluate the financial condition of  
3 individuals;

4 L. a copy of each form of agreement that the  
5 applicant will use with individuals who reside in New Mexico;

6 M. the schedule of fees and charges that the  
7 applicant will use with individuals who reside in New Mexico;

8 N. at the applicant's expense, the results of a  
9 criminal records check, including fingerprints, conducted  
10 within the immediately preceding twelve months, covering every  
11 officer of the applicant and every employee or agent of the  
12 applicant who is authorized to have access to the trust account  
13 required by Section 21 of the Uniform Debt-Management Services  
14 Act;

15 O. the names and addresses of all employers of each  
16 director during the ten years immediately preceding the  
17 application;

18 P. a description of any ownership interest of at  
19 least ten percent by a director, owner or employee of the  
20 applicant in:

21 (1) any affiliate of the applicant; or

22 (2) any entity that provides products or  
23 services to the applicant or any individual relating to the  
24 applicant's debt-management services;

25 Q. a statement of the amount of compensation of the

.181969.2

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

5 R. the identity of each director who is an  
6 affiliate of the applicant;

7 S. a statement listing all names under which the  
8 applicant provides or has provided debt-management services  
9 within the preceding five calendar years; and

10 T. any other information that the administrator  
11 reasonably requires to perform the administrator's duties  
12 pursuant to Section 9 of the Uniform Debt-Management Services  
13 Act.

14 Section 7. APPLICATION FOR REGISTRATION--OBLIGATION TO  
15 UPDATE INFORMATION.--An applicant or registered provider shall  
16 notify the administrator within ten days after a change in the  
17 information specified in Paragraph (4) or (6) of Subsection B  
18 of Section 5 of the Uniform Debt-Management Services Act or  
19 Subsection A, C, F, L or M of Section 6 of that act.

20 Section 8. APPLICATION FOR REGISTRATION--PUBLIC  
21 INFORMATION.--Except for the information required by  
22 Subsections G, N and Q of Section 6 of the Uniform Debt-  
23 Management Services Act and the addresses required by  
24 Subsection D of Section 6 of that act, the administrator shall  
25 make the information in an application for registration as a

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1 provider available to the public.

2 Section 9. CERTIFICATE OF REGISTRATION--ISSUANCE OR  
3 DENIAL.--

4 A. Except as otherwise provided in Subsections C  
5 and D of this section, the administrator shall issue a  
6 certificate of registration as a provider to a person that  
7 complies with Sections 5 and 6 of the Uniform Debt-Management  
8 Services Act.

9 B. If an applicant has otherwise complied with  
10 Sections 5 and 6 of the Uniform Debt-Management Services Act,  
11 including a timely effort to obtain the information required by  
12 Subsection N of Section 6 of that act but the information has  
13 not been received, the administrator may issue a temporary  
14 certificate of registration. The temporary certificate shall  
15 expire no later than one hundred eighty days after issuance.

16 C. The administrator may deny registration if:

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

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

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

.181969.2

1 (4) the application is not accompanied by the  
2 fee established by the administrator; or

3 (5) the administrator finds that the financial  
4 responsibility, experience, character or general fitness of the  
5 applicant or its owners, directors, employees or agents does  
6 not warrant belief that the business will be operated in  
7 compliance with the Uniform Debt-Management Services Act.

8 D. The administrator shall deny registration if,  
9 with respect to an applicant that is organized as a  
10 not-for-profit entity or has obtained tax-exempt status  
11 pursuant to the Internal Revenue Code of 1986, 26 U.S.C.  
12 Section 501, as amended, the applicant's board of directors is  
13 not independent of the applicant's employees and agents.

14 E. Subject to adjustment of the dollar amount  
15 pursuant to Subsection E of Section 31 of the Uniform  
16 Debt-Management Services Act, a board of directors is not  
17 independent for purposes of Subsection D of this section if  
18 more than one-fourth of its members:

19 (1) are affiliates of the applicant; or

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

25 Section 10. CERTIFICATE OF REGISTRATION--TIMING.--

.181969.2



1           A. The administrator shall approve or deny an  
 2 initial registration as a provider within one hundred twenty  
 3 days after an application is filed. In connection with a  
 4 request pursuant to Subsection T of Section 6 of the Uniform  
 5 Debt-Management Services Act for additional information, the  
 6 administrator may extend the one-hundred-twenty-day period for  
 7 not more than sixty days. Within seven days after denying an  
 8 application, the administrator, in a record, shall inform the  
 9 applicant of the reasons for the denial.

10           B. If the administrator denies an application for  
 11 registration as a provider or does not act on an application  
 12 within the time prescribed in Subsection A of this section, the  
 13 applicant may appeal and request a hearing.

14           C. Subject to the provisions of Subsection D of  
 15 Section 11 and Section 33 of the Uniform Debt-Management  
 16 Services Act, a registration as a provider is valid for one  
 17 year.

18           Section 11. RENEWAL OF REGISTRATION.--

19           A. A provider shall obtain a renewal of its  
 20 registration annually.

21           B. An application for renewal of registration as a  
 22 provider shall be in a form prescribed by the administrator,  
 23 signed upon oath or affirmation, and shall:

24                   (1) be filed no fewer than thirty and no more  
 25 than sixty days before the registration expires;

.181969.2

1 (2) be accompanied by a one-thousand-dollar  
2 (\$1,000) renewal fee and the bond required by Section 12 of the  
3 Uniform Debt-Management Services Act;

4 (3) contain the matter required for initial  
5 registration as a provider by Subsections H and I of Section 6  
6 of the Uniform Debt-Management Services Act and a financial  
7 statement, audited by an accountant licensed to conduct audits,  
8 for the applicant's fiscal year immediately preceding the  
9 application;

10 (4) disclose any changes in the information  
11 contained in the applicant's application for registration or  
12 its immediately previous application for renewal, as  
13 applicable. If an application is otherwise complete and the  
14 applicant has made a timely effort to obtain the information  
15 required by Subsection N of Section 6 of the Uniform Debt-  
16 Management Services Act but the information has not been  
17 received, the administrator may issue a temporary renewal of  
18 registration. The temporary renewal shall expire no later than  
19 ninety days after issuance;

20 (5) supply evidence of insurance in an amount  
21 equal to the greater of two hundred fifty thousand dollars  
22 (\$250,000) or the highest daily balance in the trust account  
23 required by Section 21 of the Uniform Debt-Management Services  
24 Act during the six-month period immediately preceding the  
25 application:

.181969.2

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

4 (b) issued by an insurance company  
5 authorized to do business in New Mexico and rated at least A or  
6 equivalent by a nationally recognized rating organization  
7 approved by the administrator;

8 (c) with a deductible not exceeding five  
9 thousand dollars (\$5,000);

10 (d) payable for the benefit of the  
11 applicant, New Mexico and individuals who are residents of New  
12 Mexico, as their interests may appear; and

13 (e) not subject to cancellation by the  
14 applicant or the insurer until sixty days after written notice  
15 has been given to the administrator;

16 (6) disclose the total amount of money  
17 received by the applicant pursuant to plans during the  
18 preceding twelve months from or on behalf of individuals who  
19 reside in New Mexico and the total amount of money distributed  
20 to creditors of those individuals during that period;

21 (7) disclose, to the best of the applicant's  
22 knowledge, the gross amount of money accumulated during the  
23 preceding twelve months pursuant to plans by or on behalf of  
24 individuals who reside in New Mexico and with whom the  
25 applicant has agreements; and

.181969.2

1 (8) provide any other information that the  
2 administrator reasonably requires to perform the  
3 administrator's duties pursuant to this section.

4 C. Except for the information required by  
5 Subsections G, N and Q of Section 6 of the Uniform Debt-  
6 Management Services Act and the addresses required by  
7 Subsection D of Section 6 of that act, the administrator shall  
8 make the information in an application for renewal of  
9 registration as a provider available to the public.

10 D. If a registered provider files a timely and  
11 complete application for renewal of registration, the  
12 registration remains effective until the administrator, in a  
13 record, notifies the applicant of a denial and states the  
14 reasons for the denial.

15 E. If the administrator denies an application for  
16 renewal of registration as a provider, the applicant within  
17 thirty days after receiving notice of the denial may appeal and  
18 request a hearing. Subject to Section 33 of the Uniform  
19 Debt-Management Services Act, while the appeal is pending, the  
20 applicant shall continue to provide debt-management services to  
21 individuals with whom it has agreements. If the denial is  
22 affirmed, subject to the administrator's order and Section 33  
23 of the Uniform Debt-Management Services Act, the applicant  
24 shall continue to provide debt-management services to  
25 individuals with whom it has agreements until, with the

.181969.2

1 approval of the administrator, it transfers the agreements to  
2 another registered provider or returns to the individuals all  
3 unexpended money that is under the applicant's control.

4 Section 12. BOND REQUIRED.--

5 A. Except as otherwise provided in Section 13 of  
6 the Uniform Debt-Management Services Act, a provider that is  
7 required to be registered pursuant to the provisions of that  
8 act shall file a surety bond with the administrator, which  
9 shall:

10 (1) be in effect during the period of  
11 registration and for two years after the provider ceases  
12 providing debt-management services to individuals in New  
13 Mexico; and

14 (2) run to New Mexico for the benefit of New  
15 Mexico and of individuals who reside in New Mexico when they  
16 agree to receive debt-management services from the provider, as  
17 their interests may appear.

18 B. Subject to adjustment of the dollar amount  
19 pursuant to Subsection E of Section 31 of the Uniform Debt-  
20 Management Services Act, a surety bond filed pursuant to  
21 Subsection A of this section shall:

22 (1) be in the amount of fifty thousand dollars  
23 (\$50,000) or other larger or smaller amount that the  
24 administrator determines is warranted by the financial  
25 condition and business experience of the provider, the history

.181969.2

1 of the provider in performing debt-management services, the  
2 risk to individuals and any other factor the administrator  
3 considers appropriate;

4 (2) be issued by a bonding, surety or  
5 insurance company authorized to do business in New Mexico and  
6 rated at least A by a nationally recognized rating  
7 organization; and

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

11 C. If the principal amount of a surety bond is  
12 reduced by payment of a claim or a judgment, the provider shall  
13 immediately notify the administrator and within thirty days  
14 after notice by the administrator file a new or additional  
15 surety bond in an amount set by the administrator. The amount  
16 of the new or additional bond shall be at least the amount of  
17 the bond immediately before payment of the claim or judgment.  
18 If for any reason a surety terminates a bond, the provider  
19 shall immediately file a new surety bond in the amount of fifty  
20 thousand dollars (\$50,000) or other amount determined pursuant  
21 to Subsection B of this section.

22 D. The administrator or an individual may obtain  
23 satisfaction out of the surety bond procured pursuant to this  
24 section if:

25 (1) the administrator assesses expenses

1 pursuant to Paragraph (1) of Subsection B of Section 31 of the  
2 Uniform Debt-Management Services Act, issues a final order  
3 pursuant to Paragraph (2) of Subsection A of Section 32 of that  
4 act or recovers a final judgment pursuant to Paragraph (4) or  
5 (5) of Subsection A or Subsection D of Section 32 of that act;  
6 or

7 (2) an individual recovers a final judgment  
8 pursuant to Subsection A or B of Section 34 of the Uniform  
9 Debt-Management Services Act or Paragraph (1), (2) or (4) of  
10 Subsection C of Section 34 of that act.

11 E. If claims against a surety bond exceed or are  
12 reasonably expected to exceed the amount of the bond, the  
13 administrator, on the initiative of the administrator or on  
14 petition of the surety, shall, unless the proceeds are adequate  
15 to pay all costs, judgments and claims, distribute the proceeds  
16 in the following order:

17 (1) to satisfaction of a final order or  
18 judgment pursuant to Paragraph (2), (4) or (5) of Subsection A  
19 of Section 32 of the Uniform Debt-Management Services Act or  
20 Subsection D of Section 32 of that act;

21 (2) to final judgments recovered by  
22 individuals pursuant to Subsection A or B of Section 34 of the  
23 Uniform Debt-Management Services Act or Paragraph (1), (2) or  
24 (4) of Subsection C of Section 34 of that act, pro rata;

25 (3) to claims of individuals established to

.181969.2

1 the satisfaction of the administrator, pro rata; and

2 (4) if a final order or judgment is issued  
3 pursuant to Subsection A of Section 32 of the Uniform Debt-  
4 Management Services Act, to the expenses charged pursuant to  
5 Paragraph (1) of Subsection B of Section 31 of that act.

6 Section 13. BOND REQUIRED--SUBSTITUTE.--

7 A. Instead of the surety bond required by Section  
8 12 of the Uniform Debt-Management Services Act, a provider may  
9 deliver to the administrator, in the amount required by  
10 Subsection B of Section 12 of that act, and, except as  
11 otherwise provided in Subparagraph (a) of Paragraph (2) of this  
12 subsection, payable or available to New Mexico and to  
13 individuals who reside in New Mexico when they agree to receive  
14 debt-management services from the provider, as their interests  
15 may appear, if the provider or its agent does not comply with  
16 the Uniform Debt-Management Services Act:

17 (1) a certificate of insurance:

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

22 (b) with no deductible, or if the  
23 provider supplies a bond in the amount of five thousand dollars  
24 (\$5,000), a deductible not exceeding five thousand dollars  
25 (\$5,000); or

.181969.2



1 (2) with the approval of the administrator:

2 (a) an irrevocable letter of credit,  
3 issued or confirmed by a bank approved by the administrator,  
4 payable upon presentation of a certificate by the administrator  
5 stating that the provider or its agent has not complied with  
6 the Uniform Debt-Management Services Act; or

7 (b) bonds or other obligations of the  
8 United States or guaranteed by the United States or bonds or  
9 other obligations of New Mexico or a political subdivision of  
10 New Mexico, to be deposited and maintained with a bank approved  
11 by the administrator for this purpose.

12 B. If a provider furnishes a substitute pursuant to  
13 Subsection A of this section, the provisions of Subsections A,  
14 C, D and E of Section 12 of the Uniform Debt-Management  
15 Services Act apply to the substitute.

16 Section 14. REQUIREMENT OF GOOD FAITH.--A provider shall  
17 act in good faith in all matters pursuant to the Uniform  
18 Debt-Management Services Act.

19 Section 15. CUSTOMER SERVICE.--A provider that is  
20 required to be registered pursuant to the Uniform Debt-  
21 Management Services Act shall maintain a toll-free  
22 communication system, staffed at a level that reasonably  
23 permits an individual to speak to a certified counselor,  
24 certified debt specialist or customer-service representative,  
25 as appropriate, during ordinary business hours.

.181969.2

1 Section 16. PREREQUISITES FOR PROVIDING DEBT-MANAGEMENT  
2 SERVICES.--

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

10 (1) free of additional charge if the  
11 individual enters into an agreement;

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

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

17 "Set-up fee:

18 \_\_\_\_\_

19 *(dollar amount of fee)*

20 Monthly service fee:

21 \_\_\_\_\_

22 *(dollar amount of fee or method of determining amount)*

23 Settlement fee:

24 \_\_\_\_\_

25 *(dollar amount of fee or method of determining amount)*

.181969.2

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[bracketed material] = delete

1 Goods and services in addition to those provided in connection  
2 with a plan:

3 \_\_\_\_\_  
4 (item) (dollar amount or method of determining amount)

5 \_\_\_\_\_  
6 (item) (dollar amount or method of determining amount)".

7 B. A provider shall not furnish debt-management  
8 services unless the provider, through the services of a  
9 certified counselor or certified debt specialist:

10 (1) provides the individual with reasonable  
11 education about the management of personal finance;

12 (2) has prepared a financial analysis; and

13 (3) if the individual is to make regular,  
14 periodic payments to a creditor or provider:

15 (a) has prepared a plan for the  
16 individual;

17 (b) has made a determination, based on  
18 the provider's analysis of the information provided by the  
19 individual and otherwise available to it, that the plan is  
20 suitable for the individual and the individual will be able to  
21 meet the payment obligations pursuant to the plan; and

22 (c) believes that each creditor of the  
23 individual listed as a participating creditor in the plan will  
24 accept payment of the individual's debts as provided in the  
25 plan.

.181969.2

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[bracketed material] = delete

1           C. Before an individual assents to an agreement to  
2 engage in a plan, a provider shall:

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

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

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

15                           (a) creditors that the provider expects  
16 to participate in the plan and grant concessions;

17                           (b) creditors that the provider expects  
18 to participate in the plan but not grant concessions;

19                           (c) creditors that the provider expects  
20 not to participate in the plan; and

21                           (d) all other creditors.

22           D. Before an individual assents to an agreement,  
23 the provider shall inform the individual in a separate record  
24 that the individual may keep whether or not the individual  
25 assents to the agreement:

.181969.2

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[bracketed material] = delete

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

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

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

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

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

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

18 (7) that a provider, who is not otherwise  
19 authorized or officially licensed, does not provide accounting  
20 or legal advice to individuals;

21 (8) that the use of debt-management services  
22 may not stop a creditor from filing or pursuing a lawsuit  
23 against an individual;

24 (9) that the use of debt-management services  
25 will not stop debt collection activity or wage garnishment;

.181969.2

1 (10) that the consumer may owe fees upon  
2 signing an agreement whether or not any debts are settled under  
3 the program; and

4 (11) that some creditors refuse to negotiate  
5 with debt-management providers.

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

12 **"IMPORTANT INFORMATION FOR YOU TO CONSIDER**

- 13 (1) Debt-management plans are not right for  
14 all individuals, and you may ask us to  
15 provide information about other ways,  
16 including bankruptcy, to deal with your  
17 debts.
- 18 (2) Using a debt-management plan may make it  
19 harder for you to obtain credit.
- 20 (3) We may receive compensation for our  
21 services from your creditors.

22 \_\_\_\_\_  
23 *Name and business address of provider".*

24 F. If a provider will not receive payments from an  
25 individual's creditors and the plan contemplates that the

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

5 **"IMPORTANT INFORMATION FOR YOU TO CONSIDER**

- 6 (1) Debt-management plans are not right for  
 7 all individuals, and you may ask us to  
 8 provide information about other ways,  
 9 including bankruptcy, to deal with your  
 10 debts.
- 11 (2) Using a debt-management plan may make it  
 12 harder for you to obtain credit.

13 \_\_\_\_\_  
 14 *Name and business address of provider".*

15 G. If an agreement contemplates that creditors will  
 16 settle debts for less than the full principal amount of debt  
 17 owed, a provider may comply with Subsection D of this section  
 18 by providing the following disclosure, surrounded by black  
 19 lines:

20 **"IMPORTANT INFORMATION FOR YOU TO CONSIDER**

- 21 (1) Our program is not right for all  
 22 individuals, and you may ask us to  
 23 provide information about bankruptcy and  
 24 other ways to deal with your debts.
- 25 (2) Nonpayment of your debts under our

.181969.2

1 program may:

- 2 · hurt your credit rating or credit scores;
- 3 · lead your creditors to increase finance and
- 4 other charges; and
- 5 · lead your creditors to undertake
- 6 activity, including lawsuits, to collect
- 7 the debts.

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

12 \_\_\_\_\_  
13 *Name and business address of provider".*

14 Section 17. COMMUNICATION BY ELECTRONIC OR OTHER  
15 MEANS.--

16 A. As used in this section:

17 (1) "consumer" means an individual who seeks  
18 or obtains goods or services that are used primarily for  
19 personal, family or household purposes; and

20 (2) "federal act" means the federal Electronic  
21 Signatures in Global and National Commerce Act, 15 U.S.C.  
22 Section 7001 et seq., as amended.

23 B. A provider may satisfy the requirements of  
24 Section 16, 18 or 26 of the Uniform Debt-Management Services  
25 Act by means of the internet or other electronic means if the

.181969.2



1 provider obtains a consumer's consent in the manner provided by  
2 Section 101(c)(1) of the federal act.

3 C. The disclosures and materials required by  
4 Sections 16, 18 and 26 of the Uniform Debt-Management Services  
5 Act shall be presented in a form that is capable of being  
6 accurately reproduced for later reference.

7 D. With respect to disclosure by means of an  
8 internet web site, the disclosure of the information required  
9 by Subsection D of Section 16 of the Uniform Debt-Management  
10 Services Act shall appear on one or more screens that:

11 (1) contain no other information; and

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

14 E. At the time of providing the materials and  
15 agreement required by Subsections C and D of Section 16 and  
16 Sections 18 and 26 of the Uniform Debt-Management Services Act,  
17 a provider shall inform the individual that upon electronic,  
18 telephonic or written request, it will send the individual a  
19 written copy of the materials and shall comply with a request  
20 as provided in Subsection F of this section.

21 F. If a provider is requested, before the  
22 expiration of ninety days after an agreement is completed or  
23 terminated, to send a written copy of the materials required by  
24 Subsections C and D of Section 16 and Sections 18 and 26 of the  
25 Uniform Debt-Management Services Act, the provider shall send

.181969.2

1 the materials at no charge within three business days after the  
2 request is received, but the provider need not comply with a  
3 request more than once per calendar month or if it reasonably  
4 believes the request is made for purposes of harassment. If a  
5 request is made more than ninety days after an agreement is  
6 completed or terminated, the provider shall send within a  
7 reasonable time a written copy of the materials requested.

8 G. A provider that maintains an internet web site  
9 shall disclose on the home page of its web site or on a page  
10 that is clearly and conspicuously connected to the home page by  
11 a link that clearly reveals its contents:

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

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

16 (3) the names of its principal officers.

17 H. Subject to Subsection I of this section, if a  
18 consumer who has consented to electronic communication in the  
19 manner provided by Section 101 of the federal act withdraws  
20 consent as provided in the federal act, a provider may  
21 terminate its agreement with the consumer.

22 I. If a provider wishes to terminate an agreement  
23 with a consumer pursuant to Subsection H of this section, it  
24 shall notify the consumer that it will terminate the agreement  
25 unless the consumer, within thirty days after receiving the

1 notification, consents to electronic communication in the  
2 manner provided in Section 101(c) of the federal act. If the  
3 consumer consents, the provider may terminate the agreement  
4 only as permitted by Subparagraph (g) of Paragraph (6) of  
5 Subsection A of Section 18 of the Uniform Debt-Management  
6 Services Act.

7 Section 18. FORM AND CONTENTS OF AGREEMENT.--

8 A. An agreement shall:

- 9 (1) be in a record;
- 10 (2) be dated and signed by the provider and  
11 the individual;
- 12 (3) include the name of the individual and the  
13 address where the individual resides;
- 14 (4) include the name, business address and  
15 telephone number of the provider;
- 16 (5) be delivered to the individual immediately  
17 upon formation of the agreement; and
- 18 (6) disclose:
- 19 (a) the services to be provided;
- 20 (b) the amount, or method of determining  
21 the amount, of all fees, individually itemized, to be paid by  
22 the individual;
- 23 (c) the schedule of payments to be made  
24 by or on behalf of the individual, including the amount of each  
25 payment, the date on which each payment is due and an estimate

.181969.2

1 of the date of the final payment;

2 (d) if a plan provides for regular  
3 periodic payments to creditors: 1) each creditor of the  
4 individual to which payment will be made, the amount owed to  
5 each creditor and any concessions the provider reasonably  
6 believes each creditor will offer; and 2) the schedule of  
7 expected payments to each creditor, including the amount of  
8 each payment and the date on which it will be made;

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

12 (f) how the provider will comply with  
13 its obligations pursuant to Subsection A of Section 26 of the  
14 Uniform Debt-Management Services Act;

15 (g) that the provider may terminate the  
16 agreement for good cause upon return of unexpended money of the  
17 individual;

18 (h) that the individual may cancel the  
19 agreement as provided in Section 19 of the Uniform Debt-  
20 Management Services Act;

21 (i) that the individual may contact the  
22 administrator with any questions or complaints regarding the  
23 provider; and

24 (j) the address, telephone number and  
25 internet address or web site of the administrator.

.181969.2

1           B. For purposes of Paragraph (5) of Subsection A of  
2 this section, delivery of an electronic record occurs when it  
3 is made available in a format in which the individual may  
4 retrieve, save and print it and the individual is notified that  
5 it is available.

6           C. If the administrator supplies the provider with  
7 any information required pursuant to Subparagraph (j) of  
8 Paragraph (6) of Subsection A of this section, the provider may  
9 comply with that requirement only by disclosing the information  
10 supplied by the administrator.

11           D. An agreement shall provide that:

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

16                               (a) the provider will refund all  
17 unexpended money that the provider or its agent has received  
18 from or on behalf of the individual for the reduction or  
19 satisfaction of the individual's debt;

20                               (b) with respect to an agreement that  
21 contemplates that creditors will settle debts for less than the  
22 principal amount of debt, the provider will refund sixty-five  
23 percent of any portion of the set-up fee that has not been  
24 credited against the settlement fee; and

25                               (c) all powers of attorney granted by

.181969.2

1 the individual to the provider are revoked and ineffective;

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

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

10 (a) the identity of the creditor; and

11 (b) the right of the individual to  
12 modify or terminate the agreement.

13 E. An agreement may confer on a provider a power of  
14 attorney to settle the individual's debt for no more than fifty  
15 percent of the outstanding amount of the debt. An agreement  
16 shall not confer a power of attorney to settle a debt for more  
17 than fifty percent of that amount, but may confer a power of  
18 attorney to negotiate with creditors of the individual on  
19 behalf of the individual. An agreement shall provide that the  
20 provider will obtain the assent of the individual after a  
21 creditor has assented to a settlement for more than fifty  
22 percent of the outstanding amount of the debt.

23 F. An agreement shall not:

24 (1) provide for application of the law of any  
25 jurisdiction other than the United States and New Mexico;

.181969.2

1 (2) except as permitted by the Uniform  
2 Arbitration Act, contain a provision that modifies or limits  
3 otherwise available forums or procedural rights, including the  
4 right to trial by jury, that are generally available to the  
5 individual pursuant to law other than the Uniform Debt-  
6 Management Services Act;

7 (3) contain a provision that restricts the  
8 individual's rights or remedies or the provider's obligations  
9 pursuant to the Uniform Debt-Management Services Act or law  
10 other than the Uniform Debt-Management Services Act;

11 (4) contain a provision that:

12 (a) limits or releases the liability of  
13 any person for not performing the agreement or for violating  
14 the Uniform Debt-Management Services Act; or

15 (b) indemnifies any person for liability  
16 arising pursuant to the agreement or the Uniform Debt-  
17 Management Services Act; or

18 (5) contain a post-agreement waiver,  
19 modification or agreement prohibited from inclusion in the  
20 agreement.

21 G. All rights and obligations specified in  
22 Subsection D of this section and Section 19 of the Uniform  
23 Debt-Management Services Act exist even if not provided in the  
24 agreement. A provision in an agreement that violates  
25 Subsection D, E or F of this section is void.

.181969.2

Section 19. CANCELLATION OF AGREEMENT--WAIVER.--

A. An individual may cancel an agreement before midnight of the third business day after the individual assents to it, unless the agreement does not comply with Subsection B of this section or Section 18 or 27 of the Uniform Debt-Management Services Act, in which event the individual may cancel the agreement within thirty days after the individual assents to it. To exercise the right to cancel, the individual shall give notice in a record to the provider. Notice by mail is given when mailed.

B. An agreement shall be accompanied by a form that contains in bold-face type, surrounded by bold black lines:

**"Notice of Right to Cancel**

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

To cancel this agreement during this period, send an email to \_\_\_\_\_ (*email address of provider*) or mail or deliver a signed, dated copy of this notice, or any other written notice to \_\_\_\_\_ (*name of provider*) at \_\_\_\_\_ (*address of provider*) before midnight on \_\_\_\_\_

underscoring material = new  
[bracketed material] = delete



1 (date).

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

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

8 I cancel this agreement,

9 \_\_\_\_\_

10 Print your name

11 \_\_\_\_\_

12 Signature

13 \_\_\_\_\_

14 Date".

15 C. If a personal financial emergency necessitates  
16 the disbursement of an individual's money to one or more of the  
17 individual's creditors before the expiration of three days  
18 after an agreement is signed, an individual may waive the right  
19 to cancel. To waive the right, the individual shall send or  
20 deliver a signed, dated statement in the individual's own words  
21 describing the circumstances that necessitate a waiver. The  
22 waiver shall explicitly waive the right to cancel. A waiver by  
23 means of a standard-form record is void.

24 Section 20. REQUIRED LANGUAGE.--Unless the  
25 administrator, by rule, provides otherwise, the disclosures and  
.181969.2

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[bracketed material] = delete

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

7 Section 21. TRUST ACCOUNT.--

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

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

20 C. A provider shall:

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

24 (2) disburse money paid by or on behalf of the  
25 individual to creditors of the individual as disclosed in the

1 agreement, except that:

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

4 (b) if a plan provides for regular  
5 periodic payments to creditors, the disbursement shall comply  
6 with the due dates established by each creditor; and

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

12 D. A provider shall not commingle money in a trust  
13 account established for the benefit of individuals to whom the  
14 provider is furnishing debt-management services with money of  
15 other persons.

16 E. A trust account shall at all times have a cash  
17 balance equal to the sum of the balances of each individual's  
18 account.

19 F. If a provider has established a trust account  
20 pursuant to Subsection A of this section, the provider shall  
21 reconcile the trust account at least once a month. The  
22 reconciliation shall compare the cash balance in the trust  
23 account with the sum of the balances in each individual's  
24 account. If the provider or its designee has more than one  
25 trust account, each trust account shall be individually

.181969.2

underscored material = new  
[bracketed material] = delete

1 reconciled.

2 G. If a provider discovers, or has a reasonable  
3 suspicion of, embezzlement or other unlawful appropriation of  
4 money held in trust, the provider immediately shall notify the  
5 administrator by a method approved by the administrator.

6 Unless the administrator by rule provides otherwise, within  
7 five days thereafter, the provider shall give notice to the  
8 administrator describing the remedial action taken or to be  
9 taken.

10 H. If an individual terminates an agreement or it  
11 becomes reasonably apparent to a provider that a plan has  
12 failed, the provider shall promptly refund to the individual  
13 all money paid by or on behalf of the individual that has not  
14 been paid to creditors, less fees that are payable to the  
15 provider pursuant to Section 22 of the Uniform Debt-Management  
16 Services Act.

17 I. Before relocating a trust account from one bank  
18 to another, a provider shall inform the administrator of the  
19 name, business address and telephone number of the new bank.  
20 As soon as practicable, the provider shall inform the  
21 administrator of the account number of the trust account at the  
22 new bank.

23 Section 22. FEES AND OTHER CHARGES.--

24 A. A provider shall not impose directly or  
25 indirectly a fee or other charge on an individual or receive

.181969.2

1 money from or on behalf of an individual for debt-management  
2 services except as permitted by this section.

3 B. A provider shall not impose charges or receive  
4 payment for debt-management services until the provider and the  
5 individual have signed an agreement that complies with Sections  
6 18 and 27 of the Uniform Debt-Management Services Act.

7 C. If an individual assents to an agreement, a  
8 provider shall not impose a fee or other charge for educational  
9 or counseling services, or the like, except as otherwise  
10 provided in this subsection and Subsection D of Section 27 of  
11 the Uniform Debt-Management Services Act. The administrator  
12 may authorize a provider to charge a fee based on the nature  
13 and extent of the educational or counseling services furnished  
14 by the provider.

15 D. Subject to adjustment of dollar amounts pursuant  
16 to Subsection E of Section 31 of the Uniform Debt-Management  
17 Services Act, the following rules apply:

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

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

25 (b) a monthly service fee, not to exceed

.181969.2

1 ten dollars (\$10.00) multiplied by the number of accounts  
2 remaining in a plan at the time the fee is assessed, but not  
3 more than fifty dollars (\$50.00) in any month;

4 (2) if an individual assents to an agreement  
5 that contemplates that creditors will settle debts for less  
6 than the principal amount of the debt, a provider may charge,  
7 subject to Subsection D of Section 18 of the Uniform Debt-  
8 Management Services Act, a fee for consultation, obtaining a  
9 credit report, setting up an account and the like in an amount  
10 not exceeding fifty dollars (\$50.00) at the inception of the  
11 plan;

12 (3) a provider shall not impose or receive  
13 fees pursuant to both Paragraphs (1) and (2) of this section;  
14 and

15 (4) except as otherwise provided in Subsection  
16 D of Section 27 of the Uniform Debt-Management Services Act, if  
17 an individual does not assent to an agreement, a provider may  
18 receive for educational and counseling services it provides to  
19 the individual a fee not exceeding one hundred dollars (\$100)  
20 or, with the approval of the administrator, a larger fee. The  
21 administrator may approve a fee larger than one hundred dollars  
22 (\$100) if the nature and extent of the educational and  
23 counseling services warrant the larger fee.

24 E. If, before the expiration of ninety days after  
25 the completion or termination of educational or counseling

1 services, an individual assents to an agreement, the provider  
2 shall refund to the individual any fee paid pursuant to  
3 Paragraph (4) of Subsection D of this section.

4 F. Except as otherwise provided in Subsections C  
5 and D of this section, if an agreement between a consumer and a  
6 creditor contemplates that creditors will settle an  
7 individual's debts for less than the principal amount of the  
8 debt, the total compensation for services in connection with  
9 settling a debt may not exceed the following settlement fee  
10 limits, the terms of which shall be clearly and conspicuously  
11 disclosed in the agreement:

12 (1) with respect to an agreement that provides  
13 for a flat settlement fee based on the overall amount of the  
14 original principal debt, the total aggregate amount of fees  
15 charged to any individual pursuant to the Uniform Debt-  
16 Management Services Act, including fees charged pursuant to  
17 Paragraph (2) of Subsection D of this section, shall not exceed  
18 fifteen percent of the principal amount of debt included in the  
19 agreement at the inception of the agreement. The flat  
20 settlement fee authorized pursuant to this paragraph shall be  
21 assessed in equal monthly payments amortized over the full term  
22 of the contract. The fee shall be paid in monthly payments.  
23 After payment of one-third of the total flat settlement fee,  
24 additional monthly payments shall be suspended until such time  
25 as the percent of the original principal debt settled and

.181969.2

1 released is equal to or greater than the percentage of fees  
2 paid. The payment of monthly fees may be resumed and continued  
3 on a monthly basis for the remainder of the contract only if  
4 the percentage of original principal debt settled and released  
5 remains equal to or greater than the percentage of total fees  
6 paid. If seventy-five percent of the debt is settled before  
7 the end of the contract term, payment of the remainder of fees  
8 owed may be accelerated to coincide with the final settlement  
9 and release of the final principal debt, but in no event should  
10 the percentage of the total fees paid exceed the percentage of  
11 debt settled and released; or

12 (2) with respect to agreements where fees are  
13 calculated as a percentage of the amount saved by an  
14 individual, a settlement fee may not exceed thirty percent of  
15 the excess of the outstanding amount of each debt over the  
16 amount actually paid to the creditor, as calculated at the time  
17 of settlement. Settlement fees authorized pursuant to this  
18 paragraph may be collected only as debts are settled, and the  
19 total aggregate amount of fees charged to any individual  
20 pursuant to the Uniform Debt-Management Services Act, including  
21 fees charged pursuant to Paragraph (2) of Subsection D of this  
22 section, may not exceed twenty percent of the principal amount  
23 of debt included in the agreement at the inception of the  
24 agreement; and

25 (3) a provider shall not impose or receive



1 fees under both Paragraphs (1) and (2) of this subsection.

2 G. Subject to adjustment of the dollar amount  
3 pursuant to Subsection E of Section 31 of the Uniform Debt-  
4 Management Services Act, if a payment to a provider by an  
5 individual pursuant to the Uniform Debt-Management Services Act  
6 is dishonored, a provider may impose a reasonable charge on the  
7 individual, not to exceed the lesser of twenty-five dollars  
8 (\$25.00) and the amount permitted by law other than that act.

9 H. The settlement triggering the application of  
10 Paragraph (2) of Subsection D of this section shall be  
11 evidenced by a binding settlement agreement between the  
12 creditor and the individual.

13 I. A provider shall not impose, directly or  
14 indirectly, a fee or other charge on an individual or receive  
15 money from or on behalf of an individual for debt-management  
16 services except as permitted by this section.

17 Section 23. VOLUNTARY CONTRIBUTIONS.--A provider shall  
18 not solicit a voluntary contribution from an individual or an  
19 affiliate of the individual for any service provided to the  
20 individual. A provider may accept voluntary contributions from  
21 an individual but, until thirty days after completion or  
22 termination of a plan, the aggregate amount of money received  
23 from or on behalf of the individual shall not exceed the total  
24 amount the provider may charge the individual pursuant to  
25 Section 22 of the Uniform Debt-Management Services Act.

.181969.2

1           Section 24. VOIDABLE AGREEMENTS.--

2           A. If a provider imposes a fee or other charge or  
3 receives money or other payments not authorized by Section 22  
4 or 23 of the Uniform Debt-Management Services Act, the  
5 individual may void the agreement and recover as provided in  
6 Section 34 of that act.

7           B. If a provider is not registered as required by  
8 the Uniform Debt-Management Services Act when an individual  
9 assents to an agreement, the agreement is voidable by the  
10 individual.

11           C. If an individual voids an agreement pursuant to  
12 Subsection B of this section, the provider does not have a  
13 claim against the individual for breach of contract or for  
14 restitution.

15           Section 25. TERMINATION OF AGREEMENTS.--

16           A. If an individual who has entered into an  
17 agreement fails for sixty days to make payments required by the  
18 agreement, a provider may terminate the agreement. The  
19 provider may not earn any additional fees on or after  
20 termination.

21           B. If a provider or an individual terminates an  
22 agreement, the provider shall immediately return to the  
23 individual:

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

.181969.2

1 (2) sixty-five percent of any portion of the  
2 set-up fee received pursuant to Paragraph (2) of Subsection D  
3 of Section 22 of the Uniform Debt-Management Services Act that  
4 has not been credited against settlement fees.

5 Section 26. PERIODIC REPORTS AND RETENTION OF RECORDS.--

6 A. A provider shall provide the accounting required  
7 by Subsection B of this section:

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

10 (2) before cancellation or termination of any  
11 agreement:

12 (a) at least once each month; and

13 (b) within five business days after a  
14 request by an individual, but the provider need not comply with  
15 more than one request in any calendar month.

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

19 (1) the amount of money received from the  
20 individual since the last report;

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

25 (3) the amounts deducted from the amount

.181969.2

1 received from the individual;

2 (4) the amount held in reserve; and

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

6 (a) the total amount and terms of the  
7 settlement;

8 (b) the amount of the debt when the  
9 individual assented to the plan;

10 (c) the amount of the debt when the  
11 creditor agreed to the settlement; and

12 (d) the calculation of a settlement fee.

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

19 Section 27. PROHIBITED ACTS AND PRACTICES.--

20 A. A provider shall not, directly or indirectly:

21 (1) misappropriate or misapply money held in  
22 trust or received from an individual;

23 (2) settle a debt on behalf of an individual  
24 for more than fifty percent of the outstanding amount of the  
25 debt owed a creditor, unless the individual assents to the

.181969.2

1 settlement after the creditor has assented;

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

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

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

12 (a) a return of money to the individual;  
13 or

14 (b) before termination of an agreement,  
15 properly authorized by the agreement and the Uniform Debt-  
16 Management Services Act, and in compliance with any other law  
17 governing the payment, including the law governing electronic  
18 fund transfers, and for: 1) payment to one or more creditors  
19 pursuant to an agreement; or 2) payment of a fee;

20 (6) offer, pay or give a gift or bonus,  
21 premium, reward or other compensation to an individual for  
22 executing an agreement;

23 (7) offer, pay or give a gift or bonus,  
24 premium, reward or other compensation to a person for referring  
25 a prospective customer, if the person making the referral has a

.181969.2

1 financial interest in the outcome of debt-management services  
2 provided to the customer, unless neither the provider nor the  
3 person making the referral communicates to the prospective  
4 customer the identity of the source of the referral;

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

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

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

15 (11) settle a debt or lead an individual to  
16 believe that a payment to a creditor is in settlement of a debt  
17 to the creditor unless, at the time of settlement, the  
18 individual receives a written certification by the creditor  
19 that the payment is in full settlement of the debt or is part  
20 of a payment plan, the terms of which are included in the  
21 certification, which upon completion will result in full  
22 settlement of the debt;

23 (12) make a representation that:

24 (a) the provider will furnish money to  
25 pay bills or prevent attachments;

.181969.2

1 (b) payment of a certain amount will  
2 permit satisfaction of a certain amount or range of  
3 indebtedness; or

4 (c) participation in a plan will or may  
5 prevent litigation, garnishment, attachment, repossession,  
6 foreclosure, eviction or loss of employment;

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

9 (14) represent in its agreements, disclosures  
10 required by the Uniform Debt-Management Services Act,  
11 advertisements or internet web site that it is:

12 (a) a not-for-profit entity, unless it  
13 is organized and properly operating as a not-for-profit entity  
14 pursuant to the law of the state in which it was formed; or

15 (b) a tax-exempt entity unless it has  
16 received certification of tax-exempt status from the internal  
17 revenue service and is properly operating as a not-for-profit  
18 entity pursuant to the law of the state in which it was formed;

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

21 (16) employ an unfair, unconscionable or  
22 deceptive act or practice, including the knowing omission of  
23 any material information;

24 (17) require an individual participating in a  
25 debt-management program to utilize additional ancillary goods

.181969.2

1 or services;

2 (18) at any time, encourage any individual to  
3 stop or refrain from payment of any debt;

4 (19) fail to provide promised services to any  
5 individual;

6 (20) enter into a contract with an individual  
7 if the contract signed by the individual contained any blank  
8 spaces to be filled in later;

9 (21) include in any debt-management services  
10 agreement any debt secured by a motor vehicle or real property;  
11 or

12 (22) advise an individual not to communicate  
13 with the individual's creditors, or to change the address on  
14 bills of creditors so that the individual no longer receives  
15 information about the individual's debts directly from the  
16 creditor.

17 B. If a provider furnishes debt-management services  
18 to an individual, the provider shall not, directly or  
19 indirectly:

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

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

24 (a) a promissory note or other  
25 negotiable instrument other than a check or a demand draft; or

.181969.2



1 (b) a post-dated check or demand draft;

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

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

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

12 (a) the administrator, upon proper  
13 demand;

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

17 (c) the extent necessary to administer  
18 the plan;

19 (6) except as otherwise provided in Subsection  
20 F of Section 22 of the Uniform Debt-Management Services Act,  
21 provide the individual less than the full benefit of a  
22 compromise of a debt arranged by the provider;

23 (7) charge the individual for or provide  
24 credit or other insurance, coupons for goods or services,  
25 membership in a club, access to computers or the internet or

.181969.2

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1 any other matter not directly related to debt-management  
2 services or educational services concerning personal finance,  
3 except to the extent such services are expressly authorized by  
4 the administrator; or

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

9 C. The Uniform Debt-Management Services Act does  
10 not authorize any person to engage in the practice of law.

11 D. A provider shall not receive a gift or bonus,  
12 premium, reward or other compensation, directly or indirectly,  
13 for advising, arranging or assisting an individual in  
14 connection with obtaining an extension of credit or other  
15 service from a lender or service provider, except for  
16 educational or counseling services required in connection with  
17 a government-sponsored program.

18 E. Unless a person supplies goods, services or  
19 facilities generally and supplies them to the provider at a  
20 cost no greater than the cost the person generally charges to  
21 others, a provider shall not purchase goods, services or  
22 facilities from the person if an employee of the provider or a  
23 person that the provider should reasonably know is an affiliate  
24 of the provider:

25 (1) owns more than ten percent of the person;

1 or

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

3 Section 28. NOTICE OF LITIGATION.--No later than thirty  
4 days after a provider has been served with notice of a civil  
5 action for violation of the Uniform Debt-Management Services  
6 Act by or on behalf of an individual who resides in New Mexico  
7 at either the time of an agreement or the time the notice is  
8 served, the provider shall notify the administrator in a record  
9 that it has been sued.

10 Section 29. ADVERTISING.--

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

17 B. If the agreements of a provider whose agreements  
18 contemplate that creditors will settle for less than the full  
19 principal amount of debt and the provider advertises  
20 debt-management services, it shall disclose, in an easily  
21 comprehensible manner, the information specified in Paragraphs  
22 (3) and (4) of Subsection D of Section 16 of the Uniform Debt-  
23 Management Services Act.

24 C. Advertising concerning debt-management services  
25 shall not contain a false, misleading or deceptive statement or

.181969.2

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1 omit any fact necessary to make the statements made, in light  
2 of circumstances under which they are made, not false,  
3 misleading or deceptive.

4 Section 30. LIABILITY FOR THE CONDUCT OF OTHER  
5 PERSONS.--If a provider delegates any of its duties or  
6 obligations pursuant to an agreement or the Uniform Debt-  
7 Management Services Act to another person, including an  
8 independent contractor, the provider is liable for conduct of  
9 the person that, if done by the provider, would violate the  
10 agreement or the Uniform Debt-Management Services Act.

11 Section 31. POWERS OF ADMINISTRATOR.--

12 A. The administrator may act on the administrator's  
13 own initiative or in response to complaints and may receive  
14 complaints, take action to obtain voluntary compliance with the  
15 Uniform Debt-Management Services Act, refer cases to the office  
16 of the attorney general and seek or provide remedies as  
17 provided in the Uniform Debt-Management Services Act.

18 B. The administrator may investigate and examine,  
19 in New Mexico or elsewhere, by subpoena or otherwise, the  
20 activities, books, accounts and records of a person that  
21 provides or offers to provide debt-management services, or a  
22 person to which a provider has delegated its obligations  
23 pursuant to an agreement or the Uniform Debt-Management  
24 Services Act, to determine compliance with the Uniform  
25 Debt-Management Services Act. Information that identifies

.181969.2

1 individuals who have agreements with the provider shall not be  
2 disclosed to the public. In connection with the investigation,  
3 the administrator may:

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

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

9 (3) seek a court order authorizing seizure  
10 from a bank at which the person maintains a trust account  
11 required by Section 21 of the Uniform Debt-Management Services  
12 Act of any or all money, books, records, accounts and other  
13 property of the provider that is in the control of the bank and  
14 relates to individuals who reside in New Mexico.

15 C. The administrator may adopt rules to implement  
16 the provisions of the Uniform Debt-Management Services Act.

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

22 E. The administrator, by rule, shall adopt dollar  
23 amounts instead of those specified in Sections 2, 5, 9, 12, 22,  
24 32 and 34 of the Uniform Debt-Management Services Act to  
25 reflect inflation, as measured by the United States bureau of  
.181969.2

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1 labor statistics consumer price index for all urban consumers  
2 or, if that index is not available, another index adopted by  
3 rule by the administrator. The administrator shall adopt a  
4 base year and adjust the dollar amounts, effective on July 1 of  
5 each year, if the change in the index from the base year, as of  
6 December 31 of the preceding year, is at least ten percent.  
7 The dollar amount shall be rounded to the nearest one hundred  
8 dollars (\$100), except that the amounts in Section 22 of the  
9 Uniform Debt-Management Services Act shall be rounded to the  
10 nearest dollar.

11 F. The administrator shall notify registered  
12 providers of any change in dollar amounts made pursuant to  
13 Subsection E of this section and make that information  
14 available to the public.

15 Section 32. ADMINISTRATIVE REMEDIES.--

16 A. The administrator may enforce the Uniform  
17 Debt-Management Services Act and rules adopted pursuant to that  
18 act by taking one or more of the following actions:

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

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

.181969.2

1 (3) subject to adjustment of the dollar amount  
2 pursuant to Subsection E of Section 31 of the Uniform Debt-  
3 Management Services Act, imposing on a provider or a person  
4 that has caused a violation a civil penalty not exceeding ten  
5 thousand dollars (\$10,000) for each violation;

6 (4) prosecuting a civil action to:

7 (a) enforce an order; or

8 (b) obtain restitution or an injunction  
9 or other equitable relief, or both; or

10 (5) intervening in an action brought pursuant  
11 to Section 35 of the Uniform Debt-Management Services Act.

12 B. Subject to adjustment of the dollar amount  
13 pursuant to Subsection E of Section 31 of the Uniform Debt-  
14 Management Services Act, if a person violates or knowingly  
15 authorizes, directs or aids in the violation of a final order  
16 issued pursuant to Paragraph (1) or (2) of Subsection A of this  
17 section, the administrator may impose a civil penalty not  
18 exceeding twenty thousand dollars (\$20,000) for each violation.

19 C. The administrator may maintain an action to  
20 enforce the Uniform Debt-Management Services Act in any county.

21 D. The administrator may recover the reasonable  
22 expenses of enforcing the Uniform Debt-Management Services Act  
23 pursuant to Subsections A through C of this section, including  
24 attorney and expert witness fees based on the hours reasonably  
25 expended and the hourly rates for attorneys and expert

.181969.2

1 witnesses of comparable experience in the community.

2 E. In determining the amount of a civil penalty to  
3 impose pursuant to Subsection A or B of this section, the  
4 administrator shall consider the seriousness of the violation,  
5 the good faith of the violator, any previous violations by the  
6 violator, the deleterious effect of the violation on the  
7 public, the net worth of the violator and any other factor the  
8 administrator considers relevant to the determination of the  
9 civil penalty.

10 Section 33. SUSPENSION, REVOCATION OR NONRENEWAL OF  
11 REGISTRATION.--

12 A. As used in this section, "insolvent" means:

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

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

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

21 B. The administrator may suspend, revoke or deny  
22 renewal of a provider's registration if:

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

.181969.2



1 (2) the provider has committed a material  
2 violation of the Uniform Debt-Management Services Act or a rule  
3 or order of the administrator pursuant to that act;

4 (3) the provider is insolvent;

5 (4) the provider or an employee or affiliate  
6 of the provider has refused to permit the administrator to make  
7 an examination authorized by the Uniform Debt-Management  
8 Services Act, failed to comply with Paragraph (2) of Subsection  
9 B of Section 31 of the Uniform Debt-Management Services Act  
10 within fifteen days after request or made a material  
11 misrepresentation or omission in complying with Paragraph (2)  
12 of Subsection B of Section 31 of that act;

13 (5) the provider has not responded within a  
14 reasonable time and in an appropriate manner to communications  
15 from the administrator; or

16 (6) the provider or any of its officers,  
17 directors, principal owners or predecessor organizations has  
18 been convicted of a crime, made a plea of nolo contendere or  
19 incurred a judgment, administrative agency action or license  
20 discipline in any jurisdiction that involves dishonesty, fraud,  
21 financial misconduct or deceit or the violation or alleged  
22 violation of consumer protection laws or that is substantially  
23 related to the qualifications, functions or duties of the  
24 licensed activity.

25 C. If a provider does not comply with Subsection F

.181969.2

1 of Section 21 of the Uniform Debt-Management Services Act or if  
2 the administrator otherwise finds that the public health or  
3 safety or general welfare requires emergency action, the  
4 administrator may order a summary suspension of the provider's  
5 registration, effective on the date specified in the order.

6 D. If the administrator suspends, revokes or denies  
7 renewal of the registration of a provider, the administrator  
8 may seek a court order authorizing seizure of any or all of the  
9 money in a trust account required by Section 21 of the Uniform  
10 Debt-Management Services Act, books, records, accounts and  
11 other property of the provider that are located in New Mexico.

12 E. If the administrator suspends or revokes a  
13 provider's registration, the provider may appeal and request a  
14 hearing.

15 Section 34. PRIVATE ENFORCEMENT.--

16 A. If an individual voids an agreement pursuant to  
17 Subsection B of Section 24 of the Uniform Debt-Management  
18 Services Act, the individual may recover in a civil action all  
19 money paid or deposited by or on behalf of the individual  
20 pursuant to the agreement, except amounts paid to creditors, in  
21 addition to the recovery pursuant to Paragraphs (3) and (4) of  
22 Subsection C of this section.

23 B. If an individual voids an agreement pursuant to  
24 Subsection A of Section 24 of the Uniform Debt-Management  
25 Services Act, the individual may recover in a civil action

.181969.2

1 three times the total amount of the fees, charges, money and  
2 payments made by the individual to the provider, in addition to  
3 the recovery pursuant to Paragraph (4) of Subsection C of this  
4 section.

5 C. Subject to Subsection D of this section, an  
6 individual with respect to whom a provider violates the Uniform  
7 Debt-Management Services Act may recover in a civil action from  
8 the provider and any person that caused the violation:

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

11 (2) except as otherwise provided in Subsection  
12 D of this section and subject to adjustment of the dollar  
13 amount pursuant to Subsection E of Section 31 of the Uniform  
14 Debt-Management Services Act, with respect to a violation of  
15 Section 16, 18, 19, 20, 21, 22, 23, 26 or Subsection A, B or D  
16 of Section 27 of that act, the greater of the amount  
17 recoverable pursuant to Paragraph (1) of this subsection or  
18 five thousand dollars (\$5,000);

19 (3) punitive damages; and

20 (4) reasonable attorney and expert witness  
21 fees and other litigation expenses.

22 D. In a class action, except for a violation of  
23 Paragraph (5) of Subsection A of Section 27 of the Uniform  
24 Debt-Management Services Act, the minimum damages provided in  
25 Paragraph (2) of Subsection C of this section do not apply.

.181969.2

1           E. In addition to the remedy available pursuant to  
2 Subsection C of this section, if a provider violates an  
3 individual's rights pursuant to Section 19 of the Uniform  
4 Debt-Management Services Act, the individual may recover in a  
5 civil action all money paid or deposited by or on behalf of the  
6 individual pursuant to the agreement, except for amounts paid  
7 to creditors.

8           F. A provider is not liable pursuant to this  
9 section for a violation of the Uniform Debt-Management Services  
10 Act if the provider proves that the violation was not  
11 intentional and resulted from a good-faith error  
12 notwithstanding the maintenance of procedures reasonably  
13 adapted to avoid the error. An error of legal judgment with  
14 respect to a provider's obligations pursuant to the Uniform  
15 Debt-Management Services Act is not a good-faith error. If, in  
16 connection with a violation, the provider has received more  
17 money than authorized by an agreement or the Uniform Debt-  
18 Management Services Act, the defense provided by this  
19 subsection is not available unless the provider refunds the  
20 excess within two business days of learning of the violation.

21           G. The administrator shall assist an individual in  
22 enforcing a judgment against the surety bond or other security  
23 provided pursuant to Section 12 or 13 of the Uniform Debt-  
24 Management Services Act.

25           Section 35. VIOLATION OF UNFAIR PRACTICES ACT.--If an

.181969.2

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1 act or practice of a provider violates both the Uniform Debt-  
2 Management Services Act and the Unfair Practices Act, an  
3 individual shall not recover under both for the same act or  
4 practice.

5 Section 36. STATUTE OF LIMITATIONS.--

6 A. An action or proceeding brought pursuant to  
7 Subsection A, B or C of Section 32 of the Uniform Debt-  
8 Management Services Act shall be commenced within four years  
9 after the conduct that is the basis of the administrator's  
10 complaint.

11 B. An action brought pursuant to Section 34 of the  
12 Uniform Debt-Management Services Act shall be commenced within  
13 two years after the latest of:

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

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

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

20 (4) the provider's last accounting to the  
21 individual pursuant to Subsection A of Section 26 of the  
22 Uniform Debt-Management Services Act;

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

.181969.2

1 (6) termination of actions or proceedings by  
2 the administrator with respect to a violation of the Uniform  
3 Debt-Management Services Act.

4 C. The period prescribed in Paragraph (5) of  
5 Subsection B of this section is tolled during any period during  
6 which the provider or, if different, the defendant has  
7 materially and willfully misrepresented information required by  
8 the Uniform Debt-Management Services Act to be disclosed to the  
9 individual, if the information so misrepresented is material to  
10 the establishment of the liability of the defendant pursuant to  
11 that act.

12 Section 37. UNIFORMITY OF APPLICATION AND  
13 CONSTRUCTION.--In applying and construing the Uniform Debt-  
14 Management Services Act, consideration shall be given to the  
15 need to promote uniformity of the law with respect to its  
16 subject matter among states that enact it.

17 Section 38. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL  
18 AND NATIONAL COMMERCE ACT.--The Uniform Debt-Management  
19 Services Act modifies, limits and supersedes the federal  
20 Electronic Signatures in Global and National Commerce Act (15  
21 U.S.C. Section 7001 et seq.) but does not modify, limit or  
22 supersede Section 101(c) of that act (15 U.S.C. Section  
23 7001(c)) or authorize electronic delivery of any of the notices  
24 described in Section 103(b) of that act (15 U.S.C. Section  
25 7003(b)).

.181969.2

1           Section 39. TRANSITIONAL PROVISIONS--APPLICATION TO  
2 EXISTING TRANSACTIONS.--Transactions entered into before the  
3 Uniform Debt-Management Services Act takes effect and the  
4 rights, duties and interests resulting from them may be  
5 completed, terminated or enforced as required or permitted by a  
6 law amended, repealed or modified by the Uniform Debt-  
7 Management Services Act as though the amendment, repeal or  
8 modification had not occurred.

9           Section 40. REPEAL.--Sections 56-2-1 through 56-2-4 NMSA  
10 1978 (being Laws 1965, Chapter 80, Sections 1 through 4) are  
11 repealed.

12           Section 41. SEVERABILITY.--If any part or application of  
13 this act is held invalid, the remainder or its application to  
14 other situations or persons shall not be affected.

15           Section 42. EFFECTIVE DATE.--

16           A. The effective date of the provisions of Sections  
17 1 through 3 and 14 through 41 of this act is January 1, 2011.

18           B. The effective date of the provisions of Sections  
19 4 through 13 of this act is January 1, 2014.

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