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SENATE BILL 432

**51ST LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2013**

INTRODUCED BY

Joseph Cervantes

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 32 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

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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 debt-  
17 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

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;

18 I. "day" means a calendar day;

19 J. "debt-management services" means services as an  
20 intermediary between an individual and one or more creditors of  
21 the individual for the purpose of obtaining concessions, but  
22 does not include:

23 (1) legal services provided in an attorney-  
24 client relationship by an attorney licensed or otherwise  
25 authorized to practice law in New Mexico who is:

1 (a) acting in the ordinary course of the  
2 attorney's business;

3 (b) providing bona fide legal services  
4 in representing the individual in the individual's relationship  
5 with creditors or debt collectors; and

6 (c) conforming to all applicable  
7 standards of professional responsibility, including those  
8 governing diligent representations of clients and fee sharing  
9 with non-lawyers; provided, however, that the exclusion set  
10 forth in this paragraph is not applicable merely because the  
11 individual speaks to or enters into a nominal agreement with an  
12 attorney, or receives forms prepared by an attorney, if the  
13 real intermediary between the individual and the creditors is  
14 an entity or person other than the attorney or the attorney's  
15 office;

16 (2) accounting services provided in an  
17 accountant-client relationship by a certified public accountant  
18 licensed to provide accounting services in New Mexico; or

19 (3) financial-planning services provided in a  
20 financial planner-client relationship by a member of a  
21 financial-planning profession whose members the administrator,  
22 by rule, determines after the delayed effective date are:

23 (a) licensed by New Mexico;

24 (b) subject to a disciplinary mechanism;

25 (c) subject to a code of professional

1 responsibility; and

2 (d) subject to a continuing education  
3 requirement;

4 K. "delayed effective date" means January 1, 2017;

5 L. "entity" means a person other than an  
6 individual;

7 M. "good faith" means honesty in fact and the  
8 observance of reasonable standards of fair dealing;

9 N. "lead generator" means a person that supplies a  
10 provider with the names of potential customers, directs  
11 communications of an individual to a provider or otherwise  
12 channels customers to a provider;

13 O. "person" means an individual, corporation,  
14 business trust, estate, trust, partnership, limited liability  
15 company, association, joint venture or any other legal or  
16 commercial entity. "Person" does not include a public  
17 corporation, government or governmental subdivision, agency or  
18 instrumentality;

19 P. "plan" means a program or strategy in which a  
20 provider furnishes debt-management services to an individual  
21 and that includes a schedule of payments to be made by or on  
22 behalf of the individual and used to pay debts owed by the  
23 individual. Every "plan" is a part of an "agreement", but not  
24 every "agreement" meets the additional requirements of a "plan"  
25 as defined in this subsection;

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1           Q. "principal amount of the debt" means the amount  
2 of a debt at the time of an agreement;

3           R. "provider" means a person, however denominated  
4 and wherever located, that provides, offers to provide or  
5 agrees to provide debt-management services directly or  
6 indirectly through one or more others;

7           S. "record" means information that is inscribed on  
8 a tangible medium or that is stored in an electronic or other  
9 medium and is retrievable in perceivable form;

10          T. "settlement fee" means a charge imposed on or  
11 paid by an individual in connection with a creditor's assent to  
12 accept in full satisfaction of a debt an amount less than the  
13 principal amount of the debt;

14          U. "sign" means, with present intent to  
15 authenticate or adopt a record:

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

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

19          V. "state" means a state of the United States, the  
20 District of Columbia, Puerto Rico, the United States Virgin  
21 Islands or any territory or insular possession subject to the  
22 jurisdiction of the United States; and

23          W. "trust account" means an account to be used for  
24 payment of a provider's fees or for payment to creditors  
25 pursuant to a plan, or both.

1           SECTION 3. EXEMPT AGREEMENTS AND PERSONS.--

2           A. The Uniform Debt-Management Services Act does  
3 not apply to an agreement with an individual if a provider does  
4 not know and has no reason to know that the individual resides  
5 in New Mexico at the time of the agreement.

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

8                   (1) provides or agrees to provide  
9 debt-management, educational or counseling services to an  
10 individual if the provider does not know and has no reason to  
11 know that the individual resides in New Mexico at the time the  
12 provider agrees to provide the services; or

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

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

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

23                   (2) a bank;

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

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1 or

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

6 SECTION 4. REGISTRATION REQUIRED.--

7 A. Except as otherwise provided in Subsection B of  
8 this section, after the delayed effective date, a provider  
9 shall not provide debt-management services to an individual  
10 whom it knows or reasonably should know resides in New Mexico  
11 at the time it agrees to provide the services, unless the  
12 provider is registered pursuant to the Uniform Debt-Management  
13 Services Act.

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

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

19 SECTION 5. APPLICATION FOR REGISTRATION--FORM, FEE AND  
20 ACCOMPANYING DOCUMENTS.--

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

23 B. Subject to adjustment of dollar amounts pursuant  
24 to Subsection E of Section 32 of the Uniform Debt-Management  
25 Services Act, an application for registration as a provider

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1 shall be accompanied by:

2 (1) a five-hundred-dollar (\$500) application  
3 fee;

4 (2) the bond required by Section 13 of the  
5 Uniform Debt-Management Services Act;

6 (3) identification of all trust accounts and  
7 an irrevocable consent authorizing the administrator or the  
8 attorney general to review and examine the trust accounts;

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

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

14 (b) issued by an insurance company  
15 authorized to do business in New Mexico and rated at least A or  
16 equivalent by a nationally recognized rating organization  
17 approved by the administrator;

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

20 (d) payable for the benefit of the  
21 applicant, New Mexico and the individuals who are residents of  
22 New Mexico, as their interests may appear; and

23 (e) not subject to cancellation by the  
24 applicant or the insurer until sixty days after written notice  
25 has been given to the administrator and the attorney general;

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1 (5) proof of compliance with the applicable  
2 law governing the formation of the applicant in the  
3 jurisdiction in which it was formed and a current certificate  
4 of good standing pertaining to the applicant in that  
5 jurisdiction;

6 (6) if the applicant was formed in a  
7 jurisdiction other than New Mexico, proof of the applicant's  
8 qualification to do business in New Mexico and a certificate of  
9 good standing pertaining to the applicant in New Mexico;

10 (7) the name and business address of the  
11 applicant's registered agent in New Mexico for the service of  
12 process and the address of the applicant's registered office in  
13 New Mexico; and

14 (8) if the applicant is organized as a  
15 not-for-profit entity or is exempt from taxation pursuant to  
16 the Internal Revenue Code of 1986, 26 U.S.C. Section 501, as  
17 amended, evidence of not-for-profit status or tax-exempt status  
18 or both, if applicable.

19 **SECTION 6. APPLICATION FOR REGISTRATION--REQUIRED**  
20 **INFORMATION.--**An application for registration shall be signed,  
21 upon oath or affirmation, and include:

22 A. the applicant's name, principal business address  
23 and telephone number and all other business addresses in New  
24 Mexico, electronic-mail addresses and internet web site  
25 addresses;

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1           B. all names under which the applicant conducts  
2 business;

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

6           D. the name and home address of each officer and  
7 director of the applicant and each person that owns at least  
8 ten percent of the applicant;

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

11                 (1) the applicant or any of its officers or  
12 directors has been licensed or registered to provide debt-  
13 management services; or

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

16           F. a statement describing, to the extent it is  
17 known or should be known by the applicant after reasonable  
18 inquiry, whether the applicant, any of its affiliates, other  
19 owners, agents or predecessors, or any person who is authorized  
20 to have access to a trust account:

21                 (1) has been convicted of a crime, made a plea  
22 of nolo contendere or incurred a judgment, an administrative or  
23 enforcement action or license discipline in any jurisdiction  
24 that involves dishonesty, fraud, financial misconduct, deceit  
25 or the violation or alleged violation of state or federal

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1 securities laws or consumer protection laws, including the  
2 Uniform Debt-Management Services Act; or

3 (2) incurred any other material civil or  
4 criminal judgment or litigation or any other material  
5 administrative or enforcement action in any jurisdiction;

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

11 H. evidence of accreditation by an independent  
12 accrediting organization approved by the administrator;

13 I. evidence that, within twelve months after  
14 initial employment, each of the applicant's counselors becomes  
15 certified as a certified counselor or certified debt  
16 specialist;

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

21 K. a description of the applicant's financial  
22 analysis and initial budget plan, including any form or  
23 electronic model, used to evaluate the financial condition of  
24 individuals;

25 L. a copy of each form of agreement that the

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1 applicant will use with individuals who reside in New Mexico;

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

4 N. at the applicant's expense, the results of a  
5 criminal records check, including fingerprints, conducted  
6 within the immediately preceding twelve months, covering every  
7 officer of the applicant and every employee or agent of the  
8 applicant who is authorized to have access to a trust account;

9 O. the names and addresses of all employers of each  
10 director during the ten years immediately preceding the  
11 application;

12 P. a description of any ownership interest of at  
13 least ten percent by a director, owner or employee of the  
14 applicant in:

15 (1) any affiliate of the applicant; or

16 (2) any entity that provides products or  
17 services to the applicant or any individual relating to the  
18 applicant's debt-management services;

19 Q. a statement of the amount of compensation of the  
20 applicant's five most highly compensated employees for each of  
21 the three years immediately preceding the application or, if it  
22 has not been in operation for the three years preceding the  
23 application, for the period of its existence;

24 R. the identity of each director who is an  
25 affiliate of the applicant;

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1           S. a statement listing all names under which the  
2 applicant or any affiliate of the applicant provides or has  
3 provided debt-management services within the preceding five  
4 calendar years; and

5           T. any other information that the administrator  
6 reasonably requires to perform the administrator's duties  
7 pursuant to Section 9 of the Uniform Debt-Management Services  
8 Act.

9           **SECTION 7. APPLICATION FOR REGISTRATION--OBLIGATION TO**  
10 **UPDATE INFORMATION.--**An applicant or registered provider shall  
11 notify the administrator within ten days after a change in the  
12 information specified in Paragraph (4), (5), (6), (7) or (8) of  
13 Subsection B of Section 5 of the Uniform Debt-Management  
14 Services Act or Subsection A, C, F, L or M of Section 6 of that  
15 act.

16           **SECTION 8. APPLICATION FOR REGISTRATION--PUBLIC**  
17 **INFORMATION.--**Except for the information required by  
18 Subsections G, N and Q of Section 6 of the Uniform Debt-  
19 Management Services Act and the addresses required by  
20 Subsection D of that section, the administrator shall make the  
21 information in an application for registration as a provider  
22 available to the public.

23           **SECTION 9. CERTIFICATE OF REGISTRATION--ISSUANCE OR**  
24 **DENIAL.--**

25           A. Except as otherwise provided in Subsections C

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1 and D of this section, the administrator shall issue a  
2 certificate of registration as a provider to a person that  
3 complies with Sections 5 and 6 of the Uniform Debt-Management  
4 Services Act.

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

12 C. The administrator may deny registration if:

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

15 (2) the applicant, any of its affiliates,  
16 other owners, predecessors or any person authorized to have  
17 access to a trust account, has been convicted of a crime, made  
18 a plea of nolo contendere or incurred a judgment, an  
19 administrative or enforcement action or license discipline in  
20 any jurisdiction that involved dishonesty, fraud, financial  
21 misconduct, deceit or the violation or alleged violation of  
22 state or federal securities laws or consumer protection laws,  
23 including the Uniform Debt-Management Services Act;

24 (3) the applicant, an affiliate of the  
25 applicant or any other owner of the applicant has defaulted in

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1 the payment of money collected for others;

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

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

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

15 E. Subject to adjustment of the dollar amount  
16 pursuant to Subsection E of Section 32 of the Uniform  
17 Debt-Management Services Act, a board of directors is not  
18 independent for purposes of Subsection D of this section if  
19 more than one-fourth of its members:

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

1           **SECTION 10. CERTIFICATE OF REGISTRATION--TIMING.--**

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

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

15           C. Subject to the provisions of Subsection D of  
16 Section 11 and Section 34 of the Uniform Debt-Management  
17 Services Act, a registration as a provider is valid for one  
18 year.

19           **SECTION 11. RENEWAL OF REGISTRATION.--**

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

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

25                   (1) be filed no fewer than sixty and no more

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1 than ninety days before the registration expires;

2 (2) be accompanied by a two-hundred-dollar  
3 (\$200) renewal fee and the bond required by Section 13 of the  
4 Uniform Debt-Management Services Act;

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

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

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

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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 deposited in trust accounts or received by the applicant  
18 pursuant to plans during the preceding twelve months from or on  
19 behalf of individuals who reside in New Mexico and the total  
20 amount of money distributed to creditors of those individuals  
21 during that period;

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

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1 applicant has agreements;

2 (8) be accompanied by a current certificate of  
3 good standing pertaining to the applicant from each  
4 jurisdiction specified in Paragraphs (5) and (6) of Subsection  
5 B of Section 5 of the Uniform Debt-Management Services Act; and

6 (9) provide any other information that the  
7 administrator reasonably requires to perform the  
8 administrator's duties pursuant to this section.

9 C. Except for the information required by  
10 Subsections G, N and Q of Section 6 of the Uniform Debt-  
11 Management Services Act and the addresses required by  
12 Subsection D of that section, the administrator shall make the  
13 information in an application for renewal of registration as a  
14 provider available to the public.

15 D. If a registered provider files a timely and  
16 complete application for renewal of registration, the  
17 registration remains effective until the administrator, in a  
18 record, notifies the applicant of a denial and states the  
19 reasons for the denial.

20 E. If the administrator denies an application for  
21 renewal of registration as a provider, the applicant within  
22 thirty days after receiving notice of the denial may appeal and  
23 request a hearing. Subject to Section 34 of the Uniform Debt-  
24 Management Services Act, while the appeal is pending, the  
25 applicant shall continue to provide debt-management services to

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1 individuals with whom it has agreements, but to no others whom  
2 it knows or has reason to know are residents of New Mexico. If  
3 the denial is affirmed, subject to the administrator's order  
4 and Section 34 of the Uniform Debt-Management Services Act, the  
5 applicant shall continue to provide debt-management services to  
6 individuals with whom it has agreements until, with the  
7 approval of the administrator, it transfers the agreements to  
8 another registered provider or returns to the individuals all  
9 unexpended money that is under the applicant's control.

10 SECTION 12. REGISTRATION IN ANOTHER STATE.--If a  
11 provider or an affiliate of a provider holds a license or  
12 certificate of registration in another state authorizing it to  
13 provide debt-management services, the provider shall submit a  
14 copy of that license or certificate to the administrator  
15 together with the application in the form prescribed by  
16 Subsection A of Section 5, Section 6 or Subsection B of Section  
17 11 of the Uniform Debt-Management Services Act. A provider  
18 providing debt-management services to residents of New Mexico  
19 shall be registered to do so pursuant to the Uniform Debt-  
20 Management Services Act even if it holds a license or  
21 certificate of registration authorizing it to provide debt-  
22 management services in another state. The provider shall  
23 notify the administrator within ten days of the commencement  
24 and outcome of any proceedings in another state to revoke,  
25 suspend or deny the renewal of a license or a certificate of

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1 registration of the provider or an affiliate of the provider in  
2 that state.

3 SECTION 13. BOND REQUIRED.--

4 A. Except as otherwise provided in Section 14 of  
5 the Uniform Debt-Management Services Act, a provider that  
6 provides debt-management services to an individual whom it  
7 knows or reasonably should have known resides in New Mexico at  
8 the time of the agreement to provide such services shall file a  
9 surety bond with the attorney general until the delayed  
10 effective date, and with the administrator after the delayed  
11 effective date, which bond shall:

12 (1) be in effect during the period it provides  
13 debt-management services to such individuals and for two years  
14 after the provider ceases providing debt-management services to  
15 individuals in New Mexico; and

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

20 B. Subject to adjustment of the dollar amount  
21 pursuant to Subsection E of Section 32 of the Uniform Debt-  
22 Management Services Act, a surety bond filed pursuant to  
23 Subsection A of this section shall:

24 (1) be in the amount of two hundred fifty  
25 thousand dollars (\$250,000) or other larger or smaller amount

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1 that the administrator determines after the delayed effective  
2 date is warranted by the financial condition and business  
3 experience of the provider, the history of the provider in  
4 performing debt-management services, the risk to individuals  
5 and any other factor the administrator considers appropriate;

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

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

13 C. If the principal amount of a surety bond is  
14 reduced by payment of a claim or a judgment, the provider shall  
15 immediately notify the attorney general until the delayed  
16 effective date, and the administrator after the delayed  
17 effective date, and within thirty days after the notice shall  
18 file a new or additional surety bond. The amount of the new or  
19 additional bond shall be the amount of the bond immediately  
20 before payment of the claim or judgment. If for any reason a  
21 surety terminates a bond, the provider shall immediately file a  
22 new surety bond in the amount of two hundred fifty thousand  
23 dollars (\$250,000) or other amount determined pursuant to  
24 Subsection B of this section.

25 D. Subject to the provisions of Section 26 of the

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1 Uniform Debt-Management Services Act, the administrator, the  
2 attorney general or an individual may obtain satisfaction out  
3 of the surety bond procured pursuant to this section if:

4 (1) the administrator or the attorney general  
5 assesses expenses pursuant to Paragraph (1) of Subsection B of  
6 Section 32 of the Uniform Debt-Management Services Act, issues  
7 a final order pursuant to Paragraph (2) of Subsection A of  
8 Section 33 of that act or recovers a final judgment pursuant to  
9 Paragraph (4) or (5) of Subsection A or Subsection D of Section  
10 33 of that act; or

11 (2) an individual recovers a final judgment  
12 pursuant to Subsection A or B of Section 35 of the Uniform  
13 Debt-Management Services Act or Paragraph (1), (2) or (4) of  
14 Subsection C of that section.

15 E. Subject to the provisions of Section 26 of the  
16 Uniform Debt-Management Services Act, if claims against a  
17 surety bond exceed or are reasonably expected to exceed the  
18 amount of the bond, the administrator or the attorney general,  
19 on that official's own initiative or on petition of the surety  
20 or another interested person, shall, unless the proceeds are  
21 adequate to pay all costs, judgments and claims, distribute the  
22 proceeds in the following order:

23 (1) to satisfaction of a final order or  
24 judgment pursuant to Paragraph (2), (4) or (5) of Subsection A  
25 of Section 33 of the Uniform Debt-Management Services Act or

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1 Subsection D of that section;

2 (2) to final judgments recovered by  
3 individuals pursuant to Subsection A or B of Section 35 of the  
4 Uniform Debt-Management Services Act or Paragraph (1), (2) or  
5 (4) of Subsection C of that section, pro rata;

6 (3) to claims of individuals established to  
7 the satisfaction of the official administering claims against  
8 the bond, pro rata; and

9 (4) if a final order or judgment is issued  
10 pursuant to Subsection A of Section 33 of the Uniform Debt-  
11 Management Services Act, to the expenses charged pursuant to  
12 Paragraph (1) of Subsection B of Section 32 of that act.

13 SECTION 14. BOND REQUIRED--SUBSTITUTE.--

14 A. Instead of the surety bond required by Section  
15 13 of the Uniform Debt-Management Services Act, a provider may  
16 deliver to the administrator after the delayed effective date,  
17 in the amount required by Subsection B of that section, and,  
18 except as otherwise provided in Subparagraph (a) of Paragraph  
19 (2) of this subsection, payable or available to New Mexico and  
20 to individuals who reside in New Mexico when they agree to  
21 receive debt-management services from the provider, as their  
22 interests may appear, if the provider or its agent does not  
23 comply with the Uniform Debt-Management Services Act:

24 (1) a certificate of insurance:

25 (a) issued by an insurance company

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1 authorized to do business in New Mexico and rated at least A or  
2 equivalent by a nationally recognized rating organization  
3 approved by the administrator; and

4 (b) with no deductible, or if the  
5 provider supplies a bond in the amount of five thousand dollars  
6 (\$5,000), a deductible not exceeding five thousand dollars  
7 (\$5,000); or

8 (2) with the approval of the administrator:

9 (a) an irrevocable letter of credit,  
10 issued by a bank approved by the administrator, payable upon  
11 presentation of a certificate by the administrator stating that  
12 the provider or its agent has not complied with the Uniform  
13 Debt-Management Services Act, and otherwise satisfactory in  
14 form and substance to the administrator; or

15 (b) bonds or other obligations of the  
16 United States or guaranteed by the United States or bonds or  
17 other obligations of New Mexico or a political subdivision of  
18 New Mexico, to be deposited and maintained with a bank located  
19 in New Mexico and approved by the administrator for this  
20 purpose.

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

25 SECTION 15. REQUIREMENT OF GOOD FAITH.--A provider, a

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1 lead generator and each person to whom a provider delegates any  
2 of its duties pursuant to the Uniform Debt-Management Services  
3 Act shall act in good faith in all matters pursuant to that  
4 act.

5 SECTION 16. CUSTOMER SERVICE.--A provider that provides  
6 debt-management services to an individual whom it knows or  
7 reasonably should know resides in New Mexico at the time it  
8 agrees to provide such services shall maintain a toll-free  
9 communication system, staffed at a level that reasonably  
10 permits an individual to speak to a certified counselor,  
11 certified debt specialist or customer service representative,  
12 as appropriate, during ordinary business hours.

13 SECTION 17. PREREQUISITES FOR PROVIDING DEBT-MANAGEMENT  
14 SERVICES.--

15 A. Before providing debt-management services, a  
16 provider that provides debt-management services to an  
17 individual whom it knows or reasonably should know resides in  
18 New Mexico at the time it agrees to provide such services shall  
19 give the individual an itemized list of goods and services and  
20 the charges for each. The list shall be clear and conspicuous,  
21 be in a record that the individual may keep, whether or not the  
22 individual assents to an agreement, and describe the goods and  
23 services the provider offers:

24 (1) free of additional charge if the  
25 individual enters into an agreement;

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

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

6 "Set-up fee:  
7 \_\_\_\_\_  
8 (dollar amount of fee)

9 Monthly service fee:  
10 \_\_\_\_\_  
11 (dollar amount of fee or method of determining amount)

12 Settlement fee:  
13 \_\_\_\_\_  
14 (dollar amount of fee or method of determining amount)

15 Goods and services in addition to those provided in connection  
16 with a plan:

17 \_\_\_\_\_  
18 (item) (dollar amount or method of determining amount)

19 \_\_\_\_\_  
20 (item) (dollar amount or method of determining amount)".

21 B. A provider shall not furnish debt-management  
22 services unless the provider, through the services of a  
23 certified counselor or certified debt specialist:

24 (1) provides the individual with reasonable  
25 education about the management of personal finance;

1 (2) has prepared a financial analysis; and

2 (3) if the individual is to make regular,

3 periodic payments to a creditor or provider:

4 (a) has prepared a plan for the  
5 individual;

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

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

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

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

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

25 (3) with respect to all creditors identified

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

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

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

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

10 (d) all other creditors.

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

16 (1) of the name and business address of the  
17 provider;

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

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

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

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

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

8 (7) that the provider, who is not otherwise  
9 authorized or officially licensed, does not provide accounting  
10 or legal advice to individuals;

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

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

16 (10) that some creditors refuse to negotiate  
17 with debt-management providers.

18 E. If a provider may receive payments from an  
19 individual's creditors and the plan contemplates that the  
20 individual's creditors will reduce finance charges or fees for  
21 late payment, default or delinquency, the provider may comply  
22 with Subsection D of this section by providing the following  
23 disclosure, surrounded by black lines:

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

25 (1) Debt-management plans are not right for



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1 all individuals, and you may ask us to  
2 provide information about other ways,  
3 including bankruptcy, to deal with your  
4 debts.

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

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

9 \_\_\_\_\_  
10 *Name and business address of provider".*

11 F. If a provider will not receive payments from an  
12 individual's creditors and the plan contemplates that the  
13 individual's creditors will reduce finance charges or fees for  
14 late payment, default or delinquency, a provider may comply  
15 with Subsection D of this section by providing the following  
16 disclosure, surrounded by black lines:

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

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

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

25 \_\_\_\_\_

1                    *Name and business address of provider".*

2                    G. If an agreement contemplates that creditors will  
3 settle debts for less than the full principal amount of debt  
4 owed, a provider may comply with Subsection D of this section  
5 by providing the following disclosure, surrounded by black  
6 lines:

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

- 8                    (1) Our program is not right for all  
9 individuals, and you may ask us to  
10 provide information about bankruptcy and  
11 other ways to deal with your debts.
- 12                    (2) Nonpayment of your debts under our  
13 program may:
- 14                    · hurt your credit rating or credit scores;
  - 15                    · lead your creditors to increase finance and  
16 other charges; and
  - 17                    · lead your creditors to undertake  
18 activity, including lawsuits, to collect  
19 the debts.
- 20                    (3) Reduction of debt under our program may  
21 result in taxable income to you, even  
22 though you will not actually receive any  
23 money.

24 \_\_\_\_\_  
25                    *Name and business address of provider".*

1           SECTION 18. COMMUNICATION BY ELECTRONIC OR OTHER

2 MEANS.--

3           A. As used in this section:

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

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

10           B. A provider may satisfy the requirements of  
11 Section 17, 19 or 27 of the Uniform Debt-Management Services  
12 Act by means of the internet or other electronic means if the  
13 provider obtains a consumer's consent in the manner provided by  
14 Section 101(c)(1) of the federal act.

15           C. The disclosures and materials required by  
16 Sections 17, 19 and 27 of the Uniform Debt-Management Services  
17 Act shall be presented in a form that is capable of being  
18 accurately reproduced for later reference.

19           D. With respect to disclosure by means of an  
20 internet web site, the disclosure of the information required  
21 by Subsection D of Section 17 of the Uniform Debt-Management  
22 Services Act shall appear on one or more screens that:

23                   (1) contain no other information; and

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

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1           E. At the time of providing the materials and  
2 agreement required by Subsections C and D of Section 17 and  
3 Sections 19 and 27 of the Uniform Debt-Management Services Act,  
4 a provider shall inform the individual that upon electronic,  
5 telephonic or written request, it will send the individual a  
6 written copy of the materials and shall comply with a request  
7 as provided in Subsection F of this section.

8           F. If a provider is requested, before the  
9 expiration of ninety days after an agreement is completed or  
10 terminated, to send a written copy of the materials required by  
11 Subsections C and D of Section 17 and Sections 19 and 27 of the  
12 Uniform Debt-Management Services Act, the provider shall send  
13 the materials at no charge within three business days after the  
14 request is received, but the provider need not comply with a  
15 request more than once per calendar month or if it reasonably  
16 believes the request is made for purposes of harassment. If a  
17 request is made more than ninety days after an agreement is  
18 completed or terminated, the provider shall send within a  
19 reasonable time a written copy of the materials requested.

20           G. A provider that maintains an internet web site  
21 shall disclose on the home page of its web site or on a page  
22 that is clearly and conspicuously connected to the home page by  
23 a link that clearly reveals its contents:

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

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

3                   (3) the names of its principal officers.

4                   H. Subject to Subsection I of this section, if a  
5 consumer who has consented to electronic communication in the  
6 manner provided by Section 101 of the federal act withdraws  
7 consent as provided in the federal act, a provider may  
8 terminate its agreement with the consumer.

9                   I. If a provider wishes to terminate an agreement  
10 with a consumer pursuant to Subsection H of this section, it  
11 shall notify the consumer that it will terminate the agreement  
12 unless the consumer, within thirty days after receiving the  
13 notification, consents to electronic communication in the  
14 manner provided in Section 101(c) of the federal act. If the  
15 consumer consents, the provider may terminate the agreement  
16 only as permitted by Subparagraph (g) of Paragraph (6) of  
17 Subsection A of Section 19 of the Uniform Debt-Management  
18 Services Act.

19                   **SECTION 19. FORM AND CONTENTS OF AGREEMENT.--**

20                   A. An agreement shall:

- 21                               (1) be in a record;  
22                               (2) be dated and signed by the provider and  
23 the individual;  
24                               (3) include the name of the individual and the  
25 address where the individual resides;

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

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

5 (6) disclose:

6 (a) the services to be provided;

7 (b) the amount, or method of determining  
8 the amount, of all fees, individually itemized, to be paid by  
9 the individual;

10 (c) the schedule of payments to be made  
11 by or on behalf of the individual, including the amount of each  
12 payment, the date on which each payment is due and an estimate  
13 of the date of the final payment;

14 (d) if a plan provides for regular  
15 periodic payments to creditors: 1) each creditor of the  
16 individual to which payment will be made, the amount owed to  
17 each creditor and any concessions the provider reasonably  
18 believes each creditor will offer; and 2) the schedule of  
19 expected payments to each creditor, including the amount of  
20 each payment and the date on which it will be made;

21 (e) each creditor that the provider  
22 believes will not participate in the plan and to which the  
23 provider will not direct payment;

24 (f) how the provider will comply with  
25 its obligations pursuant to Subsection A of Section 27 of the

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1 Uniform Debt-Management Services Act;

2 (g) that the provider may terminate the  
3 agreement for good cause upon return of unexpended money of the  
4 individual;

5 (h) that the individual may terminate  
6 the agreement at any time, by giving written or electronic  
7 notice, in which event the individual will receive all  
8 unexpended money in the trust account;

9 (i) that the individual may contact the  
10 attorney general before the delayed effective date, or the  
11 administrator after the delayed effective date, with any  
12 questions or complaints regarding the provider; and

13 (j) the address, telephone number and  
14 internet address or web site of the attorney general before the  
15 delayed effective date and the administrator after the delayed  
16 effective date.

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

22 C. If the attorney general, before the delayed  
23 effective date, or the administrator, after the delayed  
24 effective date, supplies the provider with any information  
25 pursuant to Subparagraph (j) of Paragraph (6) of Subsection A

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1 of this section, the provider may comply with that requirement  
2 only by disclosing the information supplied by the attorney  
3 general or the administrator.

4 D. An agreement shall provide that:

5 (1) the individual authorizes any bank in  
6 which the provider or its agent has established a trust account  
7 to disclose to the administrator or the attorney general any  
8 financial records relating to the trust account; and

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

13 (a) the identity of the creditor; and

14 (b) the right of the individual to  
15 modify or terminate the agreement.

16 E. An agreement shall not confer a power of  
17 attorney to settle a debt, but may confer a power of attorney  
18 to negotiate with creditors of the individual on behalf of the  
19 individual. An agreement shall provide that the provider will  
20 obtain the assent of the individual after a creditor has  
21 assented to a settlement.

22 F. An agreement shall not:

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

25 (2) except as permitted by Section 2 of the



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1 Federal Arbitration Act or the Uniform Arbitration Act, contain  
2 a provision that modifies or limits otherwise available local  
3 forums or procedural rights, including the right to trial by  
4 jury or the right to proceed by class action where appropriate,  
5 that are generally available to the individual pursuant to law  
6 other than the Uniform Debt-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 20 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.

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1           **SECTION 20. TERMINATION OF AGREEMENT.--**

2           A. An individual may terminate an agreement at any  
3 time, without penalty or obligation, by giving the provider  
4 written or electronic notice.

5           B. A provider may terminate an agreement if an  
6 individual fails for sixty days to make payments required by  
7 the agreement or for other good cause.

8           C. If an agreement is terminated by either party:

9                   (1) the provider shall, within seven business  
10 days of termination, pay to the individual all money that the  
11 provider, its agent or a person administering a trust account  
12 has received from or on behalf of the individual, other than  
13 amounts previously disbursed to creditors or received pursuant  
14 to Section 23 of the Uniform Debt-Management Services Act; and

15                   (2) all powers of attorney granted by the  
16 individual to the provider are revoked and ineffective.

17           **SECTION 21. REQUIRED LANGUAGE.--**Unless the

18 administrator, by rule, provides otherwise after the delayed  
19 effective date, the disclosures and documents required by the  
20 Uniform Debt-Management Services Act shall be in English. If a  
21 provider communicates with an individual primarily in a  
22 language other than English, the provider shall furnish a  
23 translation into the other language of the disclosures and  
24 documents required by the Uniform Debt-Management Services Act.

25           **SECTION 22. TRUST ACCOUNT.--**

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1           A. All money paid to a provider by or on behalf of  
2 an individual for distribution to creditors pursuant to a plan  
3 is held in trust. Within two business days after receipt, the  
4 provider shall deposit the money in a trust account.

5           B. A provider may request or require an individual  
6 to place money in a trust account instead of paying money to  
7 the provider.

8           C. The trust account shall be in a bank account  
9 that is fully insured by the federal deposit insurance  
10 corporation and, unless the individual owns the account, shall:

11                   (1) be designated as a trust account or other  
12 account designated to indicate that the money in the account is  
13 not the money of the provider or its designee;

14                   (2) be administered by an entity that is not:

15                           (a) the provider; or

16                           (b) an affiliate of the provider; and

17                   (3) provide that any interest accruing on the  
18 individual's funds in the account is credited to the  
19 individual.

20           D. A person administering a trust account shall not  
21 give or accept any compensation from the provider in exchange  
22 for referrals of business involving debt-management services.

23           E. Upon termination of an agreement, a person  
24 administering a trust account shall, within seven business days  
25 of termination, pay to the individual all money received from

1 or on behalf of the individual, other than amounts properly  
2 disbursed to creditors or the provider.

3 F. Money in a trust account is not property of the  
4 provider or the person administering the account. The money  
5 belongs to each individual from whom or on whose behalf it was  
6 deposited and is not available to creditors of the person  
7 administering the account or creditors of the provider.

8 G. A person administering a trust account shall:

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

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

15 (a) the person administering the account  
16 may delay payment to the extent that a payment by the  
17 individual is not final; and

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

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

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1           H. A provider or person administering a trust  
2 account shall not include in the trust account money of persons  
3 other than individuals to whom the provider is furnishing  
4 debt-management services.

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

8           J. A person administering a trust account shall  
9 reconcile the trust account at least once a month. The  
10 reconciliation shall compare the cash balance in the trust  
11 account with the sum of the balances in each individual's  
12 account. If the provider or its designee has more than one  
13 trust account, each trust account shall be individually  
14 reconciled.

15           K. If a provider or person administering a trust  
16 account discovers, or has a reasonable suspicion of,  
17 embezzlement or other unlawful appropriation of money held in  
18 trust, the provider or person administering the account,  
19 respectively, immediately shall notify the attorney general  
20 before the delayed effective date, or the administrator after  
21 the delayed effective date, by a method or methods approved by  
22 the attorney general or, after the delayed effective date, the  
23 administrator. If either the administrator or the attorney  
24 general has not approved a method, then the notice shall be  
25 provided in a record sent by first class mail, and the record

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1 shall refer to this section of the Uniform Debt-Management  
2 Services Act. Unless the administrator by rule provides  
3 otherwise after the delayed effective date, within five days  
4 thereafter, the provider shall give notice to the attorney  
5 general, or to the administrator after the delayed effective  
6 date, describing the remedial action taken or to be taken.

7 L. Before relocating a trust account from one bank  
8 to another after the delayed effective date, a person  
9 administering the account shall inform the administrator of the  
10 name, business address and telephone number of the new bank.  
11 Within seven business days after a transfer after the delayed  
12 effective date, the person administering the account shall  
13 inform the administrator of the account number of the trust  
14 account at the new bank.

15 SECTION 23. FEES AND OTHER CHARGES.--

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

20 B. A provider shall not impose charges or receive  
21 payment for debt-management services until the provider and the  
22 individual have signed an agreement that complies with Sections  
23 19 and 28 of the Uniform Debt-Management Services Act.

24 C. If an individual assents to an agreement, a  
25 provider shall not impose a fee or other charge for educational

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1 or counseling services, or the like, except as otherwise  
2 provided in this subsection and Subsection D of Section 28 of  
3 the Uniform Debt-Management Services Act. After the delayed  
4 effective date, the administrator may authorize a provider to  
5 charge a fee based on the nature and extent of the educational  
6 or counseling services furnished by the provider.

7 D. Subject to adjustment of dollar amounts pursuant  
8 to Subsection E of Section 32 of the Uniform Debt-Management  
9 Services Act, the following rules apply:

10 (1) subject to the provisions of Paragraph (2)  
11 of this subsection, if an individual assents to a plan that  
12 contemplates that creditors will reduce finance charges or fees  
13 for late payment, default or delinquency, the provider may  
14 charge a fee not exceeding fifty dollars (\$50.00) for  
15 consultation, obtaining a credit report, setting up an account  
16 and the like;

17 (2) a provider shall not request or receive  
18 any compensation from or on behalf of an individual unless:

19 (a) the provider has secured the assent  
20 of the individual and at least one creditor of the individual  
21 to a change in the terms of a debt; and

22 (b) the individual has made a payment  
23 toward satisfying the modified terms of the debt;

24 (3) subject to the provisions of Paragraph (1)  
25 of this subsection, if an individual assents to a plan that

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1 contemplates that creditors will reduce finance charges or fees  
2 for late payment, default or delinquency, the provider may  
3 receive compensation in the form of a monthly service fee, not  
4 to exceed ten dollars (\$10.00) multiplied by the number of  
5 creditors remaining in a plan at the time the fee is assessed,  
6 but not more than fifty dollars (\$50.00) in any month;

7 (4) except as otherwise provided in Subsection  
8 C of this section, if an agreement contemplates that creditors  
9 will settle an individual's debts, including any interest  
10 accrued to the date of settlement for less than the principal  
11 amount of the debt:

12 (a) compensation for services in  
13 connection with settling a debt shall not exceed, with respect  
14 to each debt, thirty percent of the excess of the principal  
15 amount of the debt over the amount paid the creditor pursuant  
16 to the agreement; and

17 (b) if the debt is to be settled by  
18 installment payments: 1) the provider may receive this  
19 compensation in installments, made simultaneously with the  
20 individual's installment payments to the creditor; but 2) any  
21 such installment of the compensation shall not be a greater  
22 percentage of the provider's total compensation for settlement  
23 of that debt than the ratio of the settlement payment to the  
24 total settlement amount for that debt;

25 (5) a provider that receives fees pursuant to

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1 Paragraph (4) of this subsection shall not also impose or  
2 receive fees pursuant to Paragraph (1) or (3) of this  
3 subsection; and

4 (6) except as otherwise provided in Subsection  
5 D of Section 28 of the Uniform Debt-Management Services Act, if  
6 an individual does not assent to an agreement, a provider may  
7 receive for educational and counseling services it provides to  
8 the individual a fee not exceeding one hundred dollars (\$100)  
9 or, with the approval of the administrator after the delayed  
10 effective date, a larger fee. After the delayed effective  
11 date, the administrator may approve a fee larger than one  
12 hundred dollars (\$100) if the nature and extent of the  
13 educational and counseling services warrant the larger fee.

14 E. If, before the expiration of ninety days after  
15 the completion or termination of educational or counseling  
16 services, an individual assents to an agreement, the provider  
17 shall refund to the individual any fee paid pursuant to  
18 Paragraph (6) of Subsection D of this section.

19 F. Subject to adjustment of the dollar amount  
20 pursuant to Subsection E of Section 32 of the Uniform Debt-  
21 Management Services Act, if a payment to a provider by an  
22 individual pursuant to the Uniform Debt-Management Services Act  
23 is dishonored, a provider may impose a reasonable charge on the  
24 individual, not to exceed the lesser of twenty-five dollars  
25 (\$25.00) and the amount permitted by law other than that act.

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1           **SECTION 24. VOLUNTARY CONTRIBUTIONS.**--A provider shall  
2 not solicit a voluntary contribution from an individual or an  
3 affiliate of the individual for any service provided to the  
4 individual. A provider may accept voluntary contributions from  
5 an individual but, until thirty days after completion or  
6 termination of a plan, the aggregate amount of money received  
7 from or on behalf of the individual shall not exceed the total  
8 amount the provider may charge the individual pursuant to  
9 Section 23 of the Uniform Debt-Management Services Act.

10           **SECTION 25. VOIDABLE AGREEMENTS.**--

11           A. If a provider imposes a fee or other charge or  
12 receives money or other payments not authorized by Section 23  
13 or 24 of the Uniform Debt-Management Services Act, the  
14 individual may void the agreement and recover as provided in  
15 Section 35 of that act.

16           B. If a provider is not registered as required by  
17 the Uniform Debt-Management Services Act when an individual  
18 assents to an agreement, the agreement is voidable by the  
19 individual.

20           C. If an individual voids an agreement pursuant to  
21 Subsection B of this section, the provider does not have a  
22 claim against the individual for breach of contract, for  
23 restitution or for any cause or action.

24           **SECTION 26. NO DUTIES OF ADMINISTRATOR UNTIL DELAYED**  
25 **EFFECTIVE DATE--DUTIES OF ADMINISTRATOR ON AND AFTER DELAYED**

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1 EFFECTIVE DATE.--

2 A. Notwithstanding any other provision of the  
3 Uniform Debt-Management Services Act to the contrary, the  
4 administrator has no duties or responsibilities pursuant to  
5 that act until the delayed effective date.

6 B. Except as provided in Subsection D of this  
7 section, after the delayed effective date upon request of the  
8 administrator, the attorney general shall deliver to the  
9 administrator:

10 (1) the original bonds held by the attorney  
11 general pursuant to Section 13 of the Uniform Debt-Management  
12 Services Act and a copy of each record pertaining to those  
13 bonds;

14 (2) a copy of each complaint to the attorney  
15 general made by an individual against a provider, lead  
16 generator or other person pursuant to the Uniform Debt-  
17 Management Services Act and any document reflecting the  
18 disposition or outcome, if any, of that complaint;

19 (3) a copy of any report to the attorney  
20 general by any provider, lead generator or other person  
21 pursuant to any provision of the Uniform Debt-Management  
22 Services Act and any document reflecting the disposition or  
23 outcome, if any, of that report;

24 (4) a copy of any record obtained by the  
25 attorney general pursuant to Section 32 of the Uniform Debt-

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1 Management Services Act; and

2 (5) a copy of any record reflecting the  
3 outcome or disposition of each of the attorney general's  
4 enforcement, administrative and other actions pursuant to  
5 Section 32 or 33 of the Uniform Debt-Management Services Act.

6 C. Except as provided in Subsection D of this  
7 section, after the delayed effective date, the administrator  
8 shall have administrative and enforcement authority pursuant to  
9 the Uniform Debt-Management Services Act. After the delayed  
10 effective date, the attorney general shall continue to have  
11 investigative powers pursuant to Section 32 of that act in  
12 order to seek evidence to enforce laws other than the Uniform  
13 Debt-Management Services Act.

14 D. On the delayed effective date, if the attorney  
15 general is actively engaged in any investigative, enforcement,  
16 restitution or other proceedings or duties pursuant to Section  
17 32, 33 or other section of the Uniform Debt-Management Services  
18 Act, the attorney general may continue pursuing those  
19 proceedings and duties for as long after the delayed effective  
20 date as the attorney general determines to be in the public  
21 interest, and to that end may retain any original bonds and any  
22 other records for as long as the attorney general determines is  
23 necessary or desirable in connection with those proceedings and  
24 duties.

25 SECTION 27. PERIODIC REPORTS AND RETENTION OF RECORDS.--

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1           A. A provider shall provide the accounting required  
2 by Subsection B of this section:

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

5                   (2) before cancellation or termination of any  
6 agreement:

7                           (a) at least once each month; and

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

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

14                   (1) the amount of money received from the  
15 individual since the last report;

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

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

22                   (4) the amount held in reserve, which amount  
23 shall be held in a trust account pursuant to Section 22 of the  
24 Uniform Debt-Management Services Act; and

25                   (5) if, since the last report, a creditor has

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1 agreed to accept as payment in full an amount less than the  
2 principal amount of the debt owed by the individual:

3 (a) the total amount and terms of the  
4 settlement;

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

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

9 (d) the calculation of a settlement fee.

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

16 **SECTION 28. PROHIBITED ACTS AND PRACTICES.--**

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

18 (1) misappropriate or misapply money held in  
19 trust or received from or on behalf of an individual;

20 (2) settle a debt on behalf of an individual  
21 unless the individual assents to the settlement after the  
22 creditor has assented;

23 (3) take a power of attorney that authorizes  
24 it to settle a debt;

25 (4) exercise or attempt to exercise a power of

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1 attorney after an individual has terminated an agreement;

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

5 (a) a return of money to the individual;  
6 or

7 (b) before termination of an agreement,  
8 properly authorized by the agreement and the Uniform Debt-  
9 Management Services Act, and in compliance with any other law  
10 governing the payment, including the law governing electronic  
11 fund transfers, and for: 1) payment to one or more creditors  
12 pursuant to an agreement; or 2) payment of a fee;

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

15 (7) offer, pay or give a gift or bonus,  
16 premium, reward or other compensation to a lead generator or  
17 other person for referring a prospective customer, if the  
18 person making the referral:

19 (a) has a financial interest in the  
20 outcome of debt-management services provided to the customer,  
21 unless neither the provider nor the person making the referral  
22 communicates to the prospective customer the identity of the  
23 source of the referral; or

24 (b) compensates its employees on the  
25 basis of a formula that incorporates the number of individuals

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1 the employee refers to the provider;

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

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

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

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

20 (12) make a representation that:

21 (a) the provider will furnish money to  
22 pay bills or prevent attachments;

23 (b) payment of a certain amount will  
24 permit satisfaction of a certain amount or range of  
25 indebtedness; or

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

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

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

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

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

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

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

21 (17) require an individual participating in a  
22 debt-management program to utilize additional ancillary goods  
23 or services;

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

1                   (19) fail to provide promised services to any  
2 individual;

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

6                   (21) include in any debt-management services  
7 agreement any debt secured by a motor vehicle or real property;  
8 or

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

14                   B. If a provider furnishes debt-management services  
15 to an individual, the provider shall not, directly or  
16 indirectly:

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

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

21                                       (a) a promissory note or other  
22 negotiable instrument other than a check or a demand draft; or

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

24                               (3) lend money or provide credit to the  
25 individual, except as a deferral of a settlement fee at no

1 additional expense to the individual;

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

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

9 (a) the administrator, upon proper  
10 demand;

11 (b) a creditor of the individual, to the  
12 extent necessary to secure the cooperation of the creditor in a  
13 plan; or

14 (c) the extent necessary to administer  
15 the plan;

16 (6) except as otherwise provided in Paragraph  
17 (4) of Subsection D of Section 23 of the Uniform Debt-  
18 Management Services Act, provide the individual less than the  
19 full benefit of a compromise of a debt arranged by the  
20 provider;

21 (7) charge the individual for or provide  
22 credit or other insurance, coupons for goods or services,  
23 membership in a club, access to computers or the internet or  
24 any other matter not directly related to debt-management  
25 services or educational services concerning personal finance,

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1       except to the extent such services are expressly authorized by  
2       the administrator; or

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

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

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

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

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

24      or

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

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1           **SECTION 29. NOTICE OF LITIGATION.**--No later than thirty  
2 days after a provider or an affiliate of the provider has been  
3 served with notice of a civil action for violation of the  
4 Uniform Debt-Management Services Act or the Unfair Practices  
5 Act, or of fraud or misrepresentation by or on behalf of an  
6 individual who resides in New Mexico at either the time of an  
7 agreement or the time the notice is served, the provider shall  
8 notify the attorney general before the delayed effective date,  
9 or the administrator after the delayed effective date, in a  
10 record of the lawsuit.

11           **SECTION 30. ADVERTISING.**--

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

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

25           C. Advertising concerning debt-management services

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

5 SECTION 31. LIABILITY OF PROVIDER FOR THE CONDUCT OF  
6 OTHER PERSONS--UNLAWFUL CONDUCT BY OTHER PERSONS.--

7 A. If a provider delegates any of its duties or  
8 obligations pursuant to an agreement or the Uniform Debt-  
9 Management Services Act to a lead generator or other person,  
10 including an independent contractor, the provider is liable for  
11 conduct of the lead generator or other person that, if done by  
12 the provider, would violate the agreement or the Uniform  
13 Debt-Management Services Act.

14 B. A lead generator or other person that provides  
15 services to or for a provider shall not engage in an unfair,  
16 unconscionable or deceptive act or practice, including the  
17 knowing omission of any material information, in its  
18 interactions with an individual whom it has reason to believe  
19 is or may become a customer of the provider.

20 SECTION 32. POWERS OF ADMINISTRATOR AND ATTORNEY  
21 GENERAL.--

22 A. After the delayed effective date, the  
23 administrator may act on the administrator's own initiative or  
24 in response to complaints and may receive complaints, take  
25 action to obtain voluntary compliance with the Uniform Debt-

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1 Management Services Act, refer cases to the office of the  
2 attorney general and seek or provide remedies as provided in  
3 the Uniform Debt-Management Services Act.

4 B. The attorney general and, after the delayed  
5 effective date, the administrator, acting separately or  
6 together, may investigate and examine, in New Mexico or  
7 elsewhere, by subpoena or otherwise, the activities, books,  
8 accounts and records of a person that provides or offers to  
9 provide debt-management services, a person to which a provider  
10 has delegated its obligations pursuant to an agreement or the  
11 Uniform Debt-Management Services Act, a lead generator or a  
12 person that administers a trust account for a provider, to  
13 determine compliance with that act. Information that  
14 identifies individuals who have agreements with the provider  
15 shall not be disclosed to the public. In connection with the  
16 investigation, the administrator or the attorney general may:

17 (1) charge the person the reasonable expenses  
18 necessarily incurred to conduct the examination;

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

22 (3) seek a court order authorizing seizure,  
23 from a bank at which the person maintains a trust account, any  
24 or all money in the trust account, and the books, records,  
25 accounts and other property of the provider that is in the

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1 control of the bank.

2 C. After the delayed effective date, the  
3 administrator may adopt rules to implement the provisions of  
4 the Uniform Debt-Management Services Act.

5 D. The attorney general and, after the delayed  
6 effective date, the administrator may enter into cooperative  
7 arrangements with any other federal or state agency having  
8 authority over providers and may exchange with any of those  
9 agencies information about a provider, including information  
10 obtained during an examination of the provider.

11 E. After the delayed effective date, the  
12 administrator, by rule, shall adopt dollar amounts instead of  
13 those specified in Sections 2, 5, 9, 13, 23, 33 and 35 of the  
14 Uniform Debt-Management Services Act to reflect inflation, as  
15 measured by the United States bureau of labor statistics  
16 consumer price index for all urban consumers or, if that index  
17 is not available, another index adopted by rule by the  
18 administrator. When adopting the rule, the administrator shall  
19 adopt a base year and adjust the dollar amounts, effective on  
20 January 1 of each year beginning in 2016, if the change in the  
21 index from the base year, as of December 31 of the preceding  
22 year, is at least ten percent. The dollar amount shall be  
23 rounded to the nearest one hundred dollars (\$100), except that  
24 the amounts in Section 23 of the Uniform Debt-Management  
25 Services Act shall be rounded to the nearest dollar.

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1 F. After the delayed effective date, the  
2 administrator shall notify registered providers of any change  
3 in dollar amounts made pursuant to Subsection E of this section  
4 and make that information available to the public.

5 SECTION 33. ADMINISTRATIVE REMEDIES.--

6 A. Until the delayed effective date, the attorney  
7 general may enforce the Uniform Debt-Management Services Act,  
8 or after that date, the administrator may enforce that act, by  
9 taking one or more of the following actions:

10 (1) ordering a provider, a lead generator, a  
11 person administering a trust account or a director, employee or  
12 other agent of a provider to cease and desist from any  
13 violation;

14 (2) ordering a provider, a lead generator, a  
15 person administering a trust account or a person that has  
16 caused a violation to correct the violation, including making  
17 restitution of money or property to a person aggrieved by a  
18 violation;

19 (3) subject to adjustment of the dollar amount  
20 pursuant to Subsection E of Section 32 of the Uniform Debt-  
21 Management Services Act, imposing on a provider, lead generator  
22 or other person that has violated or caused a violation a civil  
23 penalty not exceeding ten thousand dollars (\$10,000) for each  
24 violation;

25 (4) prosecuting a civil action to:

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1 (a) enforce an order; or

2 (b) obtain restitution or an injunction  
3 or other equitable relief, or both; or

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

6 B. Subject to adjustment of the dollar amount  
7 pursuant to Subsection E of Section 32 of the Uniform Debt-  
8 Management Services Act, if a person violates or knowingly  
9 authorizes, directs or aids in the violation of a final order  
10 issued pursuant to Paragraph (1) or (2) of Subsection A of this  
11 section, the attorney general until the delayed effective date,  
12 or the administrator after that date, may impose a civil  
13 penalty not exceeding twenty thousand dollars (\$20,000) for  
14 each violation.

15 C. The attorney general until the delayed effective  
16 date, or the administrator after that date, may maintain an  
17 action to enforce the Uniform Debt-Management Services Act in  
18 any county, state or country.

19 D. The attorney general until the delayed effective  
20 date, or the administrator after that date, may recover the  
21 reasonable expenses of enforcing the Uniform Debt-Management  
22 Services Act pursuant to Subsections A through C of this  
23 section, including attorney and expert witness fees based on  
24 the hours reasonably expended and the hourly rates for  
25 attorneys and expert witnesses of comparable experience in the

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1 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 attorney general until the delayed effective date, or the  
5 administrator after that date, shall consider the seriousness  
6 of the violation, the good faith of the violator, any previous  
7 violations by the violator, the deleterious effect of the  
8 violation on the public, the net worth of the violator and any  
9 other factor the administrator or the attorney general  
10 considers relevant to the determination of the civil penalty.

11 F. The attorney general until the delayed effective  
12 date, or the administrator after the delayed effective date,  
13 shall provide by rule necessary or desirable procedures to  
14 implement the provisions of the Uniform Debt-Management  
15 Services Act.

16 SECTION 34. SUSPENSION, REVOCATION OR NONRENEWAL OF  
17 REGISTRATION.--

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

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

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

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

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1 amended.

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

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

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

10 (3) the provider is insolvent;

11 (4) the provider, an employee or affiliate of  
12 the provider, a lead generator, a person administering a trust  
13 account or a person to which the provider has delegated its  
14 obligations pursuant to an agreement or pursuant to the Uniform  
15 Debt-Management Services Act has refused to permit the  
16 administrator or the attorney general to make an examination  
17 authorized by that act, failed to comply with Paragraph (2) of  
18 Subsection B of Section 32 of that act within fifteen days  
19 after request or made a material misrepresentation or omission  
20 in complying with that paragraph;

21 (5) the provider has not responded within a  
22 reasonable time and in an appropriate manner to communications  
23 from the administrator; or

24 (6) the provider or any of its affiliates,  
25 owners, predecessor organizations or any person authorized to

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1 have access to a trust account has been convicted of a crime,  
2 made a plea of nolo contendere or incurred a judgment,  
3 administrative or enforcement action or license discipline in  
4 any jurisdiction that involves dishonesty, fraud, financial  
5 misconduct, deceit or the violation or alleged violation of  
6 state or federal securities laws or state or federal consumer  
7 protection laws, including the Uniform Debt-Management Services  
8 Act, or that is substantially related to the qualifications,  
9 functions or duties of the licensed activity.

10 C. If a provider or the person administering a  
11 trust account for the provider does not comply with Subsection  
12 A, G, H, I, J or K of Section 22 of the Uniform Debt-Management  
13 Services Act or if the administrator otherwise finds that the  
14 public health or safety or general welfare requires emergency  
15 action, the administrator may order a summary suspension of the  
16 provider's registration, effective on the date specified in the  
17 order.

18 D. If the administrator suspends, revokes or denies  
19 renewal of the registration of a provider, the administrator  
20 may seek a court order authorizing seizure of any or all of the  
21 money in a trust account and the books, records, accounts and  
22 other property of the provider that are located in New Mexico  
23 or elsewhere.

24 E. If the administrator suspends or revokes a  
25 provider's registration, the provider may appeal and request a

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1 hearing.

2 SECTION 35. PRIVATE ENFORCEMENT.--

3 A. If an individual voids an agreement pursuant to  
4 Subsection B of Section 25 of the Uniform Debt-Management  
5 Services Act, the individual may recover in a civil action all  
6 money paid or deposited by or on behalf of the individual  
7 pursuant to the agreement, except amounts paid to creditors, in  
8 addition to the recovery pursuant to Paragraphs (3) and (4) of  
9 Subsection C of this section.

10 B. If an individual voids an agreement pursuant to  
11 Subsection A of Section 25 of the Uniform Debt-Management  
12 Services Act, the individual may recover in a civil action  
13 three times the total amount of the fees, charges, money and  
14 payments made by the individual to the provider, in addition to  
15 the recovery pursuant to Paragraph (4) of Subsection C of this  
16 section.

17 C. Subject to Subsection D of this section, an  
18 individual with respect to whom a provider, lead generator or  
19 other person violates the Uniform Debt-Management Services Act  
20 may recover in a civil action from the provider, the lead  
21 generator, that person and any other person that caused the  
22 violation:

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

25 (2) except as otherwise provided in Subsection

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1 D of this section and subject to adjustment of the dollar  
2 amount pursuant to Subsection E of Section 32 of the Uniform  
3 Debt-Management Services Act, with respect to a violation of  
4 Section 17, 19, 20, 21, 22, 23, 24 or 27 or Subsection A, B or  
5 D of Section 28 of that act, the greater of the amount  
6 recoverable pursuant to Paragraph (1) of this subsection or  
7 five thousand dollars (\$5,000);

8 (3) punitive damages; and

9 (4) reasonable attorney and expert witness  
10 fees and other litigation expenses.

11 D. In a class action, except for a violation of  
12 Paragraph (5) of Subsection A of Section 28 of the Uniform  
13 Debt-Management Services Act, the minimum damages provided in  
14 Paragraph (2) of Subsection C of this section do not apply.

15 E. A provider is not liable pursuant to this  
16 section for a violation of the Uniform Debt-Management Services  
17 Act if the provider proves that the violation was not  
18 intentional and resulted from a good-faith error  
19 notwithstanding the maintenance of procedures reasonably  
20 adopted to avoid the error. An error of legal judgment with  
21 respect to a provider's obligations pursuant to the Uniform  
22 Debt-Management Services Act is not a good-faith error. If, in  
23 connection with a violation, the provider has received more  
24 money than authorized by an agreement or the Uniform Debt-  
25 Management Services Act, the defense provided by this

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1 subsection is not available unless the provider refunds the  
2 excess within two business days of learning of the violation.

3 F. The attorney general before the delayed  
4 effective date and the administrator after that date may assist  
5 an individual in enforcing a judgment against the surety bond  
6 or other security provided pursuant to Section 13 or 14 of the  
7 Uniform Debt-Management Services Act.

8 **SECTION 36. VIOLATION OF UNFAIR PRACTICES ACT.--**If an  
9 act or practice of a provider or other person violates both the  
10 Uniform Debt-Management Services Act and the Unfair Practices  
11 Act, an individual shall not recover under both for the same  
12 act or practice. This section shall not prevent the  
13 administrator or the attorney general from seeking injunctive  
14 relief pursuant to the Uniform Debt-Management Services Act or  
15 the Unfair Practices Act for the same act or practice, but  
16 neither shall recover damages, restitution or civil penalties  
17 pursuant to both acts for the same act or practice.

18 **SECTION 37. STATUTE OF LIMITATIONS.--**

19 A. An action or proceeding brought pursuant to  
20 Subsection A, B or C of Section 33 of the Uniform Debt-  
21 Management Services Act shall be commenced within four years  
22 after the conduct that is the basis of the complaint of the  
23 administrator or the attorney general.

24 B. An action brought pursuant to Section 35 of the  
25 Uniform Debt-Management Services Act shall be commenced within



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1 four years after the latest of:

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

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

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

8 (4) the provider's last accounting to the  
9 individual pursuant to Subsection A of Section 27 of the  
10 Uniform Debt-Management Services Act;

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

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

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

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1           **SECTION 38. UNIFORMITY OF APPLICATION AND**  
2 CONSTRUCTION.--In applying and construing the Uniform Debt-  
3 Management Services Act, consideration shall be given to the  
4 need to promote uniformity of the law with respect to its  
5 subject matter among states that enact it.

6           **SECTION 39. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL**  
7 **AND NATIONAL COMMERCE ACT.**--The Uniform Debt-Management  
8 Services Act modifies, limits and supersedes the federal  
9 Electronic Signatures in Global and National Commerce Act (15  
10 U.S.C. Section 7001, et seq.) but does not modify, limit or  
11 supersede Section 101(c) of that act (15 U.S.C. Section  
12 7001(c)) or authorize electronic delivery of any of the notices  
13 described in Section 103(b) of that act (15 U.S.C. Section  
14 7003(b)).

15           **SECTION 40. TRANSITIONAL PROVISION--APPLICATION TO**  
16 **EXISTING TRANSACTIONS.**--Transactions entered into before the  
17 Uniform Debt-Management Services Act takes effect and the  
18 rights, duties and interests resulting from them may be  
19 completed, terminated or enforced as required or permitted by a  
20 law amended, repealed or modified by the Uniform Debt-  
21 Management Services Act as though the amendment, repeal or  
22 modification had not occurred.

23           **SECTION 41. REPEAL.**--Sections 56-2-1 through 56-2-4 NMSA  
24 1978 (being Laws 1965, Chapter 80, Sections 1 through 4) are  
25 repealed.

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