

UNIFORM DEBT-MANAGEMENT SERVICES ACT

A BILL for an Act to create and enact chapter 13-XX of the North Dakota Century Code, relating to the regulation of debt settlement providers; to amend and reenact section 6-01-01.1 of the North Dakota Century Code, relating to the financial institutions regulatory fund; and to provide an effective date.

BE IT ENACTED BY THE LEGISLATIVE ASSEMBLY OF NORTH DAKOTA:

SECTION 1. ~~SHORT TITLE.~~ ~~This [act] may be cited as the Uniform Debt-~~
~~Management Services Act.~~ Chapter 13-XX of the North Dakota Century Code is created and
enacted as follows:

SECTION 2. 13-XX-01. DEFINITIONS. In this [act]:

(1) ~~“Administrator” means the [insert the name of the agency or entity that will be charged with enforcement of this act].~~

~~(2)~~ (1) “Affiliate”:

(A) with respect to an individual, means:

- (i) the spouse of the individual;
- (ii) a sibling of the individual or the spouse of a sibling;
- (iii) an individual or the spouse of an individual who is a lineal

ancestor or lineal descendant of the individual or the individual’s spouse;

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

Comment [AKW1]: Modeled after a combination of section 10 of the Illinois HB4781 and section 2 of the Uniform Debt Management Services Act.

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

and

(B) with respect to an entity, means:

(i) a person that directly or indirectly controls, is controlled by,

or is under common control with the entity;

(ii) an officer of, or an individual performing similar functions

with respect to, the entity;

(iii) a director of, or an individual performing similar functions

with respect to, the entity;

(iv) subject to adjustment of the dollar amount pursuant to

Section 32(f), a person that receives or received more than \$25,000 from the entity in either the current year or the preceding year or a person that owns more than 10 percent of, or an individual who is employed by or is a director of, a person that receives or received more than \$25,000 from the entity in either the current year or the preceding year;

(v) an officer or director of, or an individual performing

similar functions with respect to, a person described in subsubparagraph (i);

(vi) the spouse of, or an individual occupying the residence of,

an individual described in subsubparagraphs (i) through (v); or

(vii) an individual who has the relationship specified in

subparagraph (A)(iv) to an individual or the spouse of an individual described in subsubparagraphs (i) through (v).

(2) "Commissioner" means the commissioner of the department of financial institutions.

~~(3) "Agreement" means an agreement between a provider and an individual for the performance of debt management services.~~ "Consumer" means any person who purchases or contracts for the purchase of debt settlement services.

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

account or other means or device in which payments, deposits, or other transfers from a consumer are arranged, held, or transferred by or to a debt settlement provider for the accumulation of the consumer's funds in anticipation of proffering an adjustment or settlement of a debt or obligation of the consumer to a creditor on behalf of the consumer.

(5) ~~“Business address” means the physical location of a business, including the name and number of a street.~~ “Contract” means a contract or other legally binding agreement between a provider and an individual for the performance of debt-management services.

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

(B) ~~“Certified debt specialist” means an individual certified by a training program or certifying organization, approved by the administrator, that authenticates the competence of individuals providing education and assistance to other individuals in connection with debt management services in which an agreement contemplates that creditors will settle debts for less than the full principal amount of debt owed.~~

“Debt settlement provider” means any person engaging in, or holding itself out as engaging in, the business of providing debt settlement service in exchange for any fee or compensation, or any person who solicits for or acts on behalf of any person engaging in, or holding itself out as engaging in, the business of providing debt settlement service in exchange for any fee or compensation. “Debt settlement provider” does not include:

- a) attorneys licensed, or otherwise authorized, to practice in North Dakota who are engaged in the practice of law;
- b) escrow agents, accountants, broker dealers in securities, or investment

advisors in securities, when acting in the ordinary practice of their professions and through the entity used in the ordinary practice of their profession;

- c) any bank, agent of a bank, operating subsidiary of a bank, affiliate of a bank, trust company, savings and loan association, savings bank, credit union, crop credit association, development credit corporation, industrial development corporation, title insurance company, title insurance agent, independent escrowee or insurance company operating or organized under the laws of a state or the United States, or any other person authorized to make loans under State law while acting in the ordinary practice of that business;
 - d) any person who performs credit services for his or her employer while receiving a regular salary or wage when the employer is not engaged in the business of offering or providing debt settlement service;
 - e) a collection agency licensed pursuant to section 13-05 that is collecting a debt on its own behalf or on behalf of a third party;
 - f) a collection agency licensed pursuant to section 13-05 that is collecting a debt on its own behalf or on behalf of a third party;
 - g) any person while performing services incidental to the dissolution, winding up, or liquidating of a partnership, corporation, or other business enterprise; or
 - h) persons licensed chapter 13-10 when acting in the ordinary practice of their profession and not holding themselves out as debt settlement providers.
- 1) (7) ~~“Concessions” means assent to repayment of a debt on terms more favorable to an individual than the terms of the contract between the individual and a creditor.~~
- “Debt settlement service” means:

a) offering to provide advice or service, or acting as an intermediary between or on behalf of a consumer and one or more of a consumer's creditors, where the primary purpose of the advice, service, or action is to obtain a settlement, adjustment, or satisfaction of the consumer's unsecured debt to a creditor in an amount less than the full amount of the principal amount of the debt or in an amount less than the current outstanding balance of the debt; or

b) offering to provide services related to or providing services advising, encouraging, assisting, or counseling a consumer to accumulate funds for the primary purpose of proposing or obtaining or seeking to obtain a settlement, adjustment, or satisfaction of the consumer's unsecured debt to a creditor in an amount less than the full amount of the principal amount of the debt or in an amount less than the current outstanding balance of the debt.

~~(8) "Day" means calendar day.~~

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

(A) legal services provided in an attorney-client relationship by an attorney licensed or otherwise authorized to practice law in this state;

(B) accounting services provided in an accountant-client relationship by a certified public accountant licensed to provide accounting services in this state; or

(C) financial-planning services provided in a financial planner-client relationship by a member of a financial-planning profession whose members the ~~administrator~~ commissioner, by rule, determines are

(i) licensed by this state;

(ii) subject to a disciplinary mechanism;

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

(iv) subject to a continuing-education requirement.

(9) "Enrollment or set up fee" means any fee, obligation, or compensation paid or to be paid by the consumer to a debt settlement provider in consideration of or in connection with establishing a contract or other agreement with a consumer related to the provision of debt settlement service.

(10) ~~"Entity" means a person other than an individual.~~ "Maintenance fee" means any fee, obligation, or compensation paid or to be paid by the consumer on a periodic basis to a debt settlement provider in consideration of maintaining the relationship and services to be provided by a debt settlement provider in accordance with a contract with a consumer related to the provision of debt settlement service.

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

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

(12) "Principal amount of the debt" means the total amount or outstanding balance owed by a consumer to one or more creditors for a debt that is included in a contract for debt settlement service at the time when the consumer enters into a contract for debt settlement service.

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

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

~~(15) "Provider" means a person that provides, offers to provide, or agrees to~~

provide debt management services directly or through others.

~~(16)~~ (13) “Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(14) “Savings” means the difference between the principal amount of the debt and the amount paid by the debt settlement provider to the creditor or negotiated by the debt settlement provider and paid by the consumer to the creditor pursuant to a settlement negotiated by the debt settlement provider on behalf of the consumer as full and complete satisfaction of the creditor’s claim with regard to that debt.

~~(17)~~ (15) “Settlement fee” means ~~a charge imposed on or paid by an individual in connection with a creditor’s assent to accept in full satisfaction of a debt an amount less than the principal amount of the debt.~~ any fee, obligation, or compensation paid or to be paid by the consumer to a debt settlement provider in consideration of or in connection with a completed agreement or other arrangement on the part of a creditor to accept less than the principal amount of the debt as satisfaction of the creditor’s claim against the consumer.

16) Under this chapter, a person engages in conduct “willfully” if the person acted intentionally in the sense that the person was aware of what the person was doing.

~~(18) “Sign” means, with present intent to authenticate or adopt a record:~~

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

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

~~(19) “State” means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.~~

~~(20) “Trust account” means an account held by a provider that is:~~

(A) ~~established in an insured bank;~~
(B) ~~separate from other accounts of the provider or its designee;~~
(C) ~~designated as a trust account or other account designated to indicate that the money in the account is not the money of the provider or its designee; and~~
(D) ~~used to hold money of one or more individuals for disbursement to creditors of the individuals.~~

~~SECTION 3. EXEMPT AGREEMENTS AND PERSONS.~~

(a) ~~This [act] does not apply to an agreement with an individual who the provider has no reason to know resides in this state at the time of the agreement.~~

(b) ~~This [act] does not apply to a provider to the extent that the provider:~~

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

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

(c) ~~This [act] does not apply to the following persons or their employees when the person or the employee is engaged in the regular course of the person's business or profession:~~

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

(2) ~~a bank;~~

(3) ~~an affiliate, as defined in Section 2(2)(B)(i), of a bank if the affiliate is regulated by a federal or state banking regulatory authority; or~~

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

~~SECTION 4. (13-XX-02.) REGISTRATION [AND NOT FOR PROFIT STATUS] REQUIRED. License Required~~

It shall be unlawful for any person to act as a debt settlement provider except as

authorized by this Act and without first having obtained a license under this Act. A person engages in debt settlement in North Dakota if the debtor resides in North Dakota.

~~(a) Except as otherwise provided in subsection (b), a provider may not provide debt management services to an individual who it reasonably should know resides in this state at the time it agrees to provide the services, unless the provider is registered under this [act].~~

~~(b) If a provider is registered under this [act], subsection (a) does not apply to an employee or agent of the provider.~~

~~(c) The administrator shall maintain and publicize a list of the names of all registered providers.~~

~~[(d) A provider [whose agreements contemplate that creditors will reduce finance charges or fees for late payment, default, or delinquency] [whose agreements contemplate that creditors will settle debts for less than the full principal amount of debt owed] may be registered only if it is:~~

~~(1) organized and properly operating as a not for profit entity under the law of the state in which it was formed; and~~

~~(2) exempt from taxation under the Internal Revenue Code, 26 U.S.C. Section 501 [as amended]].~~

SECTION 5. (13-XX-03) APPLICATION FOR REGISTRATION; FORM, FEE, AND ACCOMPANYING DOCUMENTS. License. Every application for a debt settlement provider license, or for a renewal thereof, must be made upon forms designed and furnished by the Commissioner and must contain any information which the Commissioner shall deem necessary and proper. The Commissioner may further require any application to provide additional information which is not requested on the application form. The applicant must register with the North Dakota secretary of state if so required.

~~(a) An application for registration as a provider must be in a form prescribed by the administrator.~~

~~(b) Subject to adjustment of dollar amounts pursuant to Section 32(f), an application for registration as a provider must be accompanied by:~~

~~(1) the fee established by the administrator;~~

~~(2) the bond required by Section 13;~~

~~(3) identification of all trust accounts required by Section 22 and an irrevocable consent authorizing the administrator to review and examine the trust accounts;~~

~~(4) evidence of insurance in the amount of \$250,000:~~

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

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

~~(C) with a deductible not exceeding \$5,000;~~

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

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

~~(5) proof of compliance with [insert the citation to the statute specifying the prerequisites for an entity to do business in this state]; and~~

~~[(6) if the applicant is exempt from taxation under the Internal Revenue code, 26 U.S.C. Section 501[, as amended], evidence of that status].~~

13-XX-04. Fee and bond to accompany application for debt settlement license.

The application for license must be in writing, under oath, and in the form prescribed by

the Commissioner. The application must give the location where the business is to be

conducted and must contain any further information the Commissioner requires, including

the names and addresses of the partners, officers, directors, trustees, and the principal

Comment [AKW2]: Modeled after existing North Dakota law (13-04.1-04 and 13-05-04). Similar requirements exist under section 20 of Illinois HB4781 and sections 5 & 13 of the Uniform Debt Management Act.

owners or members, as will provide the basis for the investigation and findings contemplated by section 13-XX-03. At the time of making such application, the applicant shall include payment in the sum of four hundred dollars, which is not subject to refund, as a fee for investigating the application, and the sum of four hundred dollars for the annual license fee, and provide a surety bond in the sum of fifty thousand dollars or an additional amount as required by the Commissioner by rule. In addition, the applicant shall pay a fifty dollar annual fee for each branch location. Fees must be deposited in the financial institutions regulatory fund.

~~SECTION 6. APPLICATION FOR REGISTRATION: REQUIRED~~

~~INFORMATION.~~ ~~An application for registration must be signed under [oath] [penalty of false statement] and include:~~

- ~~(1) the applicant's name, principal business address and telephone number, and all other business addresses in this state, electronic mail addresses, and Internet website addresses;~~
- ~~(2) all names under which the applicant conducts business;~~
- ~~(3) the address of each location in this state at which the applicant will provide debt management services or a statement that the applicant will have no such location;~~
- ~~(4) the name and home address of each officer and director of the applicant and each person that owns at least 10 percent of the applicant;~~
- ~~(5) identification of every jurisdiction in which, during the five years immediately preceding the application:~~
 - ~~(A) the applicant or any of its officers or directors has been licensed or registered to provide debt management services; or~~

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

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

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

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

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

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

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

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

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

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

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

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

~~(A) any affiliate of the applicant; or~~

~~(B) any entity that provides products or services to the applicant or any individual relating to the applicant's debt management services;~~

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

~~(18) the identity of each director who is an affiliate, as defined in Section 2(2)(A) or (B)(i), (ii), (iv), (v), (vi), or (vii), of the applicant; and~~

~~(19) any other information that the administrator reasonably requires to perform the administrator's duties under Section 9.~~

SECTION 7. APPLICATION FOR REGISTRATION: OBLIGATION TO UPDATE INFORMATION. ~~An applicant or registered provider shall notify the administrator within 10 days after a change in the information specified in Section 5(b)(4) or (6) or 6(1), (3), (6), (12), or (13).~~

SECTION 8. APPLICATION FOR REGISTRATION: PUBLIC INFORMATION. ~~Except for the information required by Section 6 (7), (14), and (17) and the addresses required by Section 6(4), the administrator shall make the information in an application for registration as a provider available to the public.~~

SECTION 9. (13-XX-05.) CERTIFICATE OF REGISTRATION: ISSUANCE OR DENIAL. Qualifications for license. Upon the filing of the application and the approval of the bond and the payment of the specified fees, the Commissioner may issue a license if he or she finds all of the following:

- (1) The financial responsibility, experience, character, and general fitness of the applicant, managers, partners, officers and directors, are such as to command the confidence of the community and to warrant belief that the business will be operated fairly, honestly, and efficiently within the purposes of this Act.

- (2) The applicant, managers, partners, officers and directors, have not been convicted of a felony or a misdemeanor or disciplined with respect to a license or are not currently the subject of a license disciplinary proceeding concerning allegations involving dishonesty or untrustworthiness.
- (3) The applicant, managers, partners, officers and directors, have not had a record of having defaulted in the payment of money collected for others, including the discharge of those debts through bankruptcy proceedings.
- (4) The applicant, or any managers, partners, officers and directors have not previously violated any provision of this Act or any rule lawfully made by the Commissioner.
- (5) The applicant has not made any false statement or representation to the Commissioner in applying for a license under this Section.

~~(a) Except as otherwise provided in subsections (c) and (d), the administrator shall issue a certificate of registration as a provider to a person that complies with Sections 5 and 6.~~

~~(b) If an applicant has otherwise complied with Sections 5 and 6, including a timely effort to obtain the information required by Section 6(14) but the information has not been received, the administrator may issue a temporary certificate of registration. The temporary certificate shall expire no later than 180 days after issuance.~~

~~(c) The administrator may deny registration if:~~

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

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

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

~~(4) the administrator finds that the financial responsibility, experience,~~

character, or general fitness of the applicant or its owners, directors, employees, or agents does not warrant belief that the business will be operated in compliance with this [act].

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

(e) Subject to adjustment of the dollar amount pursuant to Section 32(f), a board of directors is not independent for purposes of subsection(d) if more than one fourth of its members:

(1) are affiliates of the applicant, as defined in Section 2(2)(A) or (B)(i), (ii), (iv), (v), (vi), or (vii); or

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

~~SECTION 10. CERTIFICATE OF REGISTRATION: TIMING.~~

(a) The administrator shall approve or deny an initial registration as a provider within 120 days after an application is filed. In connection with a request pursuant to Section 6(19) for additional information, the administrator may extend the 120 day period for not more than 60 days. Within seven days after denying an application, the administrator, in a record, shall inform the applicant of the reasons for the denial.

(b) If the administrator denies an application for registration as a provider or does not act on an application within the time prescribed in subsection (a), the applicant may appeal and request a hearing pursuant to [insert the citation to the appropriate section of the administrative procedure act or other statute governing administrative procedure].

(c) Subject to Sections 11(d) and 34, a registration as a provider is valid for one year.

~~SECTION 11. (13-XX-06)- Expiration and RENEWAL OF REGISTRATION~~ license.

All licenses required herein expire on December thirty-first of each year and may be

renewed. Renewals are effective the succeeding January first. Applications for renewal must be submitted at least thirty days before the expiration of the license and must be accompanied by the required annual fees, which are not subject to refund. The form and content of renewal applications must be determined by the Commissioner, and a renewal application may be denied upon the same grounds as would justify denial of an initial application. When a licensee has been delinquent in renewing the licensee's license, the Commissioner may charge an additional fee of fifty dollars for the renewal of such license. A debt settlement provider license is not transferable. If the Commissioner determines that an ownership change has occurred in a sole proprietorship, partnership, limited liability partnership, corporation, or limited liability corporation that was previously granted a debt settlement provider license, the Commissioner may require a new application from the purchaser. The application must be filed at least thirty days prior to the date on which the change of ownership is consummated.

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

~~(b) An application for renewal of registration as a provider must be in a form prescribed by the administrator, signed under [oath] [penalty of false statement], and:~~

~~(1) be filed no fewer than 30 and no more than 60 days before the registration expires;~~

~~(2) be accompanied by the fee established by the administrator and the~~

bond required by Section 13;

~~(3) contain the matter required for initial registration as a provider by Section 6(8) and (9) and a financial statement, audited by an accountant licensed to conduct audits, for the applicant's fiscal year immediately preceding the application;~~

~~(4) disclose any changes in the information contained in the applicant's application for registration or its immediately previous application for renewal, as applicable. If an application is otherwise complete and the applicant has made a timely effort to obtain the information required by Section 6(14) but the information has not been received, the administrator may issue a temporary renewal of registration. The temporary renewal shall expire no later than 180 days after issuance;~~

~~(5) supply evidence of insurance in an amount equal to the larger of \$250,000 or the highest daily balance in the trust account required by Section 22 during the six-month period immediately preceding the application:~~

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

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

~~(C) with a deductible not exceeding \$5,000;~~

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

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

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

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

~~(8) provide any other information that the administrator reasonably requires to perform the administrator's duties under this section.~~

~~(c) Except for the information required by Section 6(7), (14), and (17) and the addresses required by Section 6(4), the administrator shall make the information in an application for renewal of registration as a provider available to the public.~~

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

~~(e) If the administrator denies an application for renewal of registration as a provider, the applicant, within 30 days after receiving notice of the denial, may appeal and request a hearing pursuant to [insert the citation to the appropriate section of the Administrative Procedure Act or other statute governing administrative procedure]. Subject to Section 34, while the appeal is pending the applicant shall continue to provide debt management services to individuals with whom it has agreements. If the denial is affirmed, subject to the administrator's order and Section 34, the applicant shall continue to provide debt management services to individuals with whom it has agreements until, with the approval of the administrator, it transfers the agreements to another registered provider or returns to the individuals all unexpended money that is under the applicant's control.~~

SECTION 12. REGISTRATION IN ANOTHER STATE. ~~If a provider holds a license or certificate of registration in another state authorizing it to provide debt management services, the provider may submit a copy of that license or certificate and the application for it instead of an application in the form prescribed by Section 5(a), 6, or 11(b). The administrator shall accept the application and the license or certificate from the other state as an application for registration as a provider or for renewal of registration as a provider, as appropriate, in this state if:~~

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

~~(2) the applicant provides the information required by Section 6(1), (3), (10), (12), and (13); and~~

~~(3) the applicant, under [oath] [penalty of false statement], certifies that the information contained in the application is current or, to the extent it is not current, supplements the application to make the information current.~~

13-XX-07. Application for license: obligation to update information. An applicant

Comment [AKW3]: Modeled after section 7 of the Uniform Debt Management Act.

or registered provider shall notify the Commissioner within 10 days after a change in the information provided within the any application.

13-XX-08. Records – Annual reports – Biennial report.

Comment [AKW4]: Modeled after existing North Dakota law (13-03.1-10 - repealed). Similar requirements exist under section 33 of Illinois HB4781.

1. Every licensee shall maintain records in conformity with generally accepted accounting principles and practices in a manner that will enable the Commissioner to determine whether the licensee is complying with this chapter. The records of a licensee may be maintained electronically provided all records can be reproduced upon request of the Commissioner and within the required statutory timeframe outlined in this section.
2. On or before July thirty-first each year, the parent company of each licensee shall file with the Commissioner a composite annual report in the form prescribed by the Commissioner relating to services provided by licensees.

13-XX-09. Approval or denial of a license. Any complete application for a license

Comment [AKW5]: Modeled after section 45 of Illinois HB4781. Similar requirements exist under section 10 of the Uniform Debt Management Act.

shall be approved or denied within 60 days after the filing of the complete application with the Commissioner.

13-XX-10. Revocation of license - Suspension of license - Surrender of license.

Comment [AKW6]: Modeled after existing North Dakota law (13-05-08). Similar requirements exist under section 50 of Illinois HB4781 and section 34 of the Uniform Debt Management Act.

1. The Commissioner may, if the Commissioner has reason to believe that grounds for revocation of a license exist, send by registered or certified mail

to the licensee, a notice of hearing stating the contemplated action and in general the grounds thereof and setting the time and place for a hearing thereon. Such hearing must be held in accordance with chapter 28-32 as must any appeal therefrom. Grounds for revocation of a license shall include the following:

- a) any debt settlement provider has failed to pay the annual license fee or to maintain in effect the bond required under the provisions of this Act;
- b) the debt settlement provider has violated any provisions of this Act or any rule lawfully made by the Commissioner under the authority of this Act;
- c) any fact or condition exists that, if it had existed at the time of the original application for a license, would have warranted the Commissioner in refusing its issuance; or
- d) any applicant has made any false statement or representation to the Commissioner in applying for a license under this Act.

2. If the Commissioner finds that probable cause for revocation of any license exists and that enforcement of the chapter requires immediate suspension of such license pending investigation, the Commissioner may, upon written notice, enter an order suspending such license for a period not exceeding

thirty days, pending the holding of a hearing as prescribed in this chapter.

3. Any licensee may surrender the licensee's license by delivering it to the Commissioner with written notice of its surrender, but such surrender does not affect the licensee's civil or criminal liability for acts committed prior thereto.

13-XX-11. Suspension and removal of debt settlement provider officers and employees.

1. The Commissioner may issue and serve upon a debt settlement provider officer or employee, and upon the licensee involved, a complaint stating the basis for the Commissioner's belief that the officer or employee is willfully engaging or has willfully engaged in any of the following conduct:
- a. Violating a law, rule, order, or written agreement with the Commissioner;
- b. Engaging in harassment or abuse, the making of false or misleading representations, engaging in unfair practices involving debt settlement, or engaging in prohibited acts and practices under section 13-XX-23;
- or

Comment [AKW7]: Modeled after existing North Dakota law (13-04.1-08.1, 13-05-06.1 and 13-08-14.1).

- c. Performing an act of commission or omission or practice which is a breach of trust or a breach of fiduciary duty.
2. The complaint must contain a notice of opportunity for hearing pursuant to chapter 28-32.
3. If a hearing is not requested within twenty days of the date the complaint is served upon the officer or employee, or if a hearing is held and the Commissioner finds that the record so warrants, the Commissioner may enter an order suspending or temporarily removing the employee or officer from office for a period not exceeding three years from the effective date of the suspension or temporary removal.
4. A contested or default suspension or temporary removal order is effective immediately upon service of the order on the officer or employee and upon the licensee. A consent order is effective as agreed. An officer or employee suspended or temporarily removed from office pursuant to this section is not eligible, while under suspension, for reinstatement to a position with a debt settlement provider.
5. When an officer or employee, or other person participating in the conduct of

the affairs of a licensee is charged with a felony in state or federal court which involves dishonesty or breach of trust, the Commissioner may immediately suspend the person from office or prohibit the person from further participation in the affairs of the debt settlement provider, or both. The order is effective immediately upon service of the order on the licensee and the person charged and remains in effect until the criminal charge is finally disposed of or until modified by the Commissioner. If a judgment of conviction, federal pretrial diversion, or similar state order or judgment is entered, the Commissioner may order that the suspension or prohibition be made permanent. A finding of not guilty or other disposition of the charge does not preclude the Commissioner from pursuing administrative or civil remedies.

13-XX-12. Advertising and marketing practices.

- 1) A debt settlement provider shall not represent, expressly or by implication, any results or outcomes of its debt settlement services in any advertising, marketing, or other communication to consumers unless the debt settlement provider possesses substantiation for such representation at the time such representation is made.

Comment [AKW8]: Modeled after section 105 of Illinois HB4781. Similar requirements exist under section 30 of the Uniform Debt Management Act.

2) A debt settlement provider shall not, expressly or by implication, make any unfair or deceptive representations, or any omissions of material facts, in any of its advertising or marketing communications concerning debt settlement services.

3) All advertising and marketing communications concerning debt settlement services shall disclose the following material information clearly and conspicuously:

“Debt settlement services are not appropriate for everyone. Failure to pay your monthly bills in a timely manner will result in increased balances and will harm your credit rating. Not all creditors will agree to reduce principal balance, and they may pursue collection, including lawsuits.”

SECTION 13. BOND REQUIRED.

~~(a) Except as otherwise provided in Section 14, a provider that is required to be registered under this [act] shall file a surety bond with the administrator, which must:~~

~~(1) be in effect during the period of registration and for two years after the provider ceases providing debt management services to individuals in this state; and~~

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

~~(b) Subject to adjustment of the dollar amount pursuant to Section 32(f), a surety bond filed pursuant to subsection (a) must:~~

~~(1) be in the amount of \$50,000 or other larger or smaller amount that the administrator determines is warranted by the financial condition and business experience of the provider, the history of the provider in performing debt management services, the risk to individuals, and any other factor the administrator considers appropriate;~~

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

~~(3) have payment conditioned upon noncompliance of the provider or its~~

agent with this [act].

~~(c) If the principal amount of a surety bond is reduced by payment of a claim or a judgment, the provider shall immediately notify the administrator and, within 30 days after notice by the administrator, file a new or additional surety bond in an amount set by the administrator. The amount of the new or additional bond must be at least the amount of the bond immediately before payment of the claim or judgment. If for any reason a surety terminates a bond, the provider shall immediately file a new surety bond in the amount of \$50,000 or other amount determined pursuant to subsection (b).~~

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

~~(1) the administrator assesses expenses under Section 32(b)(1), issues a final order under Section 33(a)(2), or recovers a final judgment under Section 33(a)(4) or (5) or (d); or~~

~~(2) an individual recovers a final judgment pursuant to Section 35(a), (b), or (c)(1), (2), or (4).~~

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

~~(1) to satisfaction of a final order or judgment under Section 33(a)(2), (4), or (5) or (d);~~

~~(2) to final judgments recovered by individuals pursuant to Section 35(a), (b), or (c) (1), (2) or (4), pro rata;~~

~~(3) to claims of individuals established to the satisfaction of the administrator, pro rata; and~~

~~(4) if a final order or judgment is issued under Section 33(a), to the expenses charged pursuant to Section 32(b)(1).~~

~~SECTION 14. BOND REQUIRED: SUBSTITUTE.~~

~~(a) Instead of the surety bond required by Section 13, a provider may deliver to the administrator, in the amount required by Section 13(b), and, except as otherwise provided in~~

paragraph (2)(A), payable or available to this state and to individuals who reside in this state when they agree to receive debt management services from the provider, as their interests may appear, if the provider or its agent does not comply with this [act]:

~~(1) a certificate of insurance~~

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

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

~~(2) with the approval of the administrator:~~

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

~~(B) bonds or other obligations of the United States or guaranteed by the United States or bonds or other obligations of this state or a political subdivision of this state, to be deposited and maintained with a bank approved by the administrator for this purpose.~~

~~(b) If a provider furnishes a substitute pursuant to subsection (a), the provisions of Section 13(a), (c), (d), and (e) apply to the substitute.~~

13-XX-13. Contracts, books and records. Each debt settlement provider shall furnish to the Commissioner, when requested, a copy of the contract entered into between the debt settlement provider and the debtor. The debt settlement provider shall furnish the debtor with a copy of the written contract at the time of execution, which shall set forth the charges, if any, agreed upon for the services of the debt settlement provider.

Each debt settlement provider shall maintain records and accounts that will enable any debtor contracting with the debt settlement provider, at any reasonable time, to ascertain the status of all the debtor's accounts with the debt settlement service provider, including, but not limited to, the amount of any fees paid by the

Comment [AKW9]: Modeled after section 55 of Illinois HB4781. Similar requirements exist under section 27 of the Uniform Debt Management Act.

debtor, amount held in trust (if applicable), settlement offers made and received on each of the debtor's accounts, and legally enforceable settlements reached with the debtor's creditors. A statement showing the total amount received and the total disbursements to each creditor shall be furnished by the debt settlement provider to any individual within 7 days after a request therefor by the said debtor. Each debt settlement provider shall issue a receipt for each payment made by the debtor at a debt settlement provider office. Each debt settlement provider shall prepare and retain in the file of each debtor a written analysis of the debtor's income and expenses to substantiate that the plan of payment is feasible and practical.

13-XX-14. Trust funds; requirements and restrictions.

- 1) All funds received by a debt settlement provider or his agent from and for the purpose of paying bills, invoices, or accounts of a debtor shall constitute trust funds owned by and belonging to the debtor from whom they were received. All such funds received by the debt settlement provider shall be separated from the funds of the debt settlement provider not later than the end of the business day following receipt by the debt settlement provider. All such funds shall be kept separate and apart at all times from funds belonging to the debt settlement provider or any of its officers, employees, or agents and may be used for no purpose other than paying bills, invoices, or accounts of the debtor. All such trust funds received at the main or branch offices of a debt settlement provider shall be deposited in a bank in an account in the name of the debt settlement provider—designated trust account, or by some other appropriate name indicating that the funds are not the funds of the debt settlement provider or its officers, employees, or agents, on or before the close of the business day following receipt.

Comment [AKW10]: Modeled after section 65 of Illinois HB4781. Similar requirements exist under section 22 of the Uniform Debt Management Act.

- 2) Such funds are not subject to attachment, lien, levy of execution, or sequestration by order of court except by a debtor for whom a debt settlement provider is acting as an agent in paying bills, invoices, or accounts.
- 3) At least once every month, the debt settlement provider shall render an accounting to the debtor that shall itemize the total amount received from the debtor, the total amount paid each creditor, the amount of charges deducted, and any amount held in reserve, if applicable, and the status of each of the debtors' enrolled accounts. A debt settlement provider shall, in addition, provide such an accounting to a debtor within 7 days after written demand, but not more than 3 times per 6-month period.
- 4) Nothing in this Act requires the establishment of a trust account if no consumer funds other than earned settlement fees are held or controlled by a debt settlement provider.

SECTION 15. (13-XX-15) REQUIREMENT OF GOOD FAITH. A provider shall act in good faith in all matters under this ~~act~~ chapter.

SECTION 16. (13-XX-16) CUSTOMER SERVICE. A provider that is required to be registered under this ~~act~~ chapter shall maintain a toll-free communication system, staffed at a level that reasonably permits an individual to speak to a certified counselor, ~~certified debt specialist~~, or customer-service representative, as appropriate, during ordinary business hours.

SECTION 17. (13-XX-17) PREREQUISITES FOR PROVIDING DEBT-MANAGEMENT SERVICES. Required pre-sale consumer disclosures and warnings.

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

- ~~(1) free of additional charge if the individual enters into an agreement;~~
- ~~(2) for a charge if the individual does not enter into an agreement; and~~

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

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

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

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

~~(2) has prepared a financial analysis; and~~

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

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

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

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

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

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

~~(2) inform the individual of the availability, at the individual's option, of~~

assistance by a toll-free communication system or in person to discuss the financial analysis and plan required by subsection (b); and

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

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

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

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

~~(D) all other creditors.~~

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

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

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

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

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

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

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

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

IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

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

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

Name and business address of provider

~~(f) If a provider will not receive payments from an individual's creditors and the plan contemplates that the individual's creditors will reduce finance charges or fees for late payment, default, or delinquency, a provider may comply with subsection (d) by providing the following disclosure, surrounded by black lines:~~

~~IMPORTANT INFORMATION FOR YOU TO CONSIDER~~

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

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

Name and business address of provider

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

~~IMPORTANT INFORMATION FOR YOU TO CONSIDER~~

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

~~(2) Nonpayment of your debts under our program may~~

~~—X hurt your credit rating or credit scores;~~

~~—X lead your creditors to increase finance and other charges; and~~

~~—X lead your creditors to undertake activity, including lawsuits, to collect the debts.~~

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

Name and business address of provider

- 1) Before the consumer signs a contract, the debt settlement provider shall provide an oral and written notice to the consumer that clearly and conspicuously discloses all of the following:
 - a) Debt settlement services may not be suitable for all consumers.
 - b) Using a debt settlement service likely will harm the consumer's credit history and credit score.
 - c) Using a debt settlement service does not stop creditor collection activity, including creditor lawsuits and garnishments.
 - d) Not all creditors will accept a reduction in the balance, interest rate, or fees a consumer owes.
 - e) The consumer should inquire about other means of dealing with debt, including, but not limited to, nonprofit credit counseling and bankruptcy.
 - f) The consumer remains obligated to make periodic or scheduled payments to creditors while participating in a debt settlement plan, and that the debt settlement provider will not make any periodic or scheduled payments to creditors on behalf of the consumer.
 - g) The failure to make periodic or scheduled payments to a creditor is likely to:
 1. harm the consumer's credit history, credit rating, or credit score;
 2. lead the creditor to increase lawful collection activity, including litigation, garnishment of the consumer's wages, and judgment liens on the consumer's property; and
 3. lead to the imposition by the creditor of interest charges, late fees, and other penalty fees, increasing the principal amount of the debt.
 - h) The amount of time estimated to be necessary to achieve the represented results.

- i) The estimated amount of money or the percentage of debt the consumer must accumulate before a settlement offer will be made to each of the consumer's creditors.
 - j) A statement indicating that debt settlement providers are licensed and regulated by the North Dakota Department of Financial Institutions and any complaints regarding the services of a debt settlement provider should be directed to the North Dakota Department of Financial Institutions at 2000 Schafer Street, Suite G, Bismarck, North Dakota 58501-1204.
- 2) The consumer shall sign and date an acknowledgment form entitled "Consumer Notice and Rights Form" that states: "I, the debtor, have received from the debt settlement provider a copy of the form entitled "Consumer Notice and Rights Form". The debt settlement provider or its representative shall also sign and date the acknowledgment form, which includes the name and address of the debt settlement services provider. The acknowledgment form shall be in duplicate and incorporated into the "Consumer Notice and Rights Form". The original acknowledgment form shall be retained by the debt settlement provider, and the duplicate copy shall be retained within the form by the consumer.
- If the acknowledgment form is in electronic form, then it shall contain the consumer disclosures required by Section 101(c) of the federal Electronic Signatures in Global and National Commerce Act.
- 3) The requirements of this Section are satisfied if the provider provides the following warning verbatim, both orally and in writing, with the caption "CONSUMER NOTICE AND RIGHTS FORM" in at least 28—point font and the remaining portion in at least 14—point font, to a consumer before the consumer signs a contract for the debt settlement provider's services:

"CONSUMER NOTICE AND RIGHTS FORM

CAUTION

We CANNOT GUARANTEE that you successfully will reduce or eliminate your debt.

If you stop paying your creditors, there is a strong likelihood some or all of the following may happen:

- CREDITORS MAY STILL CONTACT YOU AND TRY TO COLLECT.
- CREDITORS MAY STILL SUE YOU FOR THE MONEY YOU OWE.
- YOUR WAGES OR BANK ACCOUNT MAY STILL BE GARNISHED.
- YOUR CREDIT RATING AND CREDIT SCORE LIKELY WILL BE HARMED.
- NOT ALL CREDITORS WILL AGREE TO ACCEPT A BALANCE REDUCTION.
- YOU SHOULD CONSIDER ALL YOUR OPTIONS FOR ADDRESSING YOUR DEBT, SUCH AS CREDIT COUNSELING AND BANKRUPTCY FILING.
- THE AMOUNT OF MONEY YOU OWE MAY INCREASE DUE TO CREDITOR IMPOSITION OF INTEREST CHARGES, LATE FEES, AND OTHER PENALTY FEES.
- EVEN IF WE DO SETTLE YOUR DEBT, YOU MAY STILL BE REQUIRED TO PAY TAXES ON THE AMOUNT FORGIVEN.

YOUR RIGHT TO CANCEL

If you sign a contract with a Debt Settlement Provider, you have the right to

cancel at any time and receive a full refund of all unearned fees you have paid to the provider and all funds placed in your settlement fund that have not been paid to any creditors.

IF YOU ARE DISSATISFIED
OR YOU HAVE QUESTIONS

If you are dissatisfied with a debt settlement provider or have any questions, please bring it to the attention of the North Dakota Department of Financial Institutions, 2000 Schafer Street, Suite G, Bismarck, North Dakota 58501-1204.

I, the debtor, have received from the debt settlement provider a copy of the form entitled Consumer Notice and Rights Form.

Signed: _____

Printed name: _____ ”

~~SECTION 18. COMMUNICATION BY ELECTRONIC OR OTHER MEANS.~~

~~(a) In this section:~~

~~(1) “Federal act” means the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.[, as amended].~~

~~(2) “Consumer” means an individual who seeks or obtains goods or services that are used primarily for personal, family, or household purposes.~~

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

~~(c) The disclosures and materials required by Sections 17, 19, and 27 shall be~~

presented in a form that is capable of being accurately reproduced for later reference.

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

~~(1) contain no other information; and~~

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

~~(e) At the time of providing the materials and agreement required by Sections 17(e) and (d), 19, and 27, a provider shall inform the individual that upon electronic, telephonic, or written request, it will send the individual a written copy of the materials, and shall comply with a request as provided in subsection (f).~~

~~(f) If a provider is requested, before the expiration of 90 days after an agreement is completed or terminated, to send a written copy of the materials required by Section 17(e) and (d), 19, or 27, the provider shall send them at no charge within three business days after the request is received, but the provider need not comply with a request more than once per calendar month or if it reasonably believes the request is made for purposes of harassment. If a request is made more than 90 days after an agreement is completed or terminated, the provider shall send within a reasonable time a written copy of the materials requested.~~

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

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

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

~~(3) the names of its principal officers.~~

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

~~(i) If a provider wishes to terminate an agreement with a consumer pursuant to subsection (h), it shall notify the consumer that it will terminate the agreement unless the consumer, within 30 days after receiving the notification, consents to electronic communication in the manner provided in Section 101(e) of the federal act. If the consumer consents, the~~

~~provider may terminate the agreement only as permitted by Section 19(a)(6)(G).~~

13-XX-18. Individualized financial analysis.

- 1) Prior to entering into a written contract with a consumer, a debt settlement provider shall prepare and provide to the consumer in writing and retain a copy of:
 - a) an individualized financial analysis, including the individual's income, expenses, and debts; and
 - b) a statement containing a good faith estimate of the length of time it will take to complete the debt settlement program, the total amount of debt owed to each creditor included in the debt settlement program, the total savings estimated to be necessary to complete the debt settlement program, and the monthly targeted savings amount estimated to be necessary to complete the debt settlement program.
- 2) A debt settlement provider shall not enter into a written contract with a consumer unless it makes written determinations, supported by the financial analysis, that:
 - a) the consumer can reasonably meet the requirements of the proposed debt settlement program, including the fees and the periodic savings amounts set forth in the savings goals; and
 - b) the debt settlement program is suitable for the consumer at the time the contract is to be signed.

~~SECTION 19. FORM AND CONTENTS OF AGREEMENT.~~

(13-XX-19) Debt settlement contract.

- 1) A debt settlement provider shall not provide debt settlement service to a consumer without a written contract signed and dated by both the consumer and the debt settlement provider.

Comment [AKW11]: Modeled after section 110 of Illinois HB4781.

- 2) Any contract for the provision of debt settlement service entered into in violation of the provisions of this Section is void.
- 3) A contract between a debt settlement provider and a consumer for the provision of debt settlement service shall disclose all of the following clearly and conspicuously:
 - a) The name and address of the consumer.
 - b) The date of execution of the contract.
 - c) The legal name of the debt settlement provider, including any other business names used by the debt settlement provider.
 - d) The corporate address and regular business address, including a street address, of the debt settlement provider.
 - e) The telephone number at which the consumer may speak with a representative of the debt settlement provider during normal business hours.
 - f) A complete list of the consumer's accounts, debts, and obligations to be included in the provision of debt settlement service, including the name of each creditor and principal amount of each debt.
 - g) A description of the services to be provided by the debt settlement provider, including the expected time frame for settlement for each account, debt, or obligation included in item (f) of this subsection (3).
 - h) An itemized list of all fees to be paid by the consumer to the debt settlement provider, and the date, approximate date, or circumstances under which each fee will become due.
 - i) A good faith estimate of the total amount of all fees and compensation, not to exceed the amounts specified in section 13-XX-21 of this Act, to be collected by the debt settlement provider from the consumer for the provision of debt settlement service contemplated by the contract.

- j) A statement of the proposed savings goals for the consumer, stating the amount to be saved per month or other period, time period over which savings goal extends, and the total amount of the savings expected to be paid by the consumer pursuant to the terms of the contract.
- k) The amount of money or the percentage of debt the consumer must accumulate before a settlement offer will be made to each of the consumer's creditors.
- l) The written individualized financial analysis required by section 13-XX-18 of this Act.
- m) The contents of the "Consumer Notice and Rights Form" provided in section 13-XX-17.
- n) A written notice to the consumer that the consumer may cancel the contract at any time until after the debt settlement provider has fully performed each service the debt settlement provider contracted to perform or represented he or she would perform, and upon that event:
 - 1. the consumer shall be entitled to a full refund of all unearned fees and compensation paid by the consumer to the debt settlement provider, and a full refund of all funds provided by the consumer to the debt settlement provider for a consumer settlement account, except for funds actually paid to a creditor on behalf of the consumer, under the terms of the contract for debt settlement service; and
 - 2. all powers of attorney granted to the debt settlement provider by the consumer shall be considered revoked and voided.
- o) A form the consumer may use to cancel the contract pursuant to the provisions of section 13-XX-20 of this Act. The form shall include the name and mailing address of the debt settlement provider and shall disclose clearly and conspicuously how the consumer can cancel the

contract, including applicable addresses, telephone numbers, facsimile numbers, and electronic mail addresses the consumer can use to cancel the contract.

- 4) If a debt settlement provider communicates with a consumer primarily in a language other than English, then the debt settlement provider shall furnish to the consumer a translation of all the disclosures and documents required by this Act in that other language.

~~(a) An agreement must:~~

~~(1) be in a record;~~

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

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

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

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

~~(6) disclose:~~

~~(A) the services to be provided;~~

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

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

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

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

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

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

~~(F) how the provider will comply with its obligations under Section 27(a);~~

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

~~(H) that the individual may cancel the agreement as provided in Section 20;~~

~~(I) that the individual may contact the administrator with any questions or complaints regarding the provider; and~~

~~(J) the address, telephone number, and Internet address or website of the administrator.~~

~~(b) For purposes of subsection (a)(5), delivery of an electronic record occurs when it is made available in a format in which the individual may retrieve, save, and print it and the individual is notified that it is available.~~

~~(c) If the administrator supplies the provider with any information required under subsection (a)(6)(J), the provider may comply with that requirement only by disclosing the information supplied by the administrator.~~

~~(d) An agreement must provide that:~~

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

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

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

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

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

the trust account; and

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

~~(A) the identity of the creditor; and~~

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

~~(e) An agreement may confer on a provider a power of attorney to settle the individual's debt for no more than 50 percent of the principal amount of the debt. An agreement may not confer a power of attorney to settle a debt for more than 50 percent of that amount, but may confer a power of attorney to negotiate with creditors of the individual on behalf of the individual. An agreement must provide that the provider will obtain the assent of the individual after a creditor has assented to a settlement for more than 50 percent of the principal amount of the debt.~~

~~(f) An agreement may not:~~

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

~~(2) except as permitted by Section 2 of the Federal Arbitration Act, 9 U.S.C. Section 2, [as amended,] [or [insert citation to the Uniform Arbitration Act or other statute authorizing predispute arbitration agreements]] contain a provision that modifies or limits otherwise available forums or procedural rights, including the right to trial by jury, that are generally available to the individual under law other than this [act];~~

~~(3) contain a provision that restricts the individual's remedies under this [act] or law other than this [act]; or~~

~~(4) contain a provision that:~~

~~(A) limits or releases the liability of any person for not performing the agreement or for violating this [act]; or~~

~~(B) indemnifies any person for liability arising under the agreement or this [act].~~

~~(g) All rights and obligations specified in subsection (d) and Section 20 exist even if not provided in the agreement. A provision in an agreement which violates subsection (d), (e), or (f) is void.~~

SECTION 20. (13-XX-20) CANCELLATION OF AGREEMENT; WAIVER.

contract and right to fee and settlement fund refunds.

~~(a) An individual may cancel an agreement before midnight of the third business day after the individual assents to it, unless the agreement does not comply with subsection (b) or Section 19 or 28, in which event the individual may cancel the agreement within 30 days after the individual assents to it. To exercise the right to cancel, the individual must give notice in a record to the provider. Notice by mail is given when mailed.~~

- 1) A consumer may cancel a contract with a debt settlement provider at any time before the debt settlement provider has fully performed each service the debt settlement provider contracted to perform or represented it would perform.

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

~~Notice of Right to Cancel~~

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

~~To cancel this agreement during this period, send an e-mail to~~

~~_____ or mail or deliver a signed, dated copy of this~~
~~E-mail address of provider~~

~~notice, or any other written notice to _____~~
Name of provider

~~at _____ before midnight on _____.~~
Address of provider *Date*

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

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

~~—I cancel this agreement,~~

Print your name

—Signature

—Date

- 2) If a consumer cancels a contract with a debt settlement provider, or at any time upon a material violation of this Act on the part of the debt settlement provider, then the debt settlement provider shall refund all fees and compensation, with the exception of the application fee and any earned settlement fee, as well as all funds paid by the consumer to the debt settlement provider that have accumulated in a consumer settlement account and that the debt settlement provider has not disbursed to creditors. Upon cancellation, all powers of attorney and direct debit authorizations granted to the debt settlement provider by the consumer shall be considered revoked and voided.

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

- 3) A debt settlement provider shall make any refund required under this Section within 7 days after the notice of cancellation, and shall include with the refund a full statement of account showing fees received, fees refunded, savings held, payments to creditors, settlement fees earned if any, and savings refunded.
- 4) Upon the cancellation of a contract under this Section, the debt settlement provider shall provide timely notice of the cancellation of the contract to each of the creditors with whom the debt settlement provider has had any prior communication on behalf of the consumer in connection with the provision of

any debt settlement service.

SECTION 21. REQUIRED LANGUAGE. ~~Unless the administrator, by rule, provides otherwise, the disclosures and documents required by this [act] must be in English. If a provider communicates with an individual primarily in a language other than English, the provider must furnish a translation into the other language of the disclosures and documents required by this [act].~~

SECTION 22. TRUST ACCOUNT.

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

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

(c) A provider shall:

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

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

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

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

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

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

of other persons.

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

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

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

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

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

~~SECTION 23. (13-XX-21) FEES AND OTHER CHARGES.~~

- 1) ~~(a)~~ (1) A debt settlement provider ~~may~~ shall not impose directly or indirectly a fee or other charge on an individual or receive money from or on behalf of an individual for debt management services except as permitted by this section. charge fees of any type or receive compensation from a consumer in a type, amount, or timing other than fees or compensation permitted in this Section.
- 2) ~~(b)~~ (2) A debt settlement provider ~~may~~ shall not impose charges charge or receive payment for debt management services until the provider and the individual have

~~signed an agreement that complies with Sections 19 and 28.~~ from a consumer any enrollment fee, set up fee, up front fee of any kind, or any maintenance fee, except for a one—time enrollment fee of no more than \$100.

~~(e) If an individual assents to an agreement, a provider may not impose a fee or other charge for educational or counseling services, or the like, except as otherwise provided in this subsection and Section 28(d). The administrator may authorize a provider to charge a fee based on the nature and extent of the educational or counseling services furnished by the provider.~~

(3) A debt settlement provider may charge a settlement fee, which shall not exceed an amount greater than 15% of the savings. If the amount paid by the debt settlement provider to the creditor or negotiated by the debt settlement provider and paid by the consumer to the creditor pursuant to a settlement negotiated by the debt settlement provider on behalf of the consumer as full and complete satisfaction of the creditor's claim with regard to that debt is greater than the principal amount of the debt, then the debt settlement provider shall not be entitled to any settlement fee.

- 3) (4) A debt settlement provider shall not collect any settlement fee from a consumer until a creditor enters into a legally enforceable agreement to accept funds in a specific dollar amount as full and complete satisfaction of the creditor's claim with regard to that debt and those funds are provided by the debt settlement provider on behalf of the consumer or are provided directly by the consumer to the creditor pursuant to a settlement negotiated by the debt settlement provider.

~~(d) Subject to adjustment of dollar amounts pursuant to Section 32(f), the following rules apply:~~

- ~~(1) If an individual assents to a plan that contemplates that creditors will~~

reduce finance charges or fees for late payment, default, or delinquency, the provider may charge:

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

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

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

~~(A) subject to Section 19(d), a fee for consultation, obtaining a credit report, setting up an account, and the like, in an amount not exceeding the lesser of \$400 and four percent of the debt in the plan at the inception of the plan; and~~

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

~~(3) A provider may not impose or receive fees under both paragraphs (1) and (2).~~

~~(4) Except as otherwise provided in Section 28(d), if an individual does not assent to an agreement, a provider may receive for educational and counseling services it provides to the individual a fee not exceeding \$100 or, with the approval of the administrator, a larger fee. The administrator may approve a fee larger than \$100 if the nature and extent of the educational and counseling services warrant the larger fee.~~

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

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

~~(1) 30 percent of the excess of the principal amount of the debt over the amount paid the creditor pursuant to the agreement, less~~

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

~~(A) the fee charged pursuant to subsection (d)(2)(A); and~~

~~(B) the aggregate of fees charged pursuant to subsection (d)(2)(B).~~

~~(g) Subject to adjustment of the dollar amount pursuant to Section 32(f), if a payment to a provider by an individual under this [act] is dishonored, a provider may impose a reasonable charge on the individual, not to exceed the lesser of \$25 and the amount permitted by law other than this [act].~~

SECTION 24. (13-XX-22) VOLUNTARY CONTRIBUTIONS. A provider may not solicit a voluntary contribution from an individual or an affiliate of the individual for any service provided to the individual. A provider may accept voluntary contributions from an individual but, until 30 days after completion or termination of a plan, the aggregate amount of money received from or on behalf of the individual may not exceed the total amount the provider may charge the individual under Section 23, 13-XX-21.

~~SECTION 25. VOIDABLE AGREEMENTS.~~

~~(a) If a provider imposes a fee or other charge or receives money or other payments not authorized by Section 23 or 24, the individual may void the agreement and recover as provided in Section 35.~~

~~(b) If a provider is not registered as required by this [act] when an individual assents to an agreement, the agreement is voidable by the individual.~~

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

~~SECTION 26. TERMINATION OF AGREEMENTS.~~

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

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

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

~~(2) 65 percent of any portion of the set up fee received pursuant to Section 23(d)(2) which has not been credited against settlement fees.~~

~~SECTION 27. PERIODIC REPORTS AND RETENTION OF RECORDS.~~

~~(a) A provider shall provide the accounting required by subsection (b):~~

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

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

~~(A) at least once each month; and~~

~~(B) within five business days after a request by an individual, but~~

~~the provider need not comply with more than one request in any calendar month.~~

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

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

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

~~(3) the amounts deducted from the amount received from the individual;~~

~~(4) the amount held in reserve; and~~

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

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

~~(B) the amount of the debt when the individual assented to the~~

~~plan;~~

~~(C) the amount of the debt when the creditor agreed to the~~

~~settlement; and~~

~~(D) the calculation of a settlement fee.~~

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

SECTION 28. (13-XX-23.) PROHIBITED ACTS AND PRACTICES.

~~(a)~~ **(1)** A provider may not, directly or indirectly:

~~(1)~~ **(a)** misappropriate or misapply money held in trust;

~~(2)~~ **(b)** settle a debt on behalf of an individual for more than 50 percent of the principal amount of the debt owed a creditor, unless the individual assents to the settlement after the creditor has assented;

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

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

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

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

(B) (2) before termination of ~~an agreement~~ a contract, properly authorized by the ~~agreement~~ contract and this ~~act~~ chapter, and for:

(i) (a) payment to one or more creditors pursuant to ~~an agreement~~ a plan; or

(ii) (b) payment of a fee;

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

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

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

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

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

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

~~(12)~~ (1) make a representation that:

~~(A)~~ (1) the provider will furnish money to pay bills or prevent attachments;

~~(B)~~ (2) payment of a certain amount will permit satisfaction of a certain amount or range of indebtedness; or

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

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

~~(14) represent in its agreements, disclosures required by this [act], advertisements, or Internet web site that it is~~

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

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

(n) represent that it is a not-for-profit entity unless it is organized and properly operating as a not-for-profit under the law of the state in which it was formed or that it is a tax-exempt entity unless it has received certification of tax-exempt status from the Internal Revenue Service;

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

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

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

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

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

~~(A)~~ (1) a promissory note or other negotiable instrument other than

a check or a demand draft; or

~~(B)~~ (2) a post-dated check or demand draft;

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

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

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

~~(A)~~ (1) the ~~administrator~~ Commissioner, upon proper demand;

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

~~(C)~~ (3) the extent necessary to administer the plan;

~~(6)~~ (f) except as otherwise provided in ~~Section 23(f)~~ 13-XX-21, provide the individual less than the full benefit of a compromise of a debt arranged by the provider;

~~(7)~~ (g) charge the individual for or provide credit or other insurance, coupons for goods or services, membership in a club, access to computers or the Internet, or any other matter not directly related to debt-management services or educational services concerning personal finance; or

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

~~(e)~~ (3) This ~~act~~ chapter does not authorize any person to engage in the practice of law.

~~(d)~~ (4) A provider may not receive a gift or bonus, premium, reward, or other compensation, directly or indirectly, for advising, arranging, or assisting an individual in connection with obtaining, an extension of credit or other service from a lender or service provider, except for educational or counseling services required in connection with a government-sponsored program.

~~(e)~~ (5) Unless a person supplies goods, services, or facilities generally and supplies them to the provider at a cost no greater than the cost the person generally charges to others, a provider may not purchase goods, services, or facilities from the person if an employee

or a person that the provider should reasonably know is an affiliate of the provider:

- (1) (a) owns more than 10 percent of the person; or
- (2) (b) is an employee or affiliate of the person.

SECTION 29. (13-XX-24.) NOTICE OF LITIGATION. No later than 30 days after a provider has been served with notice of a civil action for violation of this ~~act~~ chapter by or on behalf of an individual who resides in this state at either the time of ~~an agreement~~ a contract or the time the notice is served, the provider shall notify the ~~administrator~~ Commissioner in a record that it has been sued.

SECTION 30. ~~ADVERTISING.~~

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

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

SECTION 31. (13-XX-25.) LIABILITY FOR THE CONDUCT OF OTHER PERSONS. If a provider delegates any of its duties or obligations under ~~an agreement~~ a contract or this ~~act~~ chapter to another person, including an independent contractor, the provider is liable for conduct of the person which, if done by the provider, would violate the ~~agreement~~ contract or this ~~act~~ chapter.

SECTION 32. (13-XX-26.) POWERS OF ADMINISTRATOR. The Commissioner
Insofar as consistent with other provisions of law, the Commissioner has the power to:

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

- (1) Determine the qualifications of all applicants based on financial

responsibility, financial condition, business experience, character, and general fitness which must reasonably warrant the belief that the applicant's business will be conducted lawfully and fairly. In determining whether this qualification is met, and for the purpose of investigating compliance with this chapter, the commissioner may review and consider the relevant business records and capital adequacy of the applicant and the competence, experience, integrity, and financial ability of a person who is a member, partner, director, officer, or twenty-five percent or more shareholder of the applicant.

~~(b) The administrator may investigate and examine, in this state or elsewhere, by subpoena or otherwise, the activities, books, accounts, and records of a person that provides or offers to provide debt management services, or a person to which a provider has delegated its obligations under an agreement or this [act], to determine compliance with this [act]. Information that identifies individuals who have agreements with the provider shall not be disclosed to the public. In connection with the investigation, the administrator may:~~

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

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

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

(2) Conduct investigations and make an examination of any person, whether

licensed or not, who is engaged in the debt settlement services business,
including all records of such business, and to subpoena witnesses anytime it
has reason to believe such is necessary. The licensee shall pay an
examination or visitation fee and must be charged by the Commissioner at
an hourly rate to be set by the Commissioner, sufficient to cover all
reasonable expenses of the department associated with the examination or
visitation provided for by this section. Fees must be deposited in the
financial institutions regulatory fund.

~~(c) The administrator may adopt rules to implement the provisions of this [act] in accordance with [insert the appropriate section of the Administrative Procedure Act or other statute governing administrative procedure].~~

(3) Adopt any and all rules and regulations necessary to carry out the
purpose of this chapter.

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

(4) Issue and serve upon any person or licensed debt settlement provider an
order to cease and desist to take corrective action when the Commissioner has reason to
believe the person or agency is violating, has violated, or is about to violate the provisions

of this chapter. An interested party may appeal issuance of a cease and desist order under the provisions of chapter 28-32 by filing written notice of appeal within twenty days after service of the order.

~~(e) The administrator, by rule, shall establish reasonable fees to be paid by providers for the expense of administering this [act].~~

(5) Deny, suspend, revoke, condition, or decline to renew a license for a violation of this chapter, rules or regulations issued under this chapter or order or directive entered under this chapter.

~~(f) The administrator, by rule, shall adopt dollar amounts instead of those specified in Sections 2, 5, 9, 13, 23, 33, and 35 to reflect inflation, as measured by the United States Bureau of Labor Statistics Consumer Price Index for All Urban Consumers or, if that index is not available, another index adopted by rule by the administrator. The administrator shall adopt a base year and adjust the dollar amounts, effective on July 1 of each year, if the change in the index from the base year, as of December 31 of the preceding year, is at least 10 percent. The dollar amount must be rounded to the nearest \$100, except that the amounts in Section 23 must be rounded to the nearest dollar.~~

~~(g) The administrator shall notify registered providers of any change in dollar amounts made pursuant to subsection (f) and make that information available to the public.~~

(6) Deny, suspend, revoke, condition, or decline to renew a license if an applicant or licensee withholds information or makes a material misstatement in an application for a license or renewal of a license.

SECTION 33. (13-XX-27.) ADMINISTRATIVE REMEDIES. Enforcement authorities, violations, and penalties.

~~(a) The administrator may enforce this [act] and rules adopted under this [act] by~~

taking one or more of the following actions:

(1) Any person violating any of the provisions of this chapter or any rule or order of the Commissioner made pursuant to the provisions of this chapter or who engages in any act, practice, or transaction declared by any provision of this chapter to be unlawful is guilty of a class C felony.

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

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

~~(3) subject to adjustment of the dollar amount pursuant to Section 32(f), imposing on a provider or a person that has caused a violation a civil penalty not exceeding \$10,000 for each violation;~~

(2) The Commissioner may impose a civil money penalty not to exceed five thousand dollars per violation upon a person or agency who willfully violates a law, rule, written agreement, or order under this chapter. An interested party may appeal the assessment of a civil money penalty under the provisions of chapter 28-32 by filing a written notice of appeal within twenty days after service of the assessment of civil money penalties. A civil money penalty collected under this section must be paid to the state treasurer and deposited in the financial institutions regulatory fund.

~~(4) prosecuting a civil action to:~~

~~(A) enforce an order;~~

~~(B) obtain restitution or an injunction or other equitable relief, or~~

~~both; or~~

~~(5) intervening in an action brought under Section 35.~~

~~(b) Subject to adjustment of the dollar amount pursuant to Section 32(f), if a person violates or knowingly authorizes, directs, or aids in the violation of a final order issued under subsection (a)(1) or (2), the administrator may impose a civil penalty not exceeding \$20,000 for each violation.~~

~~(c) The administrator may maintain an action to enforce this [act] in any [county].~~

~~(d) The administrator may recover the reasonable costs of enforcing the [act] under subsections (a) through (c), including attorney's fees based on the hours reasonably expended and the hourly rates for attorneys of comparable experience in the community.~~

~~(e) In determining the amount of a civil penalty to impose under subsection (a) or (b), the administrator shall consider the seriousness of the violation, the good faith of the violator, any previous violations by the violator, the deleterious effect of the violation on the public, the net worth of the violator, and any other factor the administrator considers relevant to the determination of the civil penalty.~~

(3) The attorney general may also enforce this chapter. The attorney general, in enforcing this chapter, has all the powers provided in this chapter or chapter 51-15 and may seek all remedies in this chapter or chapter 51-15. A violation of this chapter is deemed a violation of chapter 51-15. The remedies, duties, prohibitions, and penalties of this chapter are not exclusive and are in addition to all other causes of action, remedies, and penalties under chapter 51-15, or otherwise provided by law.

~~SECTION 34. SUSPENSION, REVOCATION, OR NONRENEWAL OF REGISTRATION.~~

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

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

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

~~(3) being insolvent within the meaning of the federal bankruptcy law, 11~~

~~U.S.C. Section 101 et seq.[, as amended].~~

~~(b) The administrator may suspend, revoke, or deny renewal of a provider's registration if:~~

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

~~(2) the provider has committed a material violation of this [act] or a rule or order of the administrator under this [act];~~

~~(3) the provider is insolvent;~~

~~(4) the provider or an employee or affiliate of the provider has refused to permit the administrator to make an examination authorized by this [act], failed to comply with Section 32(b)(2) within 15 days after request, or made a material misrepresentation or omission in complying with Section 32(b)(2); or~~

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

~~(e) If a provider does not comply with Section 22(f) or if the administrator otherwise finds that the public health or safety or general welfare requires emergency action, the administrator may order a summary suspension of the provider's registration, effective on the date specified in the order.~~

~~(d) If the administrator suspends, revokes, or denies renewal of the registration of a provider, the administrator may seek a court order authorizing seizure of any or all of the money in a trust account required by Section 22, books, records, accounts, and other property of the provider which are located in this state.~~

~~(e) If the administrator suspends or revokes a provider's registration, the provider may appeal and request a hearing pursuant to [insert the citation to the appropriate section of the administrative procedure act or other statute governing administrative procedure].~~

13-XX-28. Voidable contracts.

1. If a provider imposes a fee or other charge or receives money or other

payments not authorized by sections 13-XX-21 and 13-XX-22, the individual

Comment [AKW12]: Modeled after section 25 of the Uniform Debt Management Act. Similar requirements exist under section 150 of Illinois HB4781.

may void the contract and recover as provided in section 13-XX-20.

2. If a provider is not licensed as required by this chapter when an individual

assents to a contract, the contract is voidable by the individual.

3. If an individual voids a contract under subsection (2), the provider does not

have a claim against the individual for breach of contract or for restitution.

SECTION 35. ~~(13-XX-29.)~~ PRIVATE ENFORCEMENT.

~~(a) If an individual voids an agreement pursuant to Section 25(b), the individual may recover in a civil action all money paid or deposited by or on behalf of the individual pursuant to the agreement, except amounts paid to creditors, in addition to the recovery under subsection (c)(3) and (4).~~

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

~~(c) Subject to subsection (d), an individual with respect to whom a provider violates this [act] may recover in a civil action from the provider and any person that caused the violation:~~

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

~~(2) except as otherwise provided in subsection (d) and subject to adjustment of the dollar amount pursuant to Section 32(f), with respect to a violation of Section 17, 19, 20, 21, 22, 23, 24, 27, or 28(a), (b), or (d), the greater of the amount recoverable under paragraph (1) or \$5,000;~~

~~(3) punitive damages; and—~~

~~(4) reasonable attorney's fees and costs.~~

~~(d) In a class action, except for a violation of Section 28(a)(5), the minimum damages provided in subsection (c)(2) do not apply.~~

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

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

~~(g) The administrator shall assist an individual in enforcing a judgment against the surety bond or other security provided under Section 13 or 14.~~

Any person who is aggrieved by a violation of this chapter may bring an action to enjoin such violation, or for restitution, or both. The court may award the plaintiff the plaintiff's actual restitution or a sum up to two thousand dollars, whichever is greater. The court may award the plaintiff costs, expenses and reasonable attorney's fees. This section shall not limit any other claims the person may have against the debt settlement provider or such other third party subject to this chapter.

~~SECTION 36. VIOLATION OF [UNFAIR OR DECEPTIVE PRACTICES]~~

~~STATUTE.~~ ~~If an act or practice of a provider violates both this [act] and [insert a reference to the statute dealing with deceptive acts and practices in consumer transactions], an individual may~~

not recover under both for the same act or practice.

Legislative Note: *The caption to this section should reflect the title of the applicable statute, be it Consumer Protection Act, Deceptive Trade Practices Act, or other.*

~~SECTION 37. STATUTE OF LIMITATIONS.~~

~~(a) An action or proceeding brought pursuant to Section 33(a), (b), or (c) must be commenced within four years after the conduct that is the basis of the administrator's complaint.~~

~~(b) An action brought pursuant to Section 35 must be commenced within two years after the latest of:~~

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

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

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

~~(4) the provider's last accounting to the individual pursuant to Section 27(a);~~

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

~~(6) termination of actions or proceedings by the administrator with respect to a violation of the [act].~~

~~(c) The period prescribed in subsection (b)(5) is tolled during any period during which the provider or, if different, the defendant has materially and willfully misrepresented information required by this [act] to be disclosed to the individual, if the information so misrepresented is material to the establishment of the liability of the defendant under this [act].~~

~~SECTION 38. UNIFORMITY OF APPLICATION AND CONSTRUCTION.~~ ~~In applying and construing this Uniform Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.~~

~~SECTION 39. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL AND NATIONAL COMMERCE ACT.~~ ~~This [act] modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)).~~

~~SECTION 40. TRANSITIONAL PROVISIONS; APPLICATION TO EXISTING TRANSACTIONS.~~ Transactions entered into before this [act] takes effect and the rights, duties, and interests resulting from them may be completed, terminated, or enforced as required or permitted by a law amended, repealed, or modified by this [act] as though the amendment, repeal, or modification had not occurred.

~~**SECTION 41. SEVERABILITY.**~~ If any provision of this [act] or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this [act] that can be given effect without the invalid provision or application, and to this end the provisions of this [act] are severable.

SECTION 42. 2. REPEAL. AMENDMENT. The following laws are repealed:

Subsection 1 of section 6-01-01.1 of the North Dakota Century Code is amended

and reenacted as follows:

1. There is hereby created a special fund designated as the financial institutions regulatory fund. The amounts received under the following chapters, and any other moneys received by the department of financial institutions, must be deposited into this fund: chapters 6-01, 6-03, 6-05, 6-06, 6-10, 13-04.1, 13-05, 13-08, 13-09, and 13-10 and 13-XX.

SECTION 43. 3. EFFECTIVE DATE. This [act] ~~takes effect 12 months after enactment.~~

effective on 1, 20__.