

By: Eltife

S.B. No. 1112

Substitute the following for S.B. No. 1112:

By: Solomons

C.S.S.B. No. 1112

A BILL TO BE ENTITLED

AN ACT

relating to debt management services; providing a penalty.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Chapter 394, Finance Code, is amended by adding Subchapter C to read as follows:

SUBCHAPTER C. CONSUMER DEBT MANAGEMENT SERVICES

Sec. 394.201. PURPOSE; CONSTRUCTION. (a) The purpose of this subchapter is to protect consumers who contract for services with debt management services providers.

(b) This subchapter shall be liberally construed to accomplish its purpose.

Sec. 394.202. DEFINITIONS. In this subchapter:

(1) "Advertising" means information about a provider or about the provider's debt management services, communicated in writing or orally to an individual consumer or the public by telephone, television, Internet, radio, or other electronic medium, or by written material sent by mail, posted publicly, or posted at the provider's business location.

(2) "Certified counselor" means an individual who:

(A) is certified as a debt management counselor by an independent accreditation organization; or

(B) if the individual has been employed for less than 12 months, is in the process of being certified as a debt management counselor by an independent accreditation organization.

1           (3) "Commissioner" means the consumer credit  
2 commissioner.

3           (4) "Consumer" means an individual who resides in this  
4 state and seeks a debt management service or enters a debt  
5 management service agreement.

6           (5) "Creditor" means a person to whom a person owes  
7 money.

8           (6) "Debt management service" means:

9                   (A) the receiving of money from a consumer for  
10 the purpose of distributing that money to or among one or more of  
11 the creditors of the consumer in full or partial payment of the  
12 consumer's obligations;

13                   (B) arranging or assisting a consumer to arrange  
14 for the distribution of one or more payments to or among one or more  
15 creditors of the consumer in full or partial payment of the  
16 consumer's obligations; or

17                   (C) exercising control, directly or indirectly,  
18 or arranging for the exercise of control over funds of a consumer  
19 for the purpose of distributing payments to or among one or more  
20 creditors of the consumer in full or partial payment of the  
21 consumer's obligations.

22           (7) "Debt management service agreement" means a  
23 written agreement between a provider and a consumer for the  
24 performance of a debt management service.

25           (8) "Finance commission" means the Finance Commission  
26 of Texas.

27           (9) "Person" means an individual, partnership,

1 corporation, limited liability company, association, or  
2 organization.

3 (10) "Provider" means a person that provides or offers  
4 to provide to a consumer in this state a debt management service.

5 (11) "Secured debt" means a debt for which a creditor  
6 has a mortgage, lien, or security interest in collateral.

7 (12) "Trust account" means an account that is:

8 (A) established in a federally insured financial  
9 institution;

10 (B) separate from any account of the debt  
11 management service provider;

12 (C) designated as a "trust account" or other  
13 appropriate designation indicating that the money in the account is  
14 not money of the provider or its officers, employees, or agents;

15 (D) unavailable to creditors of the provider; and

16 (E) used exclusively to hold money paid by  
17 consumers to the provider for disbursement to creditors of the  
18 consumers and to the provider for the disbursement of fees and  
19 contributions earned and agreed to in advance.

20 (13) "Unsecured debt" means a debt for which a  
21 creditor does not have collateral.

22 Sec. 394.203. APPLICABILITY. (a) Except as otherwise  
23 provided by this subchapter, this subchapter applies to a provider  
24 regardless of whether the provider charges a fee or receives  
25 consideration for a service.

26 (b) The business of providing debt management services is  
27 conducted in this state if the debt management services provider

1 solicits or contracts with consumers located in this state.

2 (c) This subchapter does not apply to:

3 (1) an attorney licensed to practice in this state,  
4 unless the attorney holds the attorney's self out to the public as a  
5 provider or is employed, affiliated with, or otherwise working on  
6 behalf of a provider;

7 (2) a title insurance or abstract company employee or  
8 agent, or other person legally authorized to engage in escrow  
9 business in the state, only while engaged in the escrow business;

10 (3) a judicial officer or person acting under a court  
11 order;

12 (4) a person who has legal authority under federal or  
13 state law to act as a representative payee for a consumer, only to  
14 the extent the person is paying bills or other debts on behalf of  
15 that consumer;

16 (5) a person who pays bills or other debts owed by a  
17 consumer and on behalf of a consumer, if the money used to make the  
18 payments belongs exclusively to the consumer and the person does  
19 not initiate any contact with individual creditors of the consumer  
20 to compromise a debt, arrange a new payment schedule, or otherwise  
21 change the terms of the debt; or

22 (6) a financial institution, as defined by Section  
23 201.101.

24 (d) The following are not debt management services for  
25 purposes of this subchapter:

26 (1) an extension of credit, including consolidation or  
27 refinance of a loan; and

1           (2) bankruptcy services provided by an attorney  
2 licensed to practice in this state.

3           (e) This subchapter applies to a person who seeks to evade  
4 its applicability by any device, subterfuge, or pretense.

5           Sec. 394.204. REGISTRATION. (a) A person, regardless of  
6 whether located in this state, may not provide a debt management  
7 service to a consumer in this state unless the person is registered  
8 with the commissioner.

9           (b) Registration expires on December 31 of the year in which  
10 the registration occurs and must be renewed annually.

11           (c) An application for an initial registration must be in a  
12 form prescribed by the commissioner and accompanied by:

13           (1) the appropriate fees set by the finance commission  
14 in an amount necessary to recover the costs of administering this  
15 subchapter;

16           (2) the surety bond or insurance required by Section  
17 394.206;

18           (3) a detailed description of the ownership interest  
19 of each officer, director, agent, or employee of the applicant, and  
20 any member of the immediate family of an officer, director, agent,  
21 or employee of the applicant, in a for-profit affiliate or  
22 subsidiary of the applicant or in any other for-profit business  
23 entity that provides services to the applicant or to a consumer in  
24 relation to the applicant's debt management business; and

25           (4) any other information that the commissioner  
26 requires.

27           (d) An officer or employee of a person registered under this

1 subchapter is not required to be separately registered.

2 (e) Unless the commissioner notifies an applicant that a  
3 longer period is necessary, the commissioner shall approve or deny  
4 an initial registration not later than the 60th day after the date  
5 on which the completed application, including all required  
6 documents and payments, is filed. The commissioner shall inform  
7 the applicant in writing of the reason for denial.

8 (f) A person may renew a registration by paying the  
9 appropriate fee and completing all required documents.

10 (g) The finance commission by rule may establish procedures  
11 to facilitate the registration and collection of fees under this  
12 section, including rules staggering throughout the year the dates  
13 on which fees are due.

14 (h) The commissioner may refuse an initial application if  
15 the application contains errors or incomplete information. An  
16 application is incomplete if it does not include all of the  
17 information required by this section and Section 394.205.

18 (i) The commissioner may deny an initial application if:

19 (1) the applicant or any principal of the applicant  
20 has been convicted of a crime or found civilly liable for an offense  
21 involving moral turpitude, including forgery, embezzlement,  
22 obtaining money under false pretenses, larceny, extortion,  
23 conspiracy to defraud, or any other similar offense or violation;

24 (2) the registration of the applicant or any principal  
25 of the applicant has been revoked or suspended in this state or  
26 another state, unless the applicant provides information that the  
27 commissioner finds sufficient to show that the grounds for the

1 previous revocation or suspension no longer exist and any problem  
2 cited in the previous revocation has been corrected; or

3 (3) the commissioner, based on specific evidence,  
4 finds that the applicant does not warrant the belief that the  
5 business will be operated lawfully and fairly and within the  
6 provisions and purposes of this subchapter.

7 (j) On written request, the applicant is entitled to a  
8 hearing, pursuant to Chapter 2001, Government Code, on the question  
9 of the applicant's qualifications for initial registration if the  
10 commissioner has notified the applicant in writing that the initial  
11 application has been denied. A request for a hearing may not be  
12 made after the 30th day after the date the commissioner mails a  
13 notice to the applicant stating that the application has been  
14 denied and stating the reasons for the denial.

15 (k) In addition to the power to refuse an initial  
16 application as specified in this section, the commissioner may  
17 suspend or revoke a provider's registration after notice and  
18 hearing if the commissioner finds that any of the following  
19 conditions are met:

20 (1) a fact or condition exists that if it had existed  
21 when the provider applied for registration, would have been grounds  
22 for denying registration;

23 (2) a fact or condition exists that the commissioner  
24 was not aware of when the provider applied for registration and  
25 would have been grounds for denying registration;

26 (3) the provider violates this subchapter or rule or  
27 order of the commissioner under this subchapter;

1           (4) the provider is insolvent;

2           (5) the provider refuses to permit the commissioner to  
3 make an examination authorized by this subchapter;

4           (6) the provider fails to respond within a reasonable  
5 time and in an appropriate manner to communications from the  
6 commissioner;

7           (7) the provider has failed to disburse money to  
8 creditors on behalf of consumers within a reasonable time, normally  
9 30 days;

10           (8) the commissioner determines that the provider's  
11 trust account is not materially in balance with and reconciled to  
12 the consumer's account; or

13           (9) the provider fails to warrant the belief that the  
14 business will be operated lawfully and fairly and within the  
15 provisions and purposes of this subchapter.

16           (l) The commissioner's order revoking a registration must  
17 include appropriate provisions to transfer existing clients of the  
18 provider to one or more registered providers to ensure the  
19 continued servicing of the clients' accounts.

20           (m) The commissioner shall maintain a list of registered  
21 providers and make the list available to interested persons and to  
22 the public.

23           Sec. 394.205. RECORDS. (a) A provider shall keep and use  
24 books, accounts, and other records that will enable the  
25 commissioner to determine if the provider is complying with this  
26 subchapter and maintain any other records as required by the  
27 commissioner. The commissioner may examine the records at any



1 reasonable time. The records must be kept for at least three years  
2 after the date of the last service on a consumer's debt management  
3 plan.

4 (b) Each provider shall file a report with the commissioner  
5 at each renewal of the provider's registration. The report must at  
6 a minimum disclose in detail and under appropriate headings:

7 (1) the assets and liabilities of the provider at the  
8 beginning and end of the period;

9 (2) the total number of debt management plans the  
10 provider has initiated during that year; and

11 (3) records of total and average fees charged to  
12 consumers, including all voluntary contributions received from  
13 consumers.

14 (c) The reports must be verified by the oath or affirmation  
15 of the owner, manager, president, chief executive officer, or  
16 chairman of the board of directors of the provider.

17 (d) A provider shall file a blank copy of the agreement  
18 described in Section 394.209 and blank copies of the written  
19 information required in Section 394.208(a) with the commissioner  
20 accompanying the initial registration and each renewal of  
21 registration.

22 (e) The commissioner shall make the information provided  
23 under this section available to interested parties and to the  
24 public.

25 Sec. 394.206. BOND; INSURANCE. (a) A provider shall, at  
26 the time the provider files an initial or renewal registration  
27 application with the commissioner, file:

1           (1) a surety bond; or

2           (2) evidence that the provider maintains an insurance  
3 policy in a form approved by the commissioner.

4           (b) The bond or insurance must:

5           (1) run concurrently with the period of registration;

6           (2) be available to pay damages and penalties to  
7 consumers directly harmed by a violation of this subchapter;

8           (3) be in favor of this state for the use of this state  
9 and the use of a person who has a cause of action under this  
10 subchapter against the provider;

11           (4) be in an amount equal to the average daily balance  
12 of the provider's trust account serving Texas consumers over the  
13 six-month period preceding the issuance of the bond, or in the case  
14 of an initial application, in an amount determined by the  
15 commissioner, but not less than \$25,000 or more than \$100,000;

16           (5) if an insurance policy:

17           (A) provide coverage for professional liability,  
18 employee dishonesty, depositor's forgery, and computer fraud in an  
19 amount not less than \$100,000;

20           (B) be issued by a company rated at least "A-" or  
21 its equivalent by a nationally recognized rating organization; and

22           (C) provide for 30 days advance written notice of  
23 termination of the policy to be provided to the commissioner;

24           (6) be issued by a bonding, surety, or insurance  
25 company that is authorized to do business in the state; and

26           (7) be conditioned on the provider and its agents  
27 complying with all state and federal laws, including regulations,

1 governing the business of debt management services.

2 (c) In lieu of a bond or insurance, the finance commission  
3 by rule may establish alternative financial requirements to provide  
4 substantially equivalent protection to pay damages and penalties to  
5 consumers directly harmed by a violation under this subchapter.

6 (d) The commissioner may adjust the amount of the provider's  
7 bond or insurance only when the provider applies for renewal of  
8 registration and requests a review of the bond or insurance amount.

9 Sec. 394.207. ADVERTISING. A provider may not engage in  
10 false or deceptive advertising.

11 Sec. 394.208. REQUIRED ACTIONS BY PROVIDER. (a) A provider  
12 may not enroll a consumer in a debt management plan unless:

13 (1) the provider is a nonprofit organization exempt  
14 from taxation under Section 501(c)(3), Internal Revenue Code of  
15 1986; and

16 (2) through the services of a counselor certified by  
17 an independent accreditation organization, the provider has:

18 (A) provided the consumer individualized  
19 counseling and educational information that at a minimum addresses  
20 the topics of managing household finances, managing credit and  
21 debt, and budgeting;

22 (B) prepared an individualized financial  
23 analysis and an initial debt management plan for the consumer's  
24 debts with specific recommendations regarding actions the consumer  
25 should take;

26 (C) determined that the consumer has a reasonable  
27 ability to make payments under the proposed debt management plan

1 based on the information provided by the consumer;

2 (D) a reasonable expectation, provided that the  
3 consumer has provided accurate information to the provider, that  
4 each creditor of the consumer listed as a participating creditor in  
5 the plan will accept payment of the consumer's debts as provided in  
6 the initial plan;

7 (E) prepared, for all creditors identified by the  
8 consumer or identified through additional investigation by the  
9 provider, a list, which must be provided to the consumer in a form  
10 the consumer may keep, of the creditors that the provider  
11 reasonably expects to participate in the plan; and

12 (F) provided a written document to the consumer  
13 in a form the consumer may keep that clearly and conspicuously  
14 contains the following statements:

15 (i) that debt management services are not  
16 suitable for all consumers and that consumers may request  
17 information about other ways, including bankruptcy, to deal with  
18 indebtedness;

19 (ii) that the nonprofit or tax-exempt  
20 organization cannot require donations or contributions; and

21 (iii) that some of the provider's funding  
22 comes from contributions from creditors who participate in debt  
23 management plans, except that a provider may substitute for "some"  
24 the actual percentage of creditor contributions it received during  
25 the most recent reporting period.

26 (b) If the provider discusses its services with a consumer  
27 primarily in a language other than English, the provider must

1 provide the debt management agreement in that language.

2 (c) A consumer must give at least 10 days' notice to the  
3 provider to cancel a debt management services agreement. The  
4 provider must cancel a debt management services agreement within 10  
5 days after the date the provider receives the notice from the  
6 consumer. The provider must continue making disbursements to the  
7 consumer's creditors if money has been paid to the provider under  
8 the agreement until the expiration of the 10-day period, unless  
9 otherwise agreed in writing by the consumer and the provider.

10 (d) A provider may provide the information required by  
11 Subsections (a)(2)(B), (E), and (F) through its Internet website if  
12 the provider:

13 (1) has complied with the federal Electronic  
14 Signatures in Global and National Commerce Act (15 U.S.C. Section  
15 7001 et seq.);

16 (2) informs the consumer that, on electronic,  
17 telephonic, or written request the provider will make available to  
18 the consumer a paper copy or copies; and

19 (3) discloses on its Internet website:

20 (A) the provider's name and each name under which  
21 it does business;

22 (B) the provider's principal business address  
23 and telephone number; and

24 (C) the names of the provider's principal  
25 officers.

26 (e) A provider, including a provider that does business only  
27 or principally through the Internet, shall maintain a telephone

1 system staffed at a level that reasonably permits a consumer to  
2 access a counselor during ordinary business hours.

3 (f) A provider shall provide each consumer for whom it  
4 provides debt management services a written report accounting for:

5 (1) the amount of money received from the consumer  
6 since the last report;

7 (2) the amount and date of each disbursement made on  
8 the consumer's behalf to each creditor listed in the agreement  
9 since the last report;

10 (3) any amount deducted from amounts received from the  
11 consumer; and

12 (4) any amount held in reserve.

13 (g) The provider shall provide the report under Subsection  
14 (f):

15 (1) at least once each calendar quarter; and

16 (2) not later than the 10th business day after the date  
17 of a request by a consumer.

18 Sec. 394.209. WRITTEN DEBT MANAGEMENT SERVICES AGREEMENT.

19 (a) A debt management services provider may not prepare a debt  
20 management services agreement before the provider has fully  
21 complied with Sections 394.208(a) and (b).

22 (b) Each debt management services agreement must:

23 (1) be dated and signed by the consumer;

24 (2) include the name and address of the consumer and  
25 the name, address, and telephone number of the provider;

26 (3) describe the services to be provided;

27 (4) state all fees, individually itemized, to be paid

1 by the consumer;

2 (5) list in the agreement or accompanying document, to  
3 the extent the information is available to the provider at the time  
4 the agreement is executed, each participating creditor of the  
5 consumer to which payments will be made, and based on information  
6 provided by the consumer the amount owed to each creditor and the  
7 schedule of payments the consumer will be required to make to the  
8 creditor, including the amount and date on which each payment will  
9 be due;

10 (6) state the existence of a surety bond or insurance  
11 for consumer claims;

12 (7) state that establishment of a debt management plan  
13 may impact the consumer's credit rating and credit score either  
14 favorably or unfavorably, depending on creditor policies and the  
15 consumer's payment history before and during participation in the  
16 debt management plan; and

17 (8) state that either party may cancel the agreement  
18 without penalty at any time on 10 days' notice and that a consumer  
19 who cancels an agreement is entitled to a refund of all money that  
20 the consumer has paid to the provider that has not been disbursed.

21 (c) A debt management services agreement may contain a  
22 voluntary consumer arbitration provision or a voluntary mediation  
23 provision.

24 (d) A provider may deliver the debt management services  
25 agreement through the Internet if the provider:

26 (1) has complied with the federal Electronic  
27 Signatures in Global and National Commerce Act (15 U.S.C. Section

1 7001 et seq.);

2 (2) sends the consumer a paper copy of the agreement  
3 not later than the seventh day after the date of a request by a  
4 consumer to do so; and

5 (3) discloses on a prominent page of its Internet  
6 website:

7 (A) the provider's name and each name under which  
8 it does business;

9 (B) the provider's principal business address  
10 and telephone number; and

11 (C) the names of the provider's principal  
12 officers.

13 (e) If the provider discusses its services or negotiates  
14 with a consumer primarily in a language other than English, the  
15 provider may not begin performance of a debt management plan until  
16 the provider and consumer sign a copy of the written agreement,  
17 provided by the debt management services provider, in that language  
18 and a copy is made available to the consumer.

19 Sec. 394.210. PERMITTED FEES. (a) With respect to the  
20 provision of a debt management plan service, a provider may not  
21 impose a fee or other charge on a consumer, or receive payment from  
22 a consumer or other person on behalf of a consumer except as allowed  
23 under this section.

24 (b) For the purposes of this section, fees or charges  
25 include both voluntary contributions and any other fees charged to  
26 or collected from a consumer or on behalf of the consumer.

27 (c) Any fee charged by a provider must be fair and



1 reasonable given the value of the products and services provided to  
2 the consumer, including consideration of the amount subject to debt  
3 management and the number of anticipated payments. A fee or a  
4 portion of a fee that is specifically related to a debt management  
5 plan may not be charged until the provider has complied with  
6 Sections 394.208(a) and (b) and 394.209.

7 (d) A provider may charge a monthly maintenance fee if the  
8 fee is fair and reasonable.

9 (e) A fee charged for a service other than a debt management  
10 service must be fair and reasonable.

11 Sec. 394.211. TRUST ACCOUNT. (a) A provider must use a  
12 trust account for the management of all money paid by or on behalf  
13 of a consumer for disbursement to the consumer's creditor. A  
14 provider may not commingle the money in a trust account established  
15 for the benefit of consumers with any operating funds of the  
16 provider. A provider shall exercise due care to appropriately  
17 manage the funds in the trust account.

18 (b) The trust account must at all times be materially in  
19 balance with and reconciled to the consumers' accounts. Failure to  
20 maintain that balance is cause for a summary suspension of  
21 registration under Section 394.204.

22 (c) If a trust account does not contain sufficient money to  
23 cover the aggregate consumer balances, and the provider has not  
24 corrected the deficiency within 48 hours of discovery, the provider  
25 shall notify the commissioner by telephone, facsimile, electronic  
26 mail, or other method approved by the commissioner, and provide  
27 written notice including a description of the remedial action

1 taken.

2 Sec. 394.212. PROHIBITED ACTS AND PRACTICES. (a) A  
3 provider may not:

4 (1) purchase a debt or obligation of a consumer;

5 (2) receive or charge a fee in the form of a promissory  
6 note or other negotiable instrument other than a check or a draft;

7 (3) lend money or provide credit to the consumer;

8 (4) obtain a mortgage or other security interest in  
9 property owned by a consumer;

10 (5) engage in business with an entity described by  
11 Section 394.204(c)(3) without prior consent of the commissioner,  
12 except that unless denied, consent is considered granted 30 days  
13 after the date the provider notifies the commissioner of the intent  
14 to engage in business with an organization described by Section  
15 394.204(c)(3);

16 (6) offer, pay, or give a gift, bonus, premium,  
17 reward, or other compensation to a person for entering into a debt  
18 management services agreement;

19 (7) represent that the provider is authorized or  
20 competent to furnish legal advice or perform legal services unless  
21 supervised by an attorney as required by State Bar of Texas rules;

22 (8) use an unconscionable means to obtain a contract  
23 with a consumer;

24 (9) engage in an unfair, deceptive, or unconscionable  
25 act or practice in connection with a service provided to a consumer;

26 or

27 (10) require or attempt to require payment of an

1 amount that the provider states, discloses, or advertises to be a  
2 voluntary contribution from the consumer.

3 (b) A provider does not have a claim:

4 (1) for breach of contract against a consumer who  
5 cancels an agreement pursuant to this subchapter; or

6 (2) in restitution with respect to an agreement that  
7 is void under this subchapter.

8 (c) A provider may not include any of the following  
9 provisions in a disclosure related to debt management services or  
10 in a debt management services agreement:

11 (1) a confession of judgment clause;

12 (2) a waiver of the right to a jury trial, if  
13 applicable, in an action brought by or against a consumer;

14 (3) an assignment of or order for payment of wages or  
15 other compensation for services; or

16 (4) a waiver of a provision of this subchapter.

17 Sec. 394.213. DUTIES OF PROPER MANAGEMENT. A provider has a  
18 duty to a consumer who receives debt management services from the  
19 provider to ensure that client money is managed properly at all  
20 times.

21 Sec. 394.214. ADDITIONAL ENFORCEMENT POWERS. (a) The  
22 finance commission may adopt rules to carry out this subchapter.

23 (b) The commissioner may:

24 (1) investigate the activities of a person subject to  
25 this subchapter to determine compliance with this subchapter,  
26 including examination of the books, accounts, and records of a  
27 provider; and

1           (2) require or permit a person to file a statement  
2 under oath and otherwise subject to the penalties of perjury, as to  
3 all the facts and circumstances of the matter to be investigated.

4           (c) Failure to comply with an investigation under  
5 Subsection (b) is grounds for issuance of a cease and desist order.

6           (d) The commissioner may receive and act on complaints, take  
7 action to obtain voluntary compliance with this subchapter, and  
8 refer cases to the attorney general for prosecution.

9           (e) The commissioner may enforce this subchapter and rules  
10 adopted under this subchapter by:

11           (1) ordering the violator to cease and desist from the  
12 violation and any similar violations;

13           (2) ordering the violator to take affirmative action  
14 to correct the violation, including the restitution of money or  
15 property to a person aggrieved by the violation;

16           (3) imposing an administrative penalty not to exceed  
17 \$1,000 for each violation as provided by Subchapter F, Chapter 14;  
18 or

19           (4) rejecting an initial application or revoking or  
20 suspending a registration as provided by Section 394.204.

21           (f) In determining the amount of an administrative penalty  
22 to be imposed under this section, the commissioner shall consider  
23 the seriousness of the violation, the good faith of the violator,  
24 the violator's history of previous violations, the deleterious  
25 effect of the violation on the public, the assets of the violator,  
26 and any other factors the commissioner considers relevant.

27           (g) The commissioner, on relation of the attorney general at

1 the request of the commissioner, may bring an action in district  
2 court to enjoin a person from engaging in an act or continuing a  
3 course of action that violates this chapter. The court may order a  
4 preliminary or final injunction.

5 Sec. 394.215. PRIVATE REMEDIES. (a) An agreement for debt  
6 management services between a consumer and a person that is not  
7 registered under this subchapter is void.

8 (b) A consumer is entitled to recover all fees paid by the  
9 consumer under a void agreement, costs, and reasonable attorney's  
10 fees.

11 (c) In addition to any other remedies provided by this  
12 subchapter, a consumer who is aggrieved by a violation of this  
13 subchapter, a rule adopted by the finance commission under this  
14 subchapter, or by any unfair, unconscionable, or deceptive act or  
15 practice may recover:

16 (1) actual damages;

17 (2) punitive damages for acts or practices under a  
18 void agreement; and

19 (3) the costs of the action, including reasonable  
20 attorney's fees based on the amount of time involved.

21 (d) An aggrieved consumer may sue for injunctive and other  
22 appropriate equitable relief to stop a person from violating this  
23 subchapter.

24 (e) The remedies provided in this section are not intended  
25 to be the exclusive remedies available to a consumer nor must the  
26 consumer exhaust any administrative remedies provided under this  
27 subchapter or any other applicable law.

1           SECTION 2. Subchapter B, Chapter 394, Finance Code, is  
2 repealed.

3           SECTION 3. A person is not required to be registered under  
4 Section 394.204, Finance Code, as added by this Act, before January  
5 1, 2006.

6           SECTION 4. This Act takes effect September 1, 2005.