

1-1 By: Eltife S.B. No. 1112  
1-2 (In the Senate - Filed March 8, 2005; March 21, 2005, read  
1-3 first time and referred to Committee on Business and Commerce;  
1-4 April 11, 2005, reported favorably by the following vote: Yeas 9,  
1-5 Nays 0; April 11, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to debt management services; providing a penalty.  
1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:  
1-10 SECTION 1. Chapter 394, Finance Code, is amended by adding  
1-11 Subchapter C to read as follows:

1-12 SUBCHAPTER C. CONSUMER DEBT MANAGEMENT SERVICES  
1-13 Sec. 394.201. PURPOSE; CONSTRUCTION. (a) The purpose of  
1-14 this subchapter is to protect consumers who contract for services  
1-15 with debt management services providers.

1-16 (b) This subchapter shall be liberally construed to  
1-17 accomplish its purpose.

1-18 Sec. 394.202. DEFINITIONS. In this subchapter:

1-19 (1) "Advertising" means information about a provider  
1-20 or about the provider's debt management services, communicated in  
1-21 writing or orally to an individual consumer or the public by  
1-22 telephone, television, Internet, radio, or other electronic  
1-23 medium, or by written material sent by mail, posted publicly, or  
1-24 posted at the provider's business location.

1-25 (2) "Certified counselor" means an individual who:

1-26 (A) is certified as a debt management counselor  
1-27 by an independent accreditation organization; or

1-28 (B) if the individual has been employed for less  
1-29 than 12 months, is in the process of being certified as a debt  
1-30 management counselor by an independent accreditation organization.

1-31 (3) "Commissioner" means the consumer credit  
1-32 commissioner.

1-33 (4) "Consumer" means an individual who resides in this  
1-34 state and seeks a debt management service or enters a debt  
1-35 management service agreement.

1-36 (5) "Creditor" means a person to whom a person owes  
1-37 money.

1-38 (6) "Debt management service" means:

1-39 (A) the receiving of money from a consumer for  
1-40 the purpose of distributing that money to or among one or more of  
1-41 the creditors of the consumer in full or partial payment of the  
1-42 consumer's obligations;

1-43 (B) arranging or assisting a consumer to arrange  
1-44 for the distribution of one or more payments to or among one or more  
1-45 creditors of the consumer in full or partial payment of the  
1-46 consumer's obligations; or

1-47 (C) exercising control, directly or indirectly,  
1-48 or arranging for the exercise of control over funds of a consumer  
1-49 for the purpose of distributing payments to or among one or more  
1-50 creditors of the consumer in full or partial payment of the  
1-51 consumer's obligations.

1-52 (7) "Debt management service agreement" means a  
1-53 written agreement between a provider and a consumer for the  
1-54 performance of a debt management service.

1-55 (8) "Finance commission" means the Finance Commission  
1-56 of Texas.

1-57 (9) "Person" means an individual, partnership,  
1-58 corporation, limited liability company, association, or  
1-59 organization.

1-60 (10) "Provider" means a person that provides or offers  
1-61 to provide to a consumer in this state a debt management service.

1-62 (11) "Secured debt" means a debt for which a creditor  
1-63 has a mortgage, lien, or security interest in collateral.

1-64 (12) "Trust account" means an account that is:

2-1                   (A) established in a federally insured financial  
2-2 institution;  
2-3                   (B) separate from any account of the debt  
2-4 management service provider;  
2-5                   (C) designated as a "trust account" or other  
2-6 appropriate designation indicating that the money in the account is  
2-7 not money of the provider or its officers, employees, or agents;  
2-8                   (D) unavailable to creditors of the provider; and  
2-9                   (E) used exclusively to hold money paid by  
2-10 consumers to the provider for disbursement to creditors of the  
2-11 consumers and to the provider for the disbursement of fees and  
2-12 contributions earned and agreed to in advance.  
2-13                   (13) "Unsecured debt" means a debt for which a  
2-14 creditor does not have collateral.  
2-15                   Sec. 394.203. APPLICABILITY. (a) Except as otherwise  
2-16 provided by this subchapter, this subchapter applies to a provider  
2-17 regardless of whether the provider charges a fee or receives  
2-18 consideration for a service.  
2-19                   (b) The business of providing debt management services is  
2-20 conducted in this state if the debt management services provider  
2-21 solicits or contracts with consumers located in this state.  
2-22                   (c) This subchapter does not apply to:  
2-23                   (1) an attorney licensed to practice in this state,  
2-24 unless the attorney holds the attorney's self out to the public as a  
2-25 provider or is employed, affiliated with, or otherwise working on  
2-26 behalf of a provider;  
2-27                   (2) a title insurance or abstract company employee or  
2-28 agent, or other person legally authorized to engage in escrow  
2-29 business in the state, only while engaged in the escrow business;  
2-30                   (3) a judicial officer or person acting under a court  
2-31 order;  
2-32                   (4) a person who has legal authority under federal or  
2-33 state law to act as a representative payee for a consumer, only to  
2-34 the extent the person is paying bills or other debts on behalf of  
2-35 that consumer; or  
2-36                   (5) a person who pays bills or other debts owed by a  
2-37 consumer and on behalf of a consumer, if the money used to make the  
2-38 payments belongs exclusively to the consumer and the person does  
2-39 not initiate any contact with individual creditors of the consumer  
2-40 to compromise a debt, arrange a new payment schedule, or otherwise  
2-41 change the terms of the debt.  
2-42                   (d) The following are not debt management services for  
2-43 purposes of this subchapter:  
2-44                   (1) an extension of credit, including consolidation or  
2-45 refinance of a loan; and  
2-46                   (2) bankruptcy services provided by an attorney  
2-47 licensed to practice in this state.  
2-48                   (e) This subchapter applies to a person who seeks to evade  
2-49 its applicability by any device, subterfuge, or pretense.  
2-50                   Sec. 394.204. REGISTRATION. (a) A person, regardless of  
2-51 whether located in this state, may not provide a debt management  
2-52 service to a consumer in this state unless the person is registered  
2-53 with the commissioner.  
2-54                   (b) Registration expires on December 31 of the year in which  
2-55 the registration occurs and must be renewed annually.  
2-56                   (c) An application for an initial registration must be in a  
2-57 form prescribed by the commissioner and accompanied by:  
2-58                   (1) the appropriate fees set by the finance commission  
2-59 in an amount necessary to recover the costs of administering this  
2-60 subchapter;  
2-61                   (2) the surety bond or insurance required by Section  
2-62 394.206;  
2-63                   (3) a detailed description of the ownership interest  
2-64 of each officer, director, agent, or employee of the applicant, and  
2-65 any member of the immediate family of an officer, director, agent,  
2-66 or employee of the applicant, in a for-profit affiliate or  
2-67 subsidiary of the applicant or in any other for-profit business  
2-68 entity that provides services to the applicant or to a consumer in  
2-69 relation to the applicant's debt management business; and

3-1 (4) any other information that the commissioner  
 3-2 requires.

3-3 (d) An officer or employee of a person registered under this  
 3-4 subchapter is not required to be separately registered.

3-5 (e) Unless the commissioner notifies an applicant that a  
 3-6 longer period is necessary, the commissioner shall approve or deny  
 3-7 an initial registration not later than the 60th day after the date  
 3-8 on which the completed application, including all required  
 3-9 documents and payments, is filed. The commissioner shall inform  
 3-10 the applicant in writing of the reason for denial.

3-11 (f) A person may renew a registration by paying the  
 3-12 appropriate fee and completing all required documents.

3-13 (g) The finance commission by rule may establish procedures  
 3-14 to facilitate the registration and collection of fees under this  
 3-15 section, including rules staggering throughout the year the dates  
 3-16 on which fees are due.

3-17 (h) The commissioner may refuse an initial application if  
 3-18 the application contains errors or incomplete information. An  
 3-19 application is incomplete if it does not include all of the  
 3-20 information required by this section and Section 394.205.

3-21 (i) The commissioner may deny an initial application if:

3-22 (1) the applicant or any principal of the applicant  
 3-23 has been convicted of a crime or found civilly liable for an offense  
 3-24 involving moral turpitude, including forgery, embezzlement,  
 3-25 obtaining money under false pretenses, larceny, extortion,  
 3-26 conspiracy to defraud, or any other similar offense or violation;

3-27 (2) the registration of the applicant or any principal  
 3-28 of the applicant has been revoked or suspended in this state or  
 3-29 another state, unless the applicant provides information that the  
 3-30 commissioner finds sufficient to show that the grounds for the  
 3-31 previous revocation or suspension no longer exist and any problem  
 3-32 cited in the previous revocation has been corrected; or

3-33 (3) the commissioner, based on specific evidence,  
 3-34 finds that the applicant does not warrant the belief that the  
 3-35 business will be operated lawfully and fairly and within the  
 3-36 provisions and purposes of this subchapter.

3-37 (j) On written request, the applicant is entitled to a  
 3-38 hearing, pursuant to Chapter 2001, Government Code, on the question  
 3-39 of the applicant's qualifications for initial registration if the  
 3-40 commissioner has notified the applicant in writing that the initial  
 3-41 application has been denied. A request for a hearing may not be  
 3-42 made after the 30th day after the date the commissioner mails a  
 3-43 notice to the applicant stating that the application has been  
 3-44 denied and stating the reasons for the denial.

3-45 (k) In addition to the power to refuse an initial  
 3-46 application as specified in this section, the commissioner may  
 3-47 suspend or revoke a provider's registration after notice and  
 3-48 hearing if the commissioner finds that any of the following  
 3-49 conditions are met:

3-50 (1) a fact or condition exists that if it had existed  
 3-51 when the provider applied for registration would have been grounds  
 3-52 for denying registration;

3-53 (2) a fact or condition exists that the commissioner  
 3-54 was not aware of when the provider applied for registration and  
 3-55 would have been grounds for denying registration;

3-56 (3) the provider violates this subchapter or rule or  
 3-57 order of the commissioner under this subchapter;

3-58 (4) the provider is insolvent;

3-59 (5) the provider refuses to permit the commissioner to  
 3-60 make an examination authorized by this subchapter;

3-61 (6) the provider fails to respond within a reasonable  
 3-62 time and in an appropriate manner to communications from the  
 3-63 commissioner;

3-64 (7) the provider has failed to disburse money to  
 3-65 creditors on behalf of consumers within a reasonable time, normally  
 3-66 30 days;

3-67 (8) the commissioner determines that the provider's  
 3-68 trust account is not materially in balance with and reconciled to  
 3-69 the consumer's account; or

4-1           (9) the provider fails to warrant the belief that the  
 4-2 business will be operated lawfully and fairly and within the  
 4-3 provisions and purposes of this subchapter.

4-4           (1) The commissioner's order revoking a registration must  
 4-5 include appropriate provisions to transfer existing clients of the  
 4-6 provider to one or more registered providers to ensure the  
 4-7 continued servicing of the clients' accounts.

4-8           (m) The commissioner shall maintain a list of registered  
 4-9 providers and make the list available to interested persons and to  
 4-10 the public.

4-11           Sec. 394.205. RECORDS. (a) A provider shall keep and use  
 4-12 books, accounts, and other records that will enable the  
 4-13 commissioner to determine if the provider is complying with this  
 4-14 subchapter and maintain any other records as required by the  
 4-15 commissioner. The commissioner may examine the records at any  
 4-16 reasonable time. The records must be kept for at least three years  
 4-17 after the date of the last service on a consumer's debt management  
 4-18 plan.

4-19           (b) Each provider shall file a report with the commissioner  
 4-20 at each renewal of the provider's registration. The report must at  
 4-21 a minimum disclose in detail and under appropriate headings:

4-22           (1) the assets and liabilities of the provider at the  
 4-23 beginning and end of the period;

4-24           (2) the total number of debt management plans the  
 4-25 provider has initiated during that year; and

4-26           (3) records of total and average fees charged to  
 4-27 consumers, including all voluntary contributions received from  
 4-28 consumers.

4-29           (c) The reports must be verified by the oath or affirmation  
 4-30 of the owner, manager, president, chief executive officer, or  
 4-31 chairman of the board of directors of the provider.

4-32           (d) A provider shall file a blank copy of the agreement  
 4-33 described in Section 394.209 and blank copies of the written  
 4-34 information required in Section 394.208(a) with the commissioner  
 4-35 accompanying the initial registration and each renewal of  
 4-36 registration.

4-37           (e) The commissioner shall make the information provided  
 4-38 under this section available to interested parties and to the  
 4-39 public.

4-40           Sec. 394.206. BOND; INSURANCE. (a) A provider shall, at  
 4-41 the time the provider files an initial or renewal registration  
 4-42 application with the commissioner, file:

4-43           (1) a surety bond; or  
 4-44           (2) evidence that the provider maintains an insurance  
 4-45 policy in a form approved by the commissioner.

4-46           (b) The bond or insurance must:  
 4-47           (1) run concurrently with the period of registration;  
 4-48           (2) be available to pay damages and penalties to  
 4-49 consumers directly harmed by a violation of this subchapter;

4-50           (3) be in favor of this state for the use of this state  
 4-51 and the use of a person who has a cause of action under this  
 4-52 subchapter against the provider;

4-53           (4) be in an amount equal to the average daily balance  
 4-54 of the provider's trust account serving Texas consumers over the  
 4-55 six-month period preceding the issuance of the bond, or in the case  
 4-56 of an initial application, in an amount determined by the  
 4-57 commissioner, but not less than \$25,000 or more than \$100,000;

4-58           (5) if an insurance policy:  
 4-59           (A) provide coverage for professional liability,  
 4-60 employee dishonesty, depositor's forgery, and computer fraud in an  
 4-61 amount not less than \$100,000;

4-62           (B) be issued by a company rated at least "A-" or  
 4-63 its equivalent by a nationally recognized rating organization; and

4-64           (C) provide for 30 days advance written notice of  
 4-65 termination of the policy to be provided to the commissioner;

4-66           (6) be issued by a bonding, surety, or insurance  
 4-67 company that is authorized to do business in the state; and

4-68           (7) be conditioned on the provider and its agents  
 4-69 complying with all state and federal laws, including regulations,

5-1 governing the business of debt management services.

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

5-6 (d) The commissioner may adjust the amount of the provider's  
 5-7 bond or insurance only when the provider applies for renewal of  
 5-8 registration and requests a review of the bond or insurance amount.

5-9 Sec. 394.207. ADVERTISING. A provider may not engage in  
 5-10 false or deceptive advertising.

5-11 Sec. 394.208. REQUIRED ACTIONS BY PROVIDER. (a) A  
 5-12 provider may not enroll a consumer in a debt management plan unless:

5-13 (1) the provider is a nonprofit organization exempt  
 5-14 from taxation under Section 501(c)(3), Internal Revenue Code of  
 5-15 1986; and

5-16 (2) through the services of a counselor certified by  
 5-17 an independent accreditation organization, the provider has:

5-18 (A) provided the consumer individualized  
 5-19 counseling and educational information that at a minimum addresses  
 5-20 the topics of managing household finances, managing credit and  
 5-21 debt, and budgeting;

5-22 (B) prepared an individualized financial  
 5-23 analysis and an initial debt management plan for the consumer's  
 5-24 debts with specific recommendations regarding actions the consumer  
 5-25 should take;

5-26 (C) determined that the consumer has a reasonable  
 5-27 ability to make payments under the proposed debt management plan  
 5-28 based on the information provided by the consumer;

5-29 (D) a reasonable expectation, provided that the  
 5-30 consumer has provided accurate information to the provider, that  
 5-31 each creditor of the consumer listed as a participating creditor in  
 5-32 the plan will accept payment of the consumer's debts as provided in  
 5-33 the initial plan;

5-34 (E) prepared, for all creditors identified by the  
 5-35 consumer or identified through additional investigation by the  
 5-36 provider, a list, which must be provided to the consumer in a form  
 5-37 the consumer may keep, of the creditors that the provider  
 5-38 reasonably expects to participate in the plan; and

5-39 (F) provided a written document to the consumer  
 5-40 in a form the consumer may keep that clearly and conspicuously  
 5-41 contains the following statements:

5-42 (i) that debt management services are not  
 5-43 suitable for all consumers and that consumers may request  
 5-44 information about other ways, including bankruptcy, to deal with  
 5-45 indebtedness;

5-46 (ii) that the nonprofit or tax-exempt  
 5-47 organization cannot require donations or contributions; and

5-48 (iii) that some of the provider's funding  
 5-49 comes from contributions from creditors who participate in debt  
 5-50 management plans, except that a provider may substitute for "some"  
 5-51 the actual percentage of creditor contributions it received during  
 5-52 the most recent reporting period.

5-53 (b) If the provider discusses its services with a consumer  
 5-54 primarily in a language other than English, the provider must  
 5-55 provide the debt management agreement in that language.

5-56 (c) A consumer must give at least 10 days' notice to the  
 5-57 provider to cancel a debt management services agreement. The  
 5-58 provider must cancel a debt management services agreement within 10  
 5-59 days after the date the provider receives the notice from the  
 5-60 consumer. The provider must continue making disbursements to the  
 5-61 consumer's creditors if money has been paid to the provider under  
 5-62 the agreement until the expiration of the 10-day period, unless  
 5-63 otherwise agreed in writing by the consumer and the provider.

5-64 (d) A provider may provide the information required by  
 5-65 Subsections (a)(2)(B), (E), and (F) through its Internet website if  
 5-66 the provider:

5-67 (1) has complied with the federal Electronic  
 5-68 Signatures in Global and National Commerce Act (15 U.S.C. Section  
 5-69 7001 et seq.);

6-1 (2) informs the consumer that, on electronic,  
6-2 telephonic, or written request the provider will make available to  
6-3 the consumer a paper copy or copies; and

6-4 (3) discloses on its Internet website:  
6-5 (A) the provider's name and each name under which  
6-6 it does business;

6-7 (B) the provider's principal business address  
6-8 and telephone number; and

6-9 (C) the names of the provider's principal  
6-10 officers.

6-11 (e) A provider, including a provider that does business only  
6-12 or principally through the Internet, shall maintain a telephone  
6-13 system staffed at a level that reasonably permits a consumer to  
6-14 access a counselor during ordinary business hours.

6-15 (f) A provider shall provide each consumer for whom it  
6-16 provides debt management services a written report accounting for:

6-17 (1) the amount of money received from the consumer  
6-18 since the last report;

6-19 (2) the amount and date of each disbursement made on  
6-20 the consumer's behalf to each creditor listed in the agreement  
6-21 since the last report;

6-22 (3) any amount deducted from amounts received from the  
6-23 consumer; and

6-24 (4) any amount held in reserve.

6-25 (g) The provider shall provide the report under Subsection  
6-26 (f):

6-27 (1) at least once each calendar quarter; and

6-28 (2) not later than the 10th business day after the date  
6-29 of a request by a consumer.

6-30 Sec. 394.209. WRITTEN DEBT MANAGEMENT SERVICES AGREEMENT.

6-31 (a) A debt management services provider may not prepare a debt  
6-32 management services agreement before the provider has fully  
6-33 complied with Sections 394.208(a) and (b).

6-34 (b) Each debt management services agreement must:

6-35 (1) be dated and signed by the consumer;

6-36 (2) include the name and address of the consumer and  
6-37 the name, address, and telephone number of the provider;

6-38 (3) describe the services to be provided;

6-39 (4) state all fees, individually itemized, to be paid  
6-40 by the consumer;

6-41 (5) list in the agreement or accompanying document, to  
6-42 the extent the information is available to the provider at the time  
6-43 the agreement is executed, each participating creditor of the  
6-44 consumer to which payments will be made and, based on information  
6-45 provided by the consumer, the amount owed to each creditor and the  
6-46 schedule of payments the consumer will be required to make to the  
6-47 creditor, including the amount and date on which each payment will  
6-48 be due;

6-49 (6) state the existence of a surety bond or insurance  
6-50 for consumer claims;

6-51 (7) state that establishment of a debt management plan  
6-52 may impact the consumer's credit rating and credit score either  
6-53 favorably or unfavorably, depending on creditor policies and the  
6-54 consumer's payment history before and during participation in the  
6-55 debt management plan; and

6-56 (8) state that either party may cancel the agreement  
6-57 without penalty at any time on 10 days' notice and that a consumer  
6-58 who cancels an agreement is entitled to a refund of all money that  
6-59 the consumer has paid to the provider that has not been disbursed.

6-60 (c) A debt management services agreement may contain a  
6-61 voluntary consumer arbitration provision or a voluntary mediation  
6-62 provision.

6-63 (d) A provider may deliver the debt management services  
6-64 agreement through the Internet if the provider:

6-65 (1) has complied with the federal Electronic  
6-66 Signatures in Global and National Commerce Act (15 U.S.C. Section  
6-67 7001 et seq.);

6-68 (2) sends the consumer a paper copy of the agreement  
6-69 not later than the seventh day after the date of a request by a

7-1 consumer to do so; and  
 7-2 (3) discloses on a prominent page of its Internet  
 7-3 website:

7-4 (A) the provider's name and each name under which  
 7-5 it does business;

7-6 (B) the provider's principal business address  
 7-7 and telephone number; and

7-8 (C) the names of the provider's principal  
 7-9 officers.

7-10 (e) If the provider discusses its services or negotiates  
 7-11 with a consumer primarily in a language other than English, the  
 7-12 provider may not begin performance of a debt management plan until  
 7-13 the provider and consumer sign a copy of the written agreement,  
 7-14 provided by the debt management services provider, in that language  
 7-15 and a copy is made available to the consumer.

7-16 Sec. 394.210. PERMITTED FEES. (a) With respect to the  
 7-17 provision of a debt management plan service, a provider may not  
 7-18 impose a fee or other charge on a consumer, or receive payment from  
 7-19 a consumer or other person on behalf of a consumer, except as  
 7-20 allowed under this section.

7-21 (b) For the purposes of this section, fees or charges  
 7-22 include both voluntary contributions and any other fees charged to  
 7-23 or collected from a consumer or on behalf of the consumer.

7-24 (c) Any fee charged by a provider must be fair and  
 7-25 reasonable given the value of the products and services provided to  
 7-26 the consumer, including consideration of the amount subject to debt  
 7-27 management and the number of anticipated payments. A fee or a  
 7-28 portion of a fee that is specifically related to a debt management  
 7-29 plan may not be charged until the provider has complied with  
 7-30 Sections 394.208(a) and (b) and 394.209.

7-31 (d) A provider may charge a monthly maintenance fee if the  
 7-32 fee is fair and reasonable.

7-33 (e) A fee charged for a service other than a debt management  
 7-34 service must be fair and reasonable.

7-35 Sec. 394.211. TRUST ACCOUNT. (a) A provider must use a  
 7-36 trust account for the management of all money paid by or on behalf  
 7-37 of a consumer for disbursement to the consumer's creditor. A  
 7-38 provider may not commingle the money in a trust account established  
 7-39 for the benefit of consumers with any operating funds of the  
 7-40 provider. A provider shall exercise due care to appropriately  
 7-41 manage the funds in the trust account.

7-42 (b) The trust account must at all times be materially in  
 7-43 balance with and reconciled to the consumers' accounts. Failure to  
 7-44 maintain that balance is cause for a summary suspension of  
 7-45 registration under Section 394.204.

7-46 (c) If a trust account does not contain sufficient money to  
 7-47 cover the aggregate consumer balances, and the provider has not  
 7-48 corrected the deficiency within 48 hours of discovery, the provider  
 7-49 shall notify the commissioner by telephone, facsimile, electronic  
 7-50 mail, or other method approved by the commissioner, and provide  
 7-51 written notice including a description of the remedial action  
 7-52 taken.

7-53 Sec. 394.212. PROHIBITED ACTS AND PRACTICES. (a) A  
 7-54 provider may not:

7-55 (1) purchase a debt or obligation of a consumer;

7-56 (2) receive or charge a fee in the form of a promissory  
 7-57 note or other negotiable instrument other than a check or a draft;

7-58 (3) lend money or provide credit to the consumer;

7-59 (4) obtain a mortgage or other security interest in  
 7-60 property owned by a consumer;

7-61 (5) engage in business with an entity described by  
 7-62 Section 394.204(c)(3) without prior consent of the commissioner,  
 7-63 except that unless denied, consent is considered granted 30 days  
 7-64 after the date the provider notifies the commissioner of the intent  
 7-65 to engage in business with an organization described by Section  
 7-66 394.204(c)(3);

7-67 (6) offer, pay, or give a gift, bonus, premium,  
 7-68 reward, or other compensation to a person for entering into a debt  
 7-69 management services agreement;

8-1 (7) represent that the provider is authorized or  
 8-2 competent to furnish legal advice or perform legal services unless  
 8-3 supervised by an attorney as required by State Bar of Texas rules;

8-4 (8) use an unconscionable means to obtain a contract  
 8-5 with a consumer;

8-6 (9) engage in an unfair, deceptive, or unconscionable  
 8-7 act or practice in connection with a service provided to a consumer;  
 8-8 or

8-9 (10) require or attempt to require payment of an  
 8-10 amount that the provider states, discloses, or advertises to be a  
 8-11 voluntary contribution from the consumer.

8-12 (b) A provider does not have a claim:

8-13 (1) for breach of contract against a consumer who  
 8-14 cancels an agreement pursuant to this subchapter; or

8-15 (2) in restitution with respect to an agreement that  
 8-16 is void under this subchapter.

8-17 (c) A provider may not include any of the following  
 8-18 provisions in a disclosure related to debt management services or  
 8-19 in a debt management services agreement:

8-20 (1) a confession of judgment clause;

8-21 (2) a waiver of the right to a jury trial, if  
 8-22 applicable, in an action brought by or against a consumer;

8-23 (3) an assignment of or order for payment of wages or  
 8-24 other compensation for services; or

8-25 (4) a waiver of a provision of this subchapter.

8-26 Sec. 394.213. DUTIES OF PROPER MANAGEMENT. A provider has a  
 8-27 duty to a consumer who receives debt management services from the  
 8-28 provider to ensure that client money is managed properly at all  
 8-29 times.

8-30 Sec. 394.214. ADDITIONAL ENFORCEMENT POWERS. (a) The  
 8-31 finance commission may adopt rules to carry out this subchapter.

8-32 (b) The commissioner may:

8-33 (1) investigate the activities of a person subject to  
 8-34 this subchapter to determine compliance with this subchapter,  
 8-35 including examination of the books, accounts, and records of a  
 8-36 provider; and

8-37 (2) require or permit a person to file a statement  
 8-38 under oath and otherwise subject to the penalties of perjury, as to  
 8-39 all the facts and circumstances of the matter to be investigated.

8-40 (c) Failure to comply with an investigation under  
 8-41 Subsection (b) is grounds for issuance of a cease and desist order.

8-42 (d) The commissioner may receive and act on complaints, take  
 8-43 action to obtain voluntary compliance with this subchapter, and  
 8-44 refer cases to the attorney general for prosecution.

8-45 (e) The commissioner may enforce this subchapter and rules  
 8-46 adopted under this subchapter by:

8-47 (1) ordering the violator to cease and desist from the  
 8-48 violation and any similar violations;

8-49 (2) ordering the violator to take affirmative action  
 8-50 to correct the violation, including the restitution of money or  
 8-51 property to a person aggrieved by the violation;

8-52 (3) imposing an administrative penalty not to exceed  
 8-53 \$1,000 for each violation as provided by Subchapter F, Chapter 14;  
 8-54 or

8-55 (4) rejecting an initial application or revoking or  
 8-56 suspending a registration as provided by Section 394.204.

8-57 (f) In determining the amount of an administrative penalty  
 8-58 to be imposed under this section, the commissioner shall consider  
 8-59 the seriousness of the violation, the good faith of the violator,  
 8-60 the violator's history of previous violations, the deleterious  
 8-61 effect of the violation on the public, the assets of the violator,  
 8-62 and any other factors the commissioner considers relevant.

8-63 (g) The commissioner, on relation of the attorney general at  
 8-64 the request of the commissioner, may bring an action in district  
 8-65 court to enjoin a person from engaging in an act or continuing a  
 8-66 course of action that violates this chapter. The court may order a  
 8-67 preliminary or final injunction.

8-68 Sec. 394.215. PRIVATE REMEDIES. (a) An agreement for debt  
 8-69 management services between a consumer and a person that is not



9-1 registered under this subchapter is void.

9-2 (b) A consumer is entitled to recover all fees paid by the  
9-3 consumer under a void agreement, costs, and reasonable attorney's  
9-4 fees.

9-5 (c) In addition to any other remedies provided by this  
9-6 subchapter, a consumer who is aggrieved by a violation of this  
9-7 subchapter, a rule adopted by the finance commission under this  
9-8 subchapter, or by any unfair, unconscionable, or deceptive act or  
9-9 practice may recover:

9-10 (1) actual damages;

9-11 (2) punitive damages for acts or practices under a  
9-12 void agreement; and

9-13 (3) the costs of the action, including reasonable  
9-14 attorney's fees based on the amount of time involved.

9-15 (d) An aggrieved consumer may sue for injunctive and other  
9-16 appropriate equitable relief to stop a person from violating this  
9-17 subchapter.

9-18 (e) The remedies provided in this section are not intended  
9-19 to be the exclusive remedies available to a consumer nor must the  
9-20 consumer exhaust any administrative remedies provided under this  
9-21 subchapter or any other applicable law.

9-22 SECTION 2. Subchapter B, Chapter 394, Finance Code, is  
9-23 repealed.

9-24 SECTION 3. A person is not required to be registered under  
9-25 Section 394.204, Finance Code, as added by this Act, before January  
9-26 1, 2006.

9-27 SECTION 4. This Act takes effect September 1, 2005.

9-28 \* \* \* \* \*