

By: Eltife

S.B. No. 2233

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of debt management services providers;  
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 D to read as follows:

SUBCHAPTER D. UNIFORM DEBT MANAGEMENT SERVICES ACT

Sec. 394.301. SHORT TITLE. This subchapter may be cited as  
the Uniform Debt Management Services Act.

Sec. 394.302. DEFINITIONS. In this subchapter:

(1) "Administrator" means the consumer credit  
commissioner.

(2) "Affiliate":

(A) with respect to an individual who is a debt  
management services provider, means:

(i) the spouse of the individual provider;

(ii) a sibling of the individual provider  
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 provider or the individual provider'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

1 spouse of any of them; or

2 (v) any other individual occupying the  
3 residence of the individual provider; and

4 (B) with respect to an entity, means:

5 (i) a person that directly or indirectly  
6 controls, is controlled by, or is under common control with the  
7 entity;

8 (ii) an officer of, or an individual  
9 performing similar functions with respect to, the entity;

10 (iii) a director of, or an individual  
11 performing similar functions with respect to, the entity;

12 (iv) subject to adjustment of the dollar  
13 amount pursuant to Section 394.332(f), a person that receives or  
14 received more than \$25,000 from the entity in either the current  
15 year or the preceding year or a person that owns more than 10  
16 percent of, or an individual who is employed by or is a director of,  
17 a person that receives or received more than \$25,000 from the entity  
18 in either the current year or the preceding year;

19 (v) an officer or director of, or an  
20 individual performing similar functions with respect to, a person  
21 described in Subparagraph (i);

22 (vi) the spouse of, or an individual  
23 occupying the residence of, an individual described in  
24 Subparagraphs (i) through (v); or

25 (vii) an individual who has the  
26 relationship specified in Paragraph (A)(iv) to an individual  
27 provider or the spouse of an individual described in Subparagraphs

1 (i) through (v).

2 (3) "Agreement" means an agreement between a provider  
3 and an individual debtor for the performance of debt management  
4 services.

5 (4) "Bank" means a financial institution, including a  
6 commercial bank, savings bank, savings and loan association, credit  
7 union, or trust company, engaged in the business of banking,  
8 chartered under federal or state law, and regulated by a federal or  
9 state banking regulatory authority.

10 (5) "Business address" means the physical location of  
11 a business, including the name and number of a street.

12 (6) "Certified counselor" means an individual  
13 certified by a training program or certifying organization,  
14 approved by the administrator, that authenticates the competence of  
15 individuals providing education and assistance to debtors in  
16 connection with debt management services in which an agreement  
17 contemplates that creditors will reduce finance charges or fees for  
18 late payment, default, or delinquency.

19 (7) "Certified debt specialist" means an individual  
20 certified by a training program or certifying organization,  
21 approved by the administrator, that authenticates the competence of  
22 individuals providing education and assistance to debtors in  
23 connection with debt management services in which an agreement  
24 contemplates that creditors will settle debts for less than the  
25 full principal amount of debt owed.

26 (8) "Concessions" means assent to repayment of a debt  
27 on terms more favorable to an individual than the terms of the

1 contract between the individual and a creditor.

2 (9) "Day" means calendar day.

3 (10) "Debt management services" means services as an  
4 intermediary between an individual and one or more creditors of the  
5 individual for the purpose of obtaining concessions. The term does  
6 not include:

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

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

13 (C) financial planning services provided in a  
14 financial planner-client relationship by a member of a financial  
15 planning profession whose members the finance commission, by rule,  
16 determines are:

- 17 (i) licensed by this state;  
18 (ii) subject to a disciplinary mechanism;  
19 (iii) subject to a code of professional  
20 responsibility; and  
21 (iv) subject to a continuing education  
22 requirement.

23 (11) "Entity" means a person other than an individual.

24 (12) "Good faith" means honesty in fact and the  
25 observance of reasonable standards of fair dealing.

26 (13) "Person" means an individual, corporation,  
27 business trust, estate, trust, partnership, limited liability

1 company, association, joint venture, or any other legal or  
2 commercial entity. The term does not include a public corporation,  
3 government, or governmental subdivision, agency, or  
4 instrumentality.

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

9 (15) "Principal amount of the debt" means the amount  
10 of a debt at the time of an agreement.

11 (16) "Provider" means a person that provides, offers  
12 to provide, or agrees to provide debt management services directly  
13 or through others.

14 (17) "Record" means information that is inscribed on a  
15 tangible medium or that is stored in an electronic or other medium  
16 and is retrievable in perceivable form.

17 (18) "Settlement fee" means a charge imposed on or  
18 paid by an individual in connection with a creditor's assent to  
19 accept in full satisfaction of a debt an amount less than the  
20 principal amount of the debt.

21 (19) "Sign" means, with present intent to authenticate  
22 or adopt a record:

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

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

26 (20) "State" means a state of the United States, the  
27 District of Columbia, Puerto Rico, the United States Virgin

1 Islands, or any territory or insular possession subject to the  
2 jurisdiction of the United States.

3 (21) "Trust account" means an account held by a  
4 provider that is:

5 (A) established in an insured bank;

6 (B) separate from other accounts of the provider  
7 or its designee;

8 (C) designated as a trust account or other  
9 account designated to indicate that the money in the account is not  
10 the money of the provider or its designee; and

11 (D) used to hold money of one or more individuals  
12 for disbursement to creditors of the individuals.

13 Sec. 394.303. APPLICABILITY. (a) This subchapter does not  
14 apply to an agreement with an individual who the provider has no  
15 reason to know resides in this state at the time of the agreement.

16 (b) This subchapter does not apply to a provider to the  
17 extent that the provider:

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

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

25 (c) This subchapter does not apply to the following persons  
26 or their employees when the person or the employee is engaged in the  
27 regular course of the person's business or profession:

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

4           (2) a bank;

5           (3) an affiliate, as defined in Section  
6 394.302(2)(B)(i), of a bank if the affiliate is regulated by a  
7 federal or state banking regulatory authority; or

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

11           Sec. 394.304. REGISTRATION REQUIRED. (a) Except as  
12 otherwise provided in Subsection (b), a provider may not provide  
13 debt management services to an individual who it reasonably should  
14 know resides in this state at the time it agrees to provide the  
15 services, unless the provider is registered under this subchapter.

16           (b) If a provider is registered under this subchapter,  
17 Subsection (a) does not apply to an employee or agent of the  
18 provider.

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

21           Sec. 394.305. APPLICATION FOR REGISTRATION: FORM, FEE, AND  
22 ACCOMPANYING DOCUMENTS. (a) An application for registration as a  
23 provider must be in a form prescribed by the administrator.

24           (b) Subject to adjustment of dollar amounts pursuant to  
25 Section 394.332(f), an application for an initial registration must  
26 be accompanied by:

27           (1) the appropriate fees set by the finance commission

1 in an amount necessary to recover the costs of administering this  
2 subchapter;

3 (2) the bond required by Section 394.313;

4 (3) identification of all trust accounts required by  
5 Section 394.322 and an irrevocable consent authorizing the  
6 administrator to review and examine the trust accounts;

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

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

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

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

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

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

22 (5) a certificate of authority to do business in this  
23 state, if applicable.

24 Sec. 394.306. APPLICATION FOR REGISTRATION: REQUIRED  
25 INFORMATION. An application for registration must be signed under  
26 oath and include:

27 (1) the applicant's name, principal business address



1 and telephone number, and all other business addresses in this  
2 state, electronic mail addresses, and Internet website addresses;

3 (2) all names under which the applicant conducts  
4 business;

5 (3) the address of each location in this state at which  
6 the applicant will provide debt management services or a statement  
7 that the applicant will have no such location;

8 (4) the name and home address of each officer and  
9 director of the applicant and each person that owns at least 10  
10 percent of the applicant;

11 (5) identification of every jurisdiction in which,  
12 during the five years immediately preceding the application:

13 (A) the applicant or any of its officers or  
14 directors has been licensed or registered to provide debt  
15 management services; or

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

18 (6) a statement describing, to the extent it is known  
19 or should be known by the applicant, any material civil or criminal  
20 judgment or litigation and any material administrative or  
21 enforcement action by a governmental agency in any jurisdiction  
22 against the applicant, any of its officers, directors, owners, or  
23 agents, or any person who is authorized to have access to the trust  
24 account required by Section 394.322;

25 (7) the applicant's financial statements, audited by  
26 an accountant licensed to conduct audits, for each of the two years  
27 immediately preceding the application or, if it has not been in

1 operation for the two years preceding the application, for the  
2 period of its existence;

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

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

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

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

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

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

19 (14) at the applicant's expense, the results of a  
20 criminal records check, including fingerprints, conducted within  
21 the immediately preceding 12 months, covering every officer of the  
22 applicant and every employee or agent of the applicant who is  
23 authorized to have access to the trust account required by Section  
24 394.322;

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

27 (16) a description of any ownership interest of at

1 least 10 percent by a director, owner, or employee of the applicant  
2 in:

3 (A) any affiliate of the applicant; or

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

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

12 (18) the identity of each director who is an  
13 affiliate, as defined in Section 394.302(2)(A) or (B)(i), (ii),  
14 (iv), (v), (vi), or (vii), of the applicant; and

15 (19) any other information that the administrator  
16 reasonably requires.

17 Sec. 394.307. APPLICATION FOR REGISTRATION: OBLIGATION TO  
18 UPDATE INFORMATION. An applicant or registered provider shall  
19 notify the administrator within 10 days after a change in the  
20 information specified in Section 394.305(b)(4) or Section  
21 394.306(1), (3), (6), (12), or (13).

22 Sec. 394.308. APPLICATION FOR REGISTRATION: PUBLIC  
23 INFORMATION. Except for the information required by Sections  
24 394.306(7), (14), and (17) and the addresses required by Section  
25 394.306(4), the administrator shall make the information in an  
26 application for registration as a provider available to the public.

27 Sec. 394.309. CERTIFICATE OF REGISTRATION: ISSUANCE OR

1 DENIAL. (a) Except as otherwise provided in Subsections (c) and  
2 (d), the administrator shall issue a certificate of registration as  
3 a provider to a person that complies with Sections 394.305 and  
4 394.306.

5 (b) If an applicant has otherwise complied with Sections  
6 394.305 and 394.306, including a timely effort to obtain the  
7 information required by Section 394.306(14), but the information  
8 has not been received, the administrator may issue a temporary  
9 certificate of registration. The temporary certificate shall  
10 expire not later than 180 days after issuance.

11 (c) The administrator may deny registration if:

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

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

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

21 (4) the administrator finds that the financial  
22 responsibility, experience, character, or general fitness of the  
23 applicant or its owners, directors, employees, or agents does not  
24 warrant belief that the business will be operated in compliance  
25 with this subchapter.

26 (d) The administrator shall deny registration if the  
27 applicant's board of directors is not independent of the

1 applicant's employees and agents.

2 (e) Subject to adjustment of the dollar amount pursuant to  
3 Section 394.332(f), a board of directors is not independent for  
4 purposes of Subsection (d) if more than one-fourth of its members:

5 (1) are affiliates of the applicant, as defined in  
6 Section 394.302(2)(A) or (B)(i), (ii), (iv), (v), (vi), or (vii);  
7 or

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

12 Sec. 394.310. CERTIFICATE OF REGISTRATION: TIMING. (a) The  
13 administrator shall approve or deny an initial registration as a  
14 provider not later than the 60th day after the date on which the  
15 completed application, including all required documents and  
16 payments, is filed. The administrator shall inform the applicant in  
17 writing of the reasons for the denial.

18 (b) If the administrator denies an application for  
19 registration as a provider, the applicant may appeal and request a  
20 hearing pursuant to Chapter 2001, Government Code. The applicant  
21 may appeal and request a hearing on the question of the applicant's  
22 qualifications for initial registration as a provider if the  
23 administrator has notified the applicant in a record that the  
24 initial application has been denied. A request for a hearing may not  
25 be made after the 30th day after the date the administrator mails a  
26 notice to the applicant stating that the application has been  
27 denied and stating the reasons for the denial.

1 (c) A registration as a provider is valid for one year.

2 Sec. 394.311. RENEWAL OF REGISTRATION. (a) A provider must  
3 obtain a renewal of its registration annually.

4 (b) An application for renewal of registration as a provider  
5 must be in a form prescribed by the administrator, signed under  
6 oath, and:

7 (1) be filed not less than 30 days or more than 60 days  
8 before the registration expires;

9 (2) be accompanied by the fee established by the  
10 finance commission and the bond required by Section 394.313;

11 (3) contain the matters required for initial  
12 registration as a provider by Sections 394.306(8) and (9) and a  
13 financial statement, audited by an accountant licensed to conduct  
14 audits, for the applicant's fiscal year immediately preceding the  
15 application;

16 (4) disclose any changes in the information contained  
17 in the applicant's application for registration or its immediately  
18 previous application for renewal, as applicable;

19 (5) supply evidence of insurance in an amount equal to  
20 the larger of \$250,000 or the highest daily balance in the trust  
21 account required by Section 394.322 during the six-month period  
22 immediately preceding the application:

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

26 (B) issued by an insurance company authorized to  
27 do business in this state and rated at least A or equivalent by a

1 nationally recognized rating organization approved by the  
2 administrator;

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

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

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

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

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

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

23 (c) Except for the information required by Sections  
24 394.306(7), (14), and (17) and the addresses required by Section  
25 394.306(4), the administrator shall make the information in an  
26 application for renewal of registration as a provider available to  
27 the public.

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

5       (d-1) If an application is otherwise complete and the  
6 applicant has made a timely effort to obtain the information  
7 required by Section 394.306(14) but the information has not been  
8 received, the administrator may issue a temporary renewal of  
9 registration. The temporary renewal shall expire not later than 180  
10 days after issuance.

11       (e) If the administrator denies an application for renewal  
12 of registration as a provider, the applicant, within 30 days after  
13 receiving notice of the denial, may appeal and request a hearing  
14 pursuant to Chapter 2001, Government Code. Subject to Section  
15 394.334, while the appeal is pending the applicant shall continue  
16 to provide debt management services to individuals with whom it has  
17 agreements. If the denial is affirmed, subject to the  
18 administrator's order and Section 394.334, the applicant shall  
19 continue to provide debt management services to individuals with  
20 whom it has agreements until, with the approval of the  
21 administrator, it transfers the agreements to another registered  
22 provider or returns to the individuals all unexpended money that is  
23 under the applicant's control.

24       Sec. 394.312. REGISTRATION IN ANOTHER STATE. If a provider  
25 holds a license or certificate of registration in another state  
26 authorizing it to provide debt management services, the provider  
27 may submit a copy of that license or certificate and the application



1 for it instead of an application in the form prescribed by Sections  
2 394.305 and 394.306 or by Section 394.311. The administrator shall  
3 accept the application and the license or certificate from the  
4 other state as an application for registration as a provider or for  
5 renewal of registration as a provider, as appropriate, in this  
6 state if:

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

10 (2) the applicant provides the information required by  
11 Sections 394.306(1), (3), (10), (12), and (13); and

12 (3) the applicant, under oath, certifies that the  
13 information contained in the application is current or, to the  
14 extent it is not current, supplements the application to make the  
15 information current.

16 Sec. 394.313. BOND REQUIRED. (a) Except as otherwise  
17 provided in Section 394.314, a provider that is required to be  
18 registered under this subchapter shall file a surety bond with the  
19 administrator, which must:

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

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

27 (b) Subject to adjustment of the dollar amount pursuant to

1 Section 394.332(f), a surety bond filed pursuant to Subsection (a)  
2 must:

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

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

12 (3) have payment conditioned on noncompliance of the  
13 provider or its agent with this subchapter.

14 (c) If the principal amount of a surety bond is reduced by  
15 payment of a claim or a judgment, the provider shall immediately  
16 notify the administrator and, within 30 days after notice by the  
17 administrator, file a new or additional surety bond in an amount set  
18 by the administrator. The amount of the new or additional bond must  
19 be at least the amount of the bond immediately before payment of the  
20 claim or judgment. If for any reason a surety terminates a bond, the  
21 provider shall immediately file a new surety bond in the amount of  
22 \$50,000 or other amount determined pursuant to Subsection (b).

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

26 (1) the administrator assesses expenses under Section  
27 394.332(b)(1), issues a final order under Section 394.333(b)(2), or

1 recovers a final judgment under Section 394.333(b)(4) or (5) or  
2 394.333(e); or

3 (2) an individual recovers a final judgment pursuant  
4 to Section 394.335(a), 394.335(b), or 394.335(c)(1), (2), or (4).

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

11 (1) to satisfaction of a final order or judgment under  
12 Section 394.333(b)(2), (4), or (5) or 394.333(e);

13 (2) to final judgments recovered by individuals  
14 pursuant to Section 394.335(a), 394.335(b), or 394.335(c)(1), (2),  
15 or (4), pro rata;

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

18 (4) if a final order or judgment is issued under  
19 Section 394.333(b), to the expenses charged pursuant to Section  
20 394.332(b)(1).

21 Sec. 394.314. BOND REQUIRED; SUBSTITUTE. (a) Instead of the  
22 bond required by Section 394.313, a provider may deliver to the  
23 administrator a substitute provided by this section. The substitute  
24 must be in the amount required by Section 394.313(b), and except as  
25 otherwise provided in Subdivision (2)(A), payable or available to  
26 this state and to individuals who reside in this state when they  
27 agree to receive debt management services from the provider, as

1 their interests may appear, if the provider or its agent does not  
2 comply with this subchapter. On satisfying the requirements of  
3 this subsection, a provider may deliver to the administrator one of  
4 the following substitutes:

5 (1) a certificate of insurance:

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

10 (B) with no deductible, or if the provider  
11 supplies a bond in the amount of \$5,000, a deductible not exceeding  
12 \$5,000; or

13 (2) with the approval of the administrator:

14 (A) an irrevocable letter of credit, issued or  
15 confirmed by a bank approved by the administrator, payable on  
16 presentation of a certificate by the administrator stating that the  
17 provider or its agent has not complied with this subchapter; or

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

23 (b) If a provider furnishes a substitute pursuant to  
24 Subsection (a), Sections 394.313(a), (c), (d), and (e) apply to the  
25 substitute.

26 Sec. 394.315. REQUIREMENT OF GOOD FAITH. A provider shall  
27 act in good faith in all matters under this subchapter.

1       Sec. 394.316. CUSTOMER SERVICE. A provider that is required  
2 to be registered under this chapter shall maintain a toll-free  
3 communication system, staffed at a level that reasonably permits an  
4 individual to speak to a certified counselor, certified debt  
5 specialist, or customer service representative, as appropriate,  
6 during ordinary business hours.

7       Sec. 394.317. PREREQUISITES FOR PROVIDING DEBT MANAGEMENT  
8 SERVICES. (a) Before providing debt management services, a  
9 registered provider shall give the individual an itemized list of  
10 goods and services and the charges for each. The list must be clear  
11 and conspicuous, be in a record the individual may keep whether or  
12 not the individual assents to an agreement, and describe the goods  
13 and services the provider offers:

14               (1) free of additional charge if the individual enters  
15 into an agreement;

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

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

21 Set-up fee \_\_\_\_\_ (dollar amount of fee)

22 Monthly service fee \_\_\_\_\_ (dollar amount of fee or method of  
23 determining amount)

24 Settlement fee \_\_\_\_\_ (dollar amount of fee or method of  
25 determining amount)

26 Goods and services in addition to those provided in connection with  
27 a plan:

1           (item)          (dollar amount or method of determining amount)  
2           (item)          (dollar amount or method of determining  
3 amount).

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

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

9       (2) has prepared a financial analysis; and

10       (3) if the individual is to make regular periodic  
11 payments to a creditor or provider:

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

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

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

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

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

27       (2) inform the individual of the availability, at the

1 individual's option, of assistance by a toll-free communication  
2 system or in person to discuss the financial analysis and plan  
3 required by Subsection (b); and

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

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

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

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

13 (D) all other creditors.

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

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

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

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

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

27 (5) unless it is not true, that the provider may

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

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

11 IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

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

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

19 \_\_\_\_\_  
20 Name and business address of provider

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

27 IMPORTANT INFORMATION FOR YOU TO CONSIDER



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

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

6 \_\_\_\_\_  
7 Name and business address of provider

8 (g) If a plan contemplates that creditors will settle debts  
9 for less than the full principal amount of debt owed, a provider may  
10 comply with Subsection (d) by providing the following disclosure,  
11 surrounded by black lines:

12 IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

16 (2) Nonpayment of your debts under our program may:

17 (A) hurt your credit rating or credit scores;

18 (B) lead your creditors to increase finance and other  
19 charges; and

20 (C) lead your creditors to undertake activity, including  
21 lawsuits, to collect the debts.

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

24 \_\_\_\_\_  
25 Name and business address of provider

26 Sec. 394.318. COMMUNICATION BY ELECTRONIC OR OTHER MEANS.

27 (a) In this section:

1           (1) "Federal act" means the Electronic Signatures in  
2 Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.

3           (2) "Consumer" means an individual who seeks or  
4 obtains goods or services that are used primarily for personal,  
5 family, or household purposes.

6           (b) A provider may satisfy the requirements of Section  
7 394.317, 394.319, or 394.327 by means of the Internet or other  
8 electronic means if the provider obtains a consumer's consent in  
9 the manner provided by Section 101(c)(1) of the federal act.

10          (c) The disclosures and materials required by Sections  
11 394.317, 394.319, and 394.327 shall be presented in a form that is  
12 capable of being accurately reproduced for later reference.

13          (d) With respect to disclosure by means of an Internet  
14 website, the disclosure of the information required by Section  
15 394.317(d) must appear on one or more screens that:

16           (1) contain no other information; and

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

19          (e) At the time of providing the materials and agreement  
20 required by Sections 394.317(c) and (d), 394.319, and 394.327, a  
21 provider shall inform the individual that on electronic,  
22 telephonic, or written request, it will send the individual a  
23 written copy of the materials, and shall comply with a request as  
24 provided in Subsection (f).

25          (f) If a provider is requested, before the expiration of 90  
26 days after an agreement is completed or terminated, to send a  
27 written copy of the materials required by Sections 394.317(c) and

1 (d), or by Section 394.319 or 394.327, the provider shall send them  
2 at no charge within three business days after the request is  
3 received, but the provider need not comply with a request more than  
4 once per calendar month or if it reasonably believes the request is  
5 made for purposes of harassment. If a request is made more than 90  
6 days after an agreement is completed or terminated, the provider  
7 shall send within a reasonable time a written copy of the materials  
8 requested.

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

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

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

17 (3) the names of its principal officers.

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

23 (i) If a provider wishes to terminate an agreement with a  
24 consumer pursuant to Subsection (h), it shall notify the consumer  
25 that it will terminate the agreement unless the consumer, within 30  
26 days after receiving the notification, consents to electronic  
27 communication in the manner provided in Section 101(c) of the

1 federal act. If the consumer consents, the provider may terminate  
2 the agreement only as permitted by Section 394.319(a)(6)(G).

3 Sec. 394.319. FORM AND CONTENTS OF AGREEMENT. (a) An  
4 agreement must:

5 (1) be in a record;

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

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

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

12 (5) be delivered to the individual immediately on  
13 formation of the agreement; and

14 (6) disclose:

15 (A) the services to be provided;

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

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

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

25 (i) each creditor of the individual to  
26 which payment will be made, the amount owed to each creditor, and  
27 any concessions the provider reasonably believes each creditor will

1 offer; and

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

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

8 (F) how the provider will comply with its  
9 obligations under Section 394.327;

10 (G) that the provider may terminate the agreement  
11 for good cause, on return of unexpended money of the individual;

12 (H) that the individual may cancel the agreement  
13 as provided in Section 394.320;

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

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

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

23 (c) If the administrator supplies the provider with any  
24 information required under Subsection (a)(6)(J), the provider may  
25 comply with that requirement only by disclosing the information  
26 supplied by the administrator.

27 (d) An agreement must provide that:

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

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

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

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

15           (2) the individual authorizes any bank in which the  
16 provider or its agent has established a trust account to disclose to  
17 the administrator any financial records relating to the trust  
18 account; and

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

22                   (A) the identity of the creditor; and

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

25           (e) An agreement may confer on a provider a power of  
26 attorney to settle the individual's debt for not more than 50  
27 percent of the outstanding amount of the debt owed at the time of

1 settlement. An agreement may not confer a power of attorney to  
2 settle a debt for more than 50 percent of that amount, but may  
3 confer a power of attorney to negotiate with creditors of the  
4 individual on behalf of the individual. An agreement must provide  
5 that the provider will obtain the assent of the individual after a  
6 creditor has assented to a settlement for more than 50 percent of  
7 the outstanding amount of the debt owed at the time of settlement.

8 (f) An agreement may not:

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

11 (2) except as permitted by Section 2 of the Federal  
12 Arbitration Act, 9 U.S.C. Section 2, contain a provision that  
13 modifies or limits otherwise available forums or procedural rights,  
14 including the right to trial by jury, that are generally available  
15 to the individual under law other than this subchapter;

16 (3) contain a provision that restricts the  
17 individual's remedies under this subchapter or law other than this  
18 subchapter; or

19 (4) contain a provision that:

20 (A) limits or releases the liability of any  
21 person for not performing the agreement or for violating this  
22 subchapter; or

23 (B) indemnifies any person for liability arising  
24 under the agreement or this subchapter.

25 (g) All rights and obligations specified in Subsection (e)  
26 and Section 394.320 exist even if not provided in the agreement. A  
27 provision in an agreement which violates Subsection (d), (e), or

1 (f) is void.

2 Sec. 394.320. CANCELLATION OF AGREEMENT; WAIVER. (a) An  
3 individual may cancel an agreement before midnight of the third  
4 business day after the individual assents to it, unless the  
5 agreement does not comply with Section 394.319(b) or Section  
6 394.328, in which event the individual may cancel the agreement  
7 within 30 days after the individual assents to it. To exercise the  
8 right to cancel, the individual must give notice in a record to the  
9 provider. Notice by mail is given when mailed.

10 (b) An agreement must be accompanied by a form that contains  
11 in bold-faced type, surrounded by bold black lines:

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

17 To cancel this agreement during this period, send an e-mail to  
18 [e-mail address of provider] or mail or deliver a signed, dated copy  
19 of this notice, or any other written notice to [name of provider] at  
20 [address of provider] before midnight on [date].

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

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

25 I cancel this agreement,

26 \_\_\_\_\_ [Printed name]

27 \_\_\_\_\_ [Signature]





1 not been disbursed to creditors of the individual.

2 (c) A provider shall:

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

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

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

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

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

19 (d) A provider may not commingle money in a trust account  
20 established for the benefit of individuals to whom the provider is  
21 furnishing debt management services with money of other persons.

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

24 (f) If a provider has established a trust account pursuant  
25 to Subsection (a), the provider shall reconcile the trust account  
26 at least once a month. The reconciliation must compare the cash  
27 balance in the trust account with the sum of the balances in each

1 individual's account. If the provider or its designee has more than  
2 one trust account, each trust account must be individually  
3 reconciled.

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

11 (h) If an individual terminates an agreement or it becomes  
12 reasonably apparent to a provider that a plan has failed, the  
13 provider shall promptly refund to the individual all money paid by  
14 or on behalf of the individual which has not been paid to creditors,  
15 less fees that are payable to the provider under Section 394.323.

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

21 Sec. 394.323. FEES AND OTHER CHARGES. (a) A provider may not  
22 impose directly or indirectly a fee or other charge on an individual  
23 or receive money from or on behalf of an individual for debt  
24 management services except as permitted by this section.

25 (b) A provider may not impose charges or receive payment for  
26 debt management services until the provider and the individual have  
27 signed an agreement that complies with Sections 394.319 and

1 394.328.

2 (c) If an individual assents to an agreement, a provider may  
3 not impose a fee or other charge for educational or counseling  
4 services, or the like, except as otherwise provided in this  
5 subsection and Section 394.328(d). The administrator may authorize  
6 a provider to charge a fee based on the nature and extent of the  
7 educational or counseling services furnished by the provider.

8 (d) Subject to adjustment of dollar amounts pursuant to  
9 Section 394.332(f), fees and other charges must meet the following  
10 requirements:

11 (1) If an individual assents to a plan that  
12 contemplates that creditors will reduce finance charges or fees for  
13 late payment, default, or delinquency, the provider may charge:

14 (A) a fee not to exceed \$50 for consultation,  
15 obtaining a credit report, setting up an account, and the like; and

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

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

22 (A) subject to Section 394.319(d), a fee for  
23 consultation, obtaining a credit report, setting up an account, and  
24 the like, in an amount not to exceed the lesser of \$400 or four  
25 percent of the debt in the plan at the inception of the plan; and

26 (B) a monthly service fee, not to exceed \$10  
27 times the number of accounts remaining in the plan at the time the

1 fee is assessed, but not more than \$50 in any month.

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

4 (4) Except as otherwise provided in Section  
5 394.328(d), if an individual does not assent to an agreement, a  
6 provider may receive for educational and counseling services it  
7 provides to the individual a fee not to exceed \$100 or, with the  
8 approval of the administrator, a larger amount. The administrator  
9 may approve a fee in an amount greater than \$100 if the nature and  
10 extent of the educational and counseling services warrant the  
11 larger fee.

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

16 (f) Except as otherwise provided in Subsections (c) and (d),  
17 if an agreement contemplates that creditors will settle an  
18 individual's debts for less than the principal amount of the debt,  
19 compensation for services in connection with settling debt may not  
20 exceed one of the following applicable settlement fee limits in  
21 Subdivision (1) or (2), the terms of which shall be clearly  
22 disclosed in the agreement.

23 (1) With respect to agreements in which a flat  
24 settlement fee is charged based on the overall amount of included  
25 debt, the total aggregate amount of fees charged to any individual  
26 under this chapter, including fees charged under Subsections  
27 (d)(2)(A) and (B), may not exceed 17 percent of the principal amount

1 of debt included in the agreement at the agreement's inception. The  
2 flat settlement fee authorized under this subchapter shall be  
3 assessed in equal monthly payments over not less than half of the  
4 length of the plan, as estimated at the plan's inception, unless:

5 (A) voluntarily accelerated by the individual in  
6 a separate record; and

7 (B) offers of settlement by creditors have been  
8 obtained on at least half of the outstanding debt included in the  
9 agreement.

10 (2) With respect to agreements in which fees are  
11 calculated as a percentage of the amount saved by an individual, a  
12 settlement fee may not exceed 30 percent of the excess of the  
13 outstanding amount of each debt over the amount actually paid to the  
14 creditor, as calculated at the time of settlement. Settlement fees  
15 authorized under this subsection shall become billable only as  
16 debts are settled, and the total aggregate amount of fees charged  
17 to any individual under this subchapter, including fees charged  
18 under Subsections (d)(2)(A) and (B), may not exceed 20 percent of  
19 the principal amount of debt included in the agreement at the  
20 agreement's inception.

21 (3) A provider may not impose or receive fees under  
22 both Subdivisions (1) and (2).

23 (g) Subject to adjustment of the dollar amount pursuant to  
24 Section 394.332(f), if a payment to a provider by an individual  
25 under this subchapter is dishonored, a provider may impose a  
26 reasonable charge on the individual, not to exceed the lesser of \$25  
27 or the amount permitted by law other than this subchapter.

1       Sec. 394.324. VOLUNTARY CONTRIBUTIONS. A provider may not  
2 solicit a voluntary contribution from an individual or an affiliate  
3 of the individual for any service provided to the individual. A  
4 provider may accept voluntary contributions from an individual but,  
5 until 30 days after completion or termination of a plan, the  
6 aggregate amount of money received from or on behalf of the  
7 individual may not exceed the total amount the provider may charge  
8 the individual under Section 394.323.

9       Sec. 394.325. VOIDABLE AGREEMENTS. (a) If a provider  
10 imposes a fee or other charge or receives money or other payments  
11 not authorized by Section 394.323 or 394.324, the individual may  
12 void the agreement and recover as provided in Section 394.335.

13       (b) If a provider is not registered as required by this  
14 subchapter when an individual assents to an agreement, the  
15 agreement is voidable by the individual.

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

19       Sec. 394.326. TERMINATION OF AGREEMENTS. (a) If an  
20 individual who has entered into an agreement fails for 60 days to  
21 make payments required by the agreement, a provider may terminate  
22 the agreement.

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

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

27               (2) 65 percent of any portion of the set-up fee

1 received pursuant to Section 394.323(d)(2) which has not been  
2 credited against settlement fees.

3 Sec. 394.327. PERIODIC REPORTS AND RETENTION OF RECORDS.

4 (a) A provider shall provide the accounting required by Subsection  
5 (b):

6 (1) on cancellation or termination of an agreement;  
7 and

8 (2) before cancellation or termination of any  
9 agreement:

10 (A) at least once each month; and

11 (B) within five business days after a request by  
12 an individual, but the provider does not need to comply with more  
13 than one request in any calendar month.

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

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

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

22 (3) the amounts deducted from the amount received from  
23 the individual;

24 (4) the amount held in reserve; and

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



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

2           (B) the amount of the debt when the individual  
3 assented to the plan;

4           (C) the amount of the debt when the creditor  
5 agreed to the settlement; and

6           (D) the calculation of a settlement fee.

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

13       Sec. 394.328. PROHIBITED ACTS AND PRACTICES. (a) A provider  
14 may not, directly or indirectly:

15           (1) misappropriate or misapply money held in trust;

16           (2) settle a debt on behalf of an individual for more  
17 than 50 percent of the outstanding amount of the debt owed a  
18 creditor unless the individual assents to the settlement after the  
19 creditor has assented;

20           (3) take a power of attorney that authorizes it to  
21 settle a debt, unless the power of attorney expressly limits the  
22 provider's authority to settle debts for not more than 50 percent of  
23 the actual outstanding balance of the debt owed a creditor;

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

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

- 1                   (A) a return of money to the individual; or  
2                   (B) before termination of an agreement, properly  
3 authorized by the agreement and this subchapter, and for:  
4                   (i) payment to one or more creditors  
5 pursuant to a plan; or  
6                   (ii) payment of a fee;  
7                   (6) offer a gift or bonus, premium, reward, or other  
8 compensation to an individual for executing an agreement;  
9                   (7) offer, pay, or give a gift or bonus, premium,  
10 reward, or other compensation to a person for referring a  
11 prospective customer, if the person making the referral has a  
12 financial interest in the outcome of debt management services  
13 provided to the customer, unless neither the provider nor the  
14 person making the referral communicates to the prospective customer  
15 the identity of the source of the referral;  
16                   (8) receive a bonus, commission, or other benefit for  
17 referring an individual to a person;  
18                   (9) structure a plan in a manner that would result in a  
19 negative amortization of any of an individual's debts, unless a  
20 creditor that is owed a negatively amortizing debt agrees to refund  
21 or waive the finance charge on payment of the principal amount of  
22 the debt;  
23                   (10) compensate its employees on the basis of a  
24 formula that incorporates the number of individuals the employee  
25 induces to enter into agreements;  
26                   (11) settle a debt or lead an individual to believe  
27 that a payment to a creditor is in settlement of a debt to the

1 creditor unless, at the time of settlement, the individual receives  
2 a certification by the creditor that the payment is in full  
3 settlement of the debt or is part of a payment plan, the terms of  
4 which are included in the certification, that on completion will  
5 lead to full settlement of the debt;

6 (12) make a representation that:

7 (A) the provider will furnish money to pay bills  
8 or prevent attachments;

9 (B) payment of a certain amount will permit  
10 satisfaction of a certain amount or range of indebtedness; or

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

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

16 (14) represent in its agreements, disclosures  
17 required by this subchapter, advertisements, or Internet website  
18 that it is:

19 (A) a nonprofit entity unless it is organized and  
20 properly operating as a nonprofit entity under the laws of the state  
21 in which it was formed; or

22 (B) a tax-exempt entity unless it has received  
23 certification of tax-exempt status from the Internal Revenue  
24 Service and is properly operating as a nonprofit entity under the  
25 laws of the state in which it was formed;

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

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

4           (b) If a provider furnishes debt management services to an  
5 individual, the provider may not, directly or indirectly or through  
6 an affiliate:

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

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

9                         (A) a promissory note or other negotiable  
10 instrument other than a check or a demand draft; or

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

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

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

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

21                        (A) the administrator, on proper demand;

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

24                        (C) the extent necessary to administer the plan;

25                 (6) except as otherwise provided in Section  
26 394.323(f), provide the individual less than the full benefit of a  
27 compromise of a debt arranged by the provider;

1           (7) charge the individual for or provide credit or  
2 other insurance, coupons for goods or services, membership in a  
3 club, access to computers or the Internet, or any other matter not  
4 directly related to debt management services or educational  
5 services concerning personal finance, except to the extent such  
6 services are expressly authorized by the administrator;

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

10           (9) receive compensation for referring, directing, or  
11 negotiating a loan or extension of credit on behalf of the  
12 individual.

13           (c) This subchapter does not authorize any person to engage  
14 in the practice of law.

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

21           (e) Unless a person supplies goods, services, or facilities  
22 generally and supplies them to the provider at a cost not greater  
23 than the cost the person generally charges to others, a provider may  
24 not purchase goods, services, or facilities from the person if an  
25 employee or a person that the provider should reasonably know is an  
26 affiliate of the provider:

27           (1) owns more than 10 percent of the person; or

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

2           Sec. 394.329. NOTICE OF LITIGATION. Not later than 30 days  
3 after a provider has been served with notice of a civil action for  
4 violation of this subchapter by or on behalf of an individual who  
5 resides in this state at either the time of an agreement or the time  
6 the notice is served, the provider shall notify the administrator  
7 in a record that it has been sued.

8           Sec. 394.330. ADVERTISING. (a) If the agreements of a  
9 provider contemplate that creditors will reduce finance charges or  
10 fees for late payment, default, or delinquency and the provider  
11 advertises debt management services, it shall disclose, in an  
12 easily comprehensible manner, that using a debt management plan may  
13 make it harder for the individual to obtain credit.

14           (b) If the agreements of a provider contemplate that  
15 creditors will settle for less than the full principal amount of  
16 debt and the provider advertises debt management services, it shall  
17 disclose, in an easily comprehensible manner, the information  
18 specified in Sections 394.317(d)(3) and (4) and the provider's  
19 settlement fee structure, consistent with the limitations  
20 described by Section 394.323(f).

21           Sec. 394.331. LIABILITY FOR CONDUCT OF OTHER PERSONS. If a  
22 provider delegates any of its duties or obligations under an  
23 agreement or this subchapter to another person, including an  
24 independent contractor, the provider is liable for the person's  
25 conduct which, if done by the provider, would violate the agreement  
26 or this subchapter.

27           Sec. 394.332. POWERS OF ADMINISTRATOR. (a) The

1 administrator may receive complaints, may act on its own initiative  
2 or in response to complaints, take action to obtain voluntary  
3 compliance with this subchapter, and seek or provide remedies as  
4 provided in this subchapter or Chapter 14.

5 (b) The administrator or the administrator's representative  
6 may investigate and examine, in this state or elsewhere, by  
7 subpoena or otherwise, the activities, books, accounts, and records  
8 of a person that provides or offers to provide debt management  
9 services, or a person to whom a provider has delegated its  
10 obligations under an agreement or this subchapter, to determine  
11 compliance with this subchapter. Information that identifies  
12 individuals who have agreements with the provider may not be  
13 disclosed to the public. In connection with the investigation, the  
14 administrator may:

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

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

20 (3) seek a court order authorizing seizure from a bank  
21 at which the person maintains a trust account required by Section  
22 394.322, any or all money, books, records, accounts, and other  
23 property of the provider that is in the control of the bank and  
24 relates to individuals who reside in this state.

25 (c) The finance commission may adopt rules to implement this  
26 subchapter in accordance with Chapter 2001, Government Code.

27 (d) The administrator may enter into cooperative

1 arrangements with any other federal or state agency having  
2 authority over providers and may exchange with any of those  
3 agencies information about a provider, including information  
4 obtained during an examination of the provider.

5 (e) The finance commission by rule shall establish  
6 reasonable fees to be paid by providers for the expense of  
7 administering this subchapter.

8 (f) The administrator shall compute and publish the dollar  
9 amounts instead of those specified in Sections 394.302, 394.305,  
10 394.309, 394.313, 394.323, 394.333, and 394.335 to reflect  
11 inflation, as measured by the United States Bureau of Labor  
12 Statistics Consumer Price Index for All Urban Consumers or, if that  
13 index is not available, another index adopted by finance commission  
14 rule. The administrator shall adopt a base year and adjust the  
15 dollar amounts, effective on July 1 of each year, if the change in  
16 the index from the base year, as of December 31 of the preceding  
17 year, is at least 10 percent. The dollar amount must be rounded to  
18 the nearest \$100, except that the amounts in Section 394.323 must be  
19 rounded to the nearest dollar.

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

23 (h) Information obtained under an examination is  
24 confidential.

25 Sec. 394.333. ADMINISTRATIVE REMEDIES. (a) For purposes of  
26 enforcing this subchapter, the administrator:

27 (1) has the powers granted to the administrator under



1 Chapter 14;

2 (2) may exercise those powers in the same manner as  
3 those powers may be exercised under:

4 (A) Chapters 14 and 392; and

5 (B) Subtitle B, Title 4; and

6 (3) has any authority granted to the administrator by  
7 other law.

8 (b) The administrator may enforce this subchapter and rules  
9 adopted under this subchapter by taking one or more of the following  
10 actions:

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

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

16 (3) subject to adjustment of the dollar amount  
17 pursuant to Section 394.332(f), imposing against a provider or a  
18 person that has caused a violation a civil penalty in an amount not  
19 to exceed \$10,000 for each violation;

20 (4) prosecuting a civil action to:

21 (A) enforce an order; or

22 (B) obtain restitution or an injunction or other  
23 equitable relief, or both; or

24 (5) intervening in an action brought under Section  
25 394.335.

26 (c) Subject to adjustment of the dollar amount pursuant to  
27 Section 394.332(f), if a person violates or knowingly authorizes,

1 directs, or aids in the violation of a final order issued under  
2 Subsection (b)(1) or (2), the administrator may assess an  
3 administrative penalty in an amount not to exceed \$20,000 for each  
4 violation.

5 (d) The administrator may maintain an action to enforce this  
6 subchapter in any county at the administrator's sole discretion.

7 (e) The administrator may recover the reasonable costs of  
8 enforcing this subchapter under Subsections (b) and (d), including  
9 attorney's fees based on the hours reasonably expended and the  
10 hourly rates for attorneys of comparable experience in the  
11 community.

12 (f) In determining the amount of an administrative penalty  
13 to impose under Subsection (b) or (c), the administrator shall  
14 consider:

- 15 (1) the seriousness of the violation;  
16 (2) the good faith of the violator;  
17 (3) any previous violations by the violator;  
18 (4) the deleterious effect of the violation on the  
19 public;  
20 (5) the net worth of the violator; and  
21 (6) any other factor the administrator considers  
22 relevant to the determination of the penalty.

23 Sec. 394.334. SUSPENSION, REVOCATION, OR NONRENEWAL OF  
24 REGISTRATION. (a) In this section, "insolvent" means:

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

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

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

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

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

9           (2) the provider has committed a material violation of  
10 this subchapter or a rule or order of the administrator under this  
11 subchapter;

12           (3) the provider is insolvent;

13           (4) the provider or an employee or affiliate of the  
14 provider has refused to permit the administrator to make an  
15 examination authorized by this subchapter, failed to comply with  
16 Section 394.332(b)(2) within 15 days after request, or made a  
17 material misrepresentation or omission in complying with Section  
18 394.332(b)(2); or

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

22           (c) If a provider does not comply with Section 394.322(f) or  
23 if the administrator otherwise finds that the public health or  
24 safety or general welfare requires emergency action, the  
25 administrator may order a summary suspension of the provider's  
26 registration, effective on the date specified in the order.

27           (d) If the administrator suspends, revokes, or denies the

1 renewal of the registration of a provider, the administrator may  
2 seek a court order authorizing seizure of any or all of the money in  
3 a trust account required by Section 394.322, books, records,  
4 accounts, and other property of the provider that are located in  
5 this state.

6 (e) If the administrator suspends or revokes a provider's  
7 registration, the provider may appeal and request a hearing  
8 pursuant to Chapter 2001, Government Code.

9 Sec. 394.335. PRIVATE ENFORCEMENT. (a) If an individual  
10 voids an agreement pursuant to Section 394.325(b), the individual  
11 may recover in a civil action all money paid or deposited by or on  
12 behalf of the individual pursuant to the agreement, except amounts  
13 paid to creditors, in addition to the recovery under Subsections  
14 (c)(3) and (4).

15 (b) If an individual voids an agreement pursuant to Section  
16 394.325(a), the individual may recover in a civil action three  
17 times the total amount of the fees, charges, money, and payments  
18 made by the individual to the provider, in addition to the recovery  
19 under Subsection (c)(4).

20 (c) Subject to Subsection (d), an individual with respect to  
21 whom a provider violates this subchapter may recover in a civil  
22 action from the provider and any person that caused the violation:

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

25 (2) except as otherwise provided in Subsection (d) and  
26 subject to adjustment of the dollar amount pursuant to Section  
27 394.332(f), with respect to a violation of Section 394.317,

1 394.319, 394.320, 394.321, 394.322, 394.323, 394.324, 394.327, or  
2 394.328(a), (b), or (d), the greater of the amount recoverable  
3 under Subdivision (1) or \$5,000;

4 (3) punitive damages; and

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

6 (d) In a class action, except for a violation of Section  
7 394.328(a)(5), the minimum damages provided in Subsection (c)(2) do  
8 not apply.

9 (e) In addition to the remedy available under Subsection  
10 (c), if a provider violates an individual's rights under Section  
11 394.320, the individual may recover in a civil action all money paid  
12 or deposited by or on behalf of the individual pursuant to the  
13 agreement, except for amounts paid to creditors.

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

25 (g) The administrator shall assist an individual in  
26 enforcing a judgment against the surety bond or other security  
27 provided under Section 394.313 or 394.314.

1       Sec. 394.336. VIOLATION OF DECEPTIVE TRADE PRACTICES ACT.

2 If an act or practice of a provider violates both this subchapter  
3 and Chapter 17, Business & Commerce Code, an individual may not  
4 recover under both for the same act or practice.

5       Sec. 394.337. STATUTE OF LIMITATIONS. (a) An action or  
6 proceeding brought pursuant to Section 394.333(a), (b), or (c),  
7 must be commenced within four years after the conduct that is the  
8 basis of the administrator's complaint.

9       (b) An action brought under Section 394.335 must be  
10 commenced within two years after the latest of:

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

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

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

17           (4) the provider's last accounting to the individual  
18 pursuant to Section 394.327;

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

22           (6) termination of actions or proceedings by the  
23 administrator with respect to a violation of this subchapter.

24       (c) The period prescribed in Subsection (b)(5) is tolled  
25 during any period in which the provider or, if different, the  
26 defendant has materially and wilfully misrepresented information  
27 required by this subchapter to be disclosed to the individual, if

1 the information so misrepresented is material to the establishment  
2 of the liability of the defendant under this subchapter.

3 Sec. 394.338. UNIFORMITY OF APPLICATION AND CONSTRUCTION.  
4 In applying and construing this subchapter, consideration must be  
5 given to the need to promote uniformity of the law with respect to  
6 the subject matter of this subchapter among states that have  
7 enacted a law substantially similar to this subchapter.

8 Sec. 394.339. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL  
9 AND NATIONAL COMMERCE ACT. This subchapter modifies, limits, and  
10 supersedes the federal Electronic Signatures in Global and National  
11 Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify,  
12 limit, or supersede 15 U.S.C. Section 7001(c) or authorize  
13 electronic delivery of any of the notices described in 15 U.S.C.  
14 Section 7003(b).

15 SECTION 2. Subchapter C, Chapter 394, Finance Code, is  
16 repealed.

17 SECTION 3. A transaction entered into before the effective  
18 date of this Act and the rights, duties, and interests resulting  
19 from the transaction may be completed, terminated, or enforced as  
20 required or permitted by a law amended, repealed, or modified by  
21 this Act as though the amendment, repeal, or modification had not  
22 occurred.

23 SECTION 4. This Act takes effect January 1, 2010.