

1-1 By: Eltife S.B. No. 2233
1-2 (In the Senate - Filed March 13, 2009; March 31, 2009, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 April 27, 2009, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 7, Nays 0; April 27, 2009,
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 2233 By: Eltife

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the regulation of debt management services providers;
1-11 providing a penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Chapter 394, Finance Code, is amended by adding
1-14 Subchapter D to read as follows:

1-15 SUBCHAPTER D. UNIFORM DEBT MANAGEMENT SERVICES ACT

1-16 Sec. 394.301. SHORT TITLE. This subchapter may be cited as
1-17 the Uniform Debt Management Services Act.

1-18 Sec. 394.302. DEFINITIONS. In this subchapter:

1-19 (1) "Administrator" means the consumer credit
1-20 commissioner.

1-21 (2) "Affiliate":

1-22 (A) with respect to an individual who is a debt
1-23 management services provider, means:

1-24 (i) the spouse of the individual provider;

1-25 (ii) a sibling of the individual provider
1-26 or the spouse of a sibling;

1-27 (iii) an individual or the spouse of an
1-28 individual who is a lineal ancestor or lineal descendant of the
1-29 individual provider or the individual provider's spouse;

1-30 (iv) an aunt, uncle, great aunt, great
1-31 uncle, first cousin, niece, nephew, grandniece, or grandnephew,
1-32 whether related by the whole or the half blood or adoption, or the
1-33 spouse of any of them; or

1-34 (v) any other individual occupying the
1-35 residence of the individual provider; and

1-36 (B) with respect to an entity, means:

1-37 (i) a person that directly or indirectly
1-38 controls, is controlled by, or is under common control with the
1-39 entity;

1-40 (ii) an officer of, or an individual
1-41 performing similar functions with respect to, the entity;

1-42 (iii) a director of, or an individual
1-43 performing similar functions with respect to, the entity;

1-44 (iv) subject to adjustment of the dollar
1-45 amount pursuant to Section 394.332(f), a person that receives or
1-46 received more than \$25,000 from the entity in either the current
1-47 year or the preceding year or a person that owns more than 10
1-48 percent of, or an individual who is employed by or is a director of,
1-49 a person that receives or received more than \$25,000 from the entity
1-50 in either the current year or the preceding year;

1-51 (v) an officer or director of, or an
1-52 individual performing similar functions with respect to, a person
1-53 described in Subparagraph (i);

1-54 (vi) the spouse of, or an individual
1-55 occupying the residence of, an individual described in
1-56 Subparagraphs (i) through (v); or

1-57 (vii) an individual who has the
1-58 relationship specified in Paragraph (A)(iv) to an individual
1-59 provider or the spouse of an individual described in Subparagraphs
1-60 (i) through (v).

1-61 (3) "Agreement" means an agreement between a provider
1-62 and an individual debtor for the performance of debt management
1-63 services.

2-1 (4) "Bank" means a financial institution, including a
2-2 commercial bank, savings bank, savings and loan association, credit
2-3 union, or trust company, engaged in the business of banking,
2-4 chartered under federal or state law, and regulated by a federal or
2-5 state banking regulatory authority.

2-6 (5) "Business address" means the physical location of
2-7 a business, including the name and number of a street.

2-8 (6) "Certified counselor" means an individual
2-9 certified by a training program or certifying organization,
2-10 approved by the administrator, that authenticates the competence of
2-11 individuals providing education and assistance to debtors in
2-12 connection with debt management services in which an agreement
2-13 contemplates that creditors will reduce finance charges or fees for
2-14 late payment, default, or delinquency.

2-15 (7) "Certified debt specialist" means an individual
2-16 certified by a training program or certifying organization,
2-17 approved by the administrator, that authenticates the competence of
2-18 individuals providing education and assistance to debtors in
2-19 connection with debt management services in which an agreement
2-20 contemplates that creditors will settle debts for less than the
2-21 full principal amount of debt owed.

2-22 (8) "Concessions" means assent to repayment of a debt
2-23 on terms more favorable to an individual than the terms of the
2-24 contract between the individual and a creditor.

2-25 (9) "Day" means calendar day.

2-26 (10) "Debt management services" means services as an
2-27 intermediary between an individual and one or more creditors of the
2-28 individual for the purpose of obtaining concessions. The term does
2-29 not include:

2-30 (A) legal services provided in an
2-31 attorney-client relationship by an attorney licensed or otherwise
2-32 authorized to practice law in this state;

2-33 (B) accounting services provided in an
2-34 accountant-client relationship by a certified public accountant
2-35 licensed to provide accounting services in this state; or

2-36 (C) financial planning services provided in a
2-37 financial planner-client relationship by a member of a financial
2-38 planning profession whose members the finance commission, by rule,
2-39 determines are:

2-40 (i) licensed by this state;

2-41 (ii) subject to a disciplinary mechanism;

2-42 (iii) subject to a code of professional

2-43 responsibility; and

2-44 (iv) subject to a continuing education

2-45 requirement.

2-46 (11) "Entity" means a person other than an individual.

2-47 (12) "Good faith" means honesty in fact and the
2-48 observance of reasonable standards of fair dealing.

2-49 (13) "Person" means an individual, corporation,
2-50 business trust, estate, trust, partnership, limited liability
2-51 company, association, joint venture, or any other legal or
2-52 commercial entity. The term does not include a public corporation,
2-53 government, or governmental subdivision, agency, or
2-54 instrumentality.

2-55 (14) "Plan" means a program or strategy in which a
2-56 provider furnishes debt management services to an individual and
2-57 which includes a schedule of payments to be made by or on behalf of
2-58 the individual and used to pay debts owed by the individual.

2-59 (15) "Principal amount of the debt" means the amount
2-60 of a debt at the time of an agreement.

2-61 (16) "Provider" means a person that provides, offers
2-62 to provide, or agrees to provide debt management services directly
2-63 or through others.

2-64 (17) "Record" means information that is inscribed on a
2-65 tangible medium or that is stored in an electronic or other medium
2-66 and is retrievable in perceivable form.

2-67 (18) "Settlement fee" means a charge imposed on or
2-68 paid by an individual in connection with a creditor's assent to
2-69 accept in full satisfaction of a debt an amount less than the

3-1 principal amount of the debt.
3-2 (19) "Sign" means, with present intent to authenticate
3-3 or adopt a record:
3-4 (A) to execute or adopt a tangible symbol; or
3-5 (B) to attach to or logically associate with the
3-6 record an electronic sound, symbol, or process.
3-7 (20) "State" means a state of the United States, the
3-8 District of Columbia, Puerto Rico, the United States Virgin
3-9 Islands, or any territory or insular possession subject to the
3-10 jurisdiction of the United States.
3-11 (21) "Trust account" means an account held by a
3-12 provider that is:
3-13 (A) established in an insured bank;
3-14 (B) separate from other accounts of the provider
3-15 or its designee;
3-16 (C) designated as a trust account or other
3-17 account designated to indicate that the money in the account is not
3-18 the money of the provider or its designee; and
3-19 (D) used to hold money of one or more individuals
3-20 for disbursement to creditors of the individuals.
3-21 Sec. 394.303. APPLICABILITY. (a) This subchapter does not
3-22 apply to an agreement with an individual who the provider has no
3-23 reason to know resides in this state at the time of the agreement.
3-24 (b) This subchapter does not apply to a provider to the
3-25 extent that the provider:
3-26 (1) provides or agrees to provide debt management,
3-27 educational, or counseling services to an individual who the
3-28 provider has no reason to know resides in this state at the time the
3-29 provider agrees to provide the services; or
3-30 (2) receives no compensation for debt management
3-31 services from or on behalf of the individuals to whom it provides
3-32 the services or from their creditors.
3-33 (c) This subchapter does not apply to the following persons
3-34 or their employees when the person or the employee is engaged in the
3-35 regular course of the person's business or profession:
3-36 (1) a judicial officer, a person acting under an order
3-37 of a court or an administrative agency, or an assignee for the
3-38 benefit of creditors;
3-39 (2) a bank;
3-40 (3) an affiliate, as defined in Section
3-41 394.302(2)(B)(i), of a bank if the affiliate is regulated by a
3-42 federal or state banking regulatory authority; or
3-43 (4) a title insurer, title insurance agent, escrow
3-44 company, or other person that provides bill-paying services if the
3-45 provision of debt management services is incidental to the
3-46 bill-paying services or a disbursement, closing, or settlement.
3-47 Sec. 394.304. REGISTRATION REQUIRED. (a) Except as
3-48 otherwise provided in Subsection (b), a provider may not provide
3-49 debt management services to an individual who it reasonably should
3-50 know resides in this state at the time it agrees to provide the
3-51 services, unless the provider is registered under this subchapter.
3-52 (b) If a provider is registered under this subchapter,
3-53 Subsection (a) does not apply to an employee or agent of the
3-54 provider.
3-55 (c) The administrator shall maintain and publicize a list of
3-56 the names of all registered providers.
3-57 Sec. 394.305. APPLICATION FOR REGISTRATION: FORM, FEE, AND
3-58 ACCOMPANYING DOCUMENTS. (a) An application for registration as a
3-59 provider must be in a form prescribed by the administrator.
3-60 (b) Subject to adjustment of dollar amounts pursuant to
3-61 Section 394.332(f), an application for an initial registration must
3-62 be accompanied by:
3-63 (1) the appropriate fees set by the Finance Commission
3-64 of Texas in an amount necessary to recover the costs of
3-65 administering this subchapter;
3-66 (2) the bond required by Section 394.313;
3-67 (3) identification of all trust accounts required by
3-68 Section 394.322 and an irrevocable consent authorizing the
3-69 administrator to review and examine the trust accounts;

4-1 (4) evidence of insurance in the amount of \$250,000:
4-2 (A) against the risks of dishonesty, fraud,
4-3 theft, and other misconduct on the part of the applicant or a
4-4 director, employee, or agent of the applicant;
4-5 (B) issued by an insurance company authorized to
4-6 do business in this state and rated at least A or equivalent by a
4-7 nationally recognized rating organization approved by the
4-8 administrator;
4-9 (C) with a deductible not exceeding \$5,000;
4-10 (D) payable for the benefit of the applicant,
4-11 this state, and individuals who are residents of this state, as
4-12 their interests may appear; and
4-13 (E) not subject to cancellation by the applicant
4-14 or the insurer until 60 days' notice after written notice has been
4-15 given to the administrator; and
4-16 (5) a certificate of authority to do business in this
4-17 state, if applicable.
4-18 Sec. 394.306. APPLICATION FOR REGISTRATION: REQUIRED
4-19 INFORMATION. (a) An application for registration must be signed
4-20 under oath and include:
4-21 (1) the applicant's name, principal business address
4-22 and telephone number, and all other business addresses in this
4-23 state, electronic mail addresses, and Internet website addresses;
4-24 (2) all names under which the applicant conducts
4-25 business;
4-26 (3) the address of each location in this state at which
4-27 the applicant will provide debt management services or a statement
4-28 that the applicant will have no such location;
4-29 (4) the name and home address of each officer and
4-30 director of the applicant and each person that owns at least 10
4-31 percent of the applicant;
4-32 (5) identification of every jurisdiction in which,
4-33 during the five years immediately preceding the application:
4-34 (A) the applicant or any of its officers or
4-35 directors has been licensed or registered to provide debt
4-36 management services; or
4-37 (B) individuals have resided when they received
4-38 debt management services from the applicant;
4-39 (6) a statement describing, to the extent it is known
4-40 or should be known by the applicant, any material civil or criminal
4-41 judgment or litigation and any material administrative or
4-42 enforcement action by a governmental agency in any jurisdiction
4-43 against the applicant, any of its officers, directors, owners, or
4-44 agents, or any person who is authorized to have access to the trust
4-45 account required by Section 394.322;
4-46 (7) subject to Subsection (b), the applicant's
4-47 financial statements, reviewed by an independent accountant
4-48 licensed to practice accounting under Chapter 901, Occupations
4-49 Code, for each of the two years immediately preceding the
4-50 application or, if it has not been in operation for the two years
4-51 preceding the application, for the period of its existence;
4-52 (8) evidence of accreditation by an independent
4-53 accrediting organization approved by the administrator;
4-54 (9) evidence that, within 12 months after initial
4-55 employment, each of the applicant's counselors becomes certified as
4-56 a certified counselor or certified debt specialist;
4-57 (10) a description of the three most commonly used
4-58 educational programs that the applicant provides or intends to
4-59 provide to individuals who reside in this state and a copy of any
4-60 materials used or to be used in those programs;
4-61 (11) a description of the applicant's financial
4-62 analysis and initial budget plan, including any form or electronic
4-63 model, used to evaluate the financial condition of individuals;
4-64 (12) a copy of each form of agreement that the
4-65 applicant will use with individuals who reside in this state;
4-66 (13) the schedule of fees and charges that the
4-67 applicant will use with individuals who reside in this state;
4-68 (14) at the applicant's expense, the results of a
4-69 criminal records check, including fingerprints, conducted within

5-1 the immediately preceding 12 months, covering every officer of the
 5-2 applicant and every employee or agent of the applicant who is
 5-3 authorized to have access to the trust account required by Section
 5-4 394.322;

5-5 (15) the names and addresses of all employers of each
 5-6 director during the 10 years immediately preceding the application;

5-7 (16) a description of any ownership interest of at
 5-8 least 10 percent by a director, owner, or employee of the applicant
 5-9 in:

5-10 (A) any affiliate of the applicant; or

5-11 (B) any entity that provides products or services
 5-12 to the applicant or any individual relating to the applicant's debt
 5-13 management services;

5-14 (17) if the applicant claims nonprofit or tax-exempt
 5-15 status, or if the applicant's business practices involve holding,
 5-16 accessing, or directing the funds of an individual, a statement of
 5-17 the amount of compensation of the applicant's five most highly
 5-18 compensated employees for each of the three years immediately
 5-19 preceding the application or, if it has not been in operation for
 5-20 the three years preceding the application, for the period of its
 5-21 existence;

5-22 (18) the identity of each director who is an
 5-23 affiliate, as defined in Section 394.302(2)(A) or (B)(i), (ii),
 5-24 (iv), (v), (vi), or (vii), of the applicant; and

5-25 (19) any other information that the administrator
 5-26 reasonably requires.

5-27 (b) If the applicant claims nonprofit or tax-exempt status,
 5-28 or if the applicant's business practices involve holding,
 5-29 accessing, or directing the funds of an individual, the applicant's
 5-30 financial statements required by Subsection (a)(7) must be audited
 5-31 by an accountant licensed to practice accounting under Chapter 901,
 5-32 Occupations Code.

5-33 Sec. 394.307. APPLICATION FOR REGISTRATION: OBLIGATION TO
 5-34 UPDATE INFORMATION. An applicant or registered provider shall
 5-35 notify the administrator within 10 days after a change in the
 5-36 information specified in Section 394.305(b)(4) or Section
 5-37 394.306(a)(1), (3), (6), (12), or (13).

5-38 Sec. 394.308. APPLICATION FOR REGISTRATION: PUBLIC
 5-39 INFORMATION. Except for the information required by Sections
 5-40 394.306(a)(7), (14), and (17) and the addresses required by Section
 5-41 394.306(a)(4), the administrator shall make the information in an
 5-42 application for registration as a provider available to the public.

5-43 Sec. 394.309. CERTIFICATE OF REGISTRATION: ISSUANCE OR
 5-44 DENIAL. (a) Except as otherwise provided in Subsections (c) and
 5-45 (d), the administrator shall issue a certificate of registration as
 5-46 a provider to a person that complies with Sections 394.305 and
 5-47 394.306.

5-48 (b) If an applicant has otherwise complied with Sections
 5-49 394.305 and 394.306, including a timely effort to obtain the
 5-50 information required by Section 394.306(a)(14), but the
 5-51 information has not been received, the administrator may issue a
 5-52 temporary certificate of registration. The temporary certificate
 5-53 shall expire not later than 180 days after issuance.

5-54 (c) The administrator may deny registration if:

5-55 (1) the application contains information that is
 5-56 materially erroneous or incomplete;

5-57 (2) an officer, director, or owner of the applicant
 5-58 has been convicted of a crime, or suffered a civil judgment,
 5-59 involving dishonesty or the violation of state or federal
 5-60 securities laws;

5-61 (3) the applicant or any of its officers, directors,
 5-62 or owners has defaulted in the payment of money collected for
 5-63 others; or

5-64 (4) the administrator finds that the financial
 5-65 responsibility, experience, character, or general fitness of the
 5-66 applicant or its owners, directors, employees, or agents does not
 5-67 warrant belief that the business will be operated in compliance
 5-68 with this subchapter.

5-69 (d) The administrator shall deny registration with respect

6-1 to an applicant that claims nonprofit or tax-exempt status if the
 6-2 applicant's board of directors is not independent of the
 6-3 applicant's employees and agents.

6-4 (e) Subject to adjustment of the dollar amount pursuant to
 6-5 Section 394.332(f), a board of directors is not independent for
 6-6 purposes of Subsection (d) if more than one-fourth of its members:

6-7 (1) are affiliates of the applicant, as defined in
 6-8 Section 394.302(2)(A) or (B)(i), (ii), (iv), (v), (vi), or (vii);
 6-9 or

6-10 (2) in the 10 years before initially becoming a
 6-11 director of the applicant, were employed by or directors of a person
 6-12 that received from the applicant more than \$25,000 in either the
 6-13 current year or the preceding year.

6-14 Sec. 394.310. CERTIFICATE OF REGISTRATION: TIMING.

6-15 (a) The administrator shall approve or deny an initial
 6-16 registration as a provider not later than the 60th day after the
 6-17 date on which the completed application, including all required
 6-18 documents and payments, is filed. The administrator shall inform
 6-19 the applicant in writing of the reasons for the denial.

6-20 (b) If the administrator denies an application for
 6-21 registration as a provider, the applicant may appeal and request a
 6-22 hearing pursuant to Chapter 2001, Government Code. The applicant
 6-23 may appeal and request a hearing on the question of the applicant's
 6-24 qualifications for initial registration as a provider if the
 6-25 administrator has notified the applicant in a record that the
 6-26 initial application has been denied. A request for a hearing may
 6-27 not be made after the 30th day after the date the administrator
 6-28 mails a notice to the applicant stating that the application has
 6-29 been denied and stating the reasons for the denial.

6-30 (c) A registration as a provider is valid for one year.

6-31 Sec. 394.311. RENEWAL OF REGISTRATION. (a) A provider
 6-32 must obtain a renewal of its registration annually.

6-33 (b) An application for renewal of registration as a provider
 6-34 must be in a form prescribed by the administrator, signed under
 6-35 oath, and:

6-36 (1) be filed not less than 30 days or more than 60 days
 6-37 before the registration expires;

6-38 (2) be accompanied by the fee established by the
 6-39 Finance Commission of Texas and the bond required by Section
 6-40 394.313;

6-41 (3) subject to Subsection (b-1), contain the matters
 6-42 required for initial registration as a provider by Sections
 6-43 394.306(8) and (9) and a financial statement for the applicant's
 6-44 fiscal year immediately preceding the application;

6-45 (4) disclose any changes in the information contained
 6-46 in the applicant's application for registration or its immediately
 6-47 previous application for renewal, as applicable;

6-48 (5) supply evidence of insurance in an amount equal to
 6-49 the larger of \$250,000 or the highest daily balance in the trust
 6-50 account required by Section 394.322 during the six-month period
 6-51 immediately preceding the application:

6-52 (A) against risks of dishonesty, fraud, theft,
 6-53 and other misconduct on the part of the applicant or a director,
 6-54 employee, or agent of the applicant;

6-55 (B) issued by an insurance company authorized to
 6-56 do business in this state and rated at least A or equivalent by a
 6-57 nationally recognized rating organization approved by the
 6-58 administrator;

6-59 (C) with a deductible not exceeding \$5,000;

6-60 (D) payable for the benefit of the applicant,
 6-61 this state, and individuals who are residents of this state, as
 6-62 their interests may appear; and

6-63 (E) not subject to cancellation by the applicant
 6-64 or the insurer until 60 days after written notice has been given to
 6-65 the administrator;

6-66 (6) disclose the total amount of money received by the
 6-67 applicant pursuant to plans during the preceding 12 months from or
 6-68 on behalf of individuals who reside in this state and the total
 6-69 amount of money distributed to creditors of those individuals

7-1 during that period;

7-2 (7) disclose, to the best of the applicant's
 7-3 knowledge, the gross amount of money accumulated during the
 7-4 preceding 12 months pursuant to plans by or on behalf of individuals
 7-5 who reside in this state and with whom the applicant has agreements;
 7-6 and

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

7-10 (b-1) If the provider claims nonprofit or tax-exempt
 7-11 status, or if a provider's business practices involve holding,
 7-12 accessing, or directing the funds of an individual, the provider's
 7-13 financial statement required by Subsection (b)(3) must be audited
 7-14 by an accountant licensed to practice accounting under Chapter 901,
 7-15 Occupations Code.

7-16 (c) Except for the information required by Sections
 7-17 394.306(a)(7), (14), and (17), the information required by Section
 7-18 394.306(a)(6) with respect to for-profit entities, and the
 7-19 addresses required by Section 394.306(a)(4), the administrator
 7-20 shall make the information in an application for renewal of
 7-21 registration as a provider available to the public.

7-22 (d) If a registered provider files a timely and complete
 7-23 application for renewal of registration, the registration remains
 7-24 effective until the administrator, in a record, notifies the
 7-25 applicant of a denial and states the reasons for the denial.

7-26 (d-1) If an application is otherwise complete and the
 7-27 applicant has made a timely effort to obtain the information
 7-28 required by Section 394.306(a)(14) but the information has not been
 7-29 received, the administrator may issue a temporary renewal of
 7-30 registration. The temporary renewal shall expire not later than
 7-31 180 days after issuance.

7-32 (e) If the administrator denies an application for renewal
 7-33 of registration as a provider, the applicant, within 30 days after
 7-34 receiving notice of the denial, may appeal and request a hearing
 7-35 pursuant to Chapter 2001, Government Code. Subject to Section
 7-36 394.334, while the appeal is pending the applicant shall continue
 7-37 to provide debt management services to individuals with whom it has
 7-38 agreements. If the denial is affirmed, subject to the
 7-39 administrator's order and Section 394.334, the applicant shall
 7-40 continue to provide debt management services to individuals with
 7-41 whom it has agreements until, with the approval of the
 7-42 administrator, it transfers the agreements to another registered
 7-43 provider or returns to the individuals all unexpended money that is
 7-44 under the applicant's control.

7-45 Sec. 394.312. REGISTRATION IN ANOTHER STATE. If a provider
 7-46 holds a license or certificate of registration in another state
 7-47 authorizing it to provide debt management services, the provider
 7-48 may submit a copy of that license or certificate and the application
 7-49 for it instead of an application in the form prescribed by Sections
 7-50 394.305 and 394.306 or by Section 394.311. The administrator shall
 7-51 accept the application and the license or certificate from the
 7-52 other state as an application for registration as a provider or for
 7-53 renewal of registration as a provider, as appropriate, in this
 7-54 state if:

7-55 (1) the application in the other state contains
 7-56 information substantially similar to or more comprehensive than
 7-57 that required in an application submitted in this state;

7-58 (2) the applicant provides the information required by
 7-59 Sections 394.306(a)(1), (3), (10), (12), and (13); and

7-60 (3) the applicant, under oath, certifies that the
 7-61 information contained in the application is current or, to the
 7-62 extent it is not current, supplements the application to make the
 7-63 information current.

7-64 Sec. 394.313. BOND REQUIRED. (a) Except as otherwise
 7-65 provided in Section 394.314, a provider that is required to be
 7-66 registered under this subchapter shall file a surety bond with the
 7-67 administrator, which must:

7-68 (1) be in effect during the period of registration and
 7-69 for two years after the provider ceases providing debt management

8-1 services to individuals in this state; and
 8-2 (2) run to this state for the benefit of this state and
 8-3 of individuals who reside in this state when they agree to receive
 8-4 debt management services from the provider, as their interests may
 8-5 appear.

8-6 (b) Subject to adjustment of the dollar amount pursuant to
 8-7 Section 394.332(f), a surety bond filed pursuant to Subsection (a)
 8-8 must:

8-9 (1) be in the amount of \$50,000 or other larger or
 8-10 smaller amount that the administrator determines is warranted by
 8-11 the financial condition and business experience of the provider,
 8-12 the history of the provider in performing debt management services,
 8-13 the risk to individuals, and any other factor the administrator
 8-14 considers appropriate;

8-15 (2) be issued by a bonding, surety, or insurance
 8-16 company authorized to do business in this state and rated at least A
 8-17 by a nationally recognized rating organization; and

8-18 (3) have payment conditioned on noncompliance of the
 8-19 provider or its agent with this subchapter.

8-20 (c) If the principal amount of a surety bond is reduced by
 8-21 payment of a claim or a judgment, the provider shall immediately
 8-22 notify the administrator and, within 30 days after notice by the
 8-23 administrator, file a new or additional surety bond in an amount set
 8-24 by the administrator. The amount of the new or additional bond must
 8-25 be at least the amount of the bond immediately before payment of the
 8-26 claim or judgment. If for any reason a surety terminates a bond,
 8-27 the provider shall immediately file a new surety bond in the amount
 8-28 of \$50,000 or other amount determined pursuant to Subsection (b).

8-29 (d) The administrator or an individual may obtain
 8-30 satisfaction out of the surety bond procured pursuant to this
 8-31 section if:

8-32 (1) the administrator assesses expenses under Section
 8-33 394.332(b)(1), issues a final order under Section 394.333(b)(2), or
 8-34 recovers a final judgment under Section 394.333(b)(4) or (5) or
 8-35 394.333(e); or

8-36 (2) an individual recovers a final judgment pursuant
 8-37 to Section 394.335(a), 394.335(b), or 394.335(c)(1), (2), or (4).

8-38 (e) If claims against a surety bond exceed or are reasonably
 8-39 expected to exceed the amount of the bond, the administrator, on the
 8-40 initiative of the administrator or on petition of the surety,
 8-41 shall, unless the proceeds are adequate to pay all costs,
 8-42 judgments, and claims, distribute the proceeds in the following
 8-43 order:

8-44 (1) to satisfaction of a final order or judgment under
 8-45 Section 394.333(b)(2), (4), or (5) or 394.333(e);

8-46 (2) to final judgments recovered by individuals
 8-47 pursuant to Section 394.335(a), 394.335(b), or 394.335(c)(1), (2),
 8-48 or (4), pro rata;

8-49 (3) to claims of individuals established to the
 8-50 satisfaction of the administrator, pro rata; and

8-51 (4) if a final order or judgment is issued under
 8-52 Section 394.333(b), to the expenses charged pursuant to Section
 8-53 394.332(b)(1).

8-54 Sec. 394.314. BOND REQUIRED; SUBSTITUTE. (a) Instead of
 8-55 the bond required by Section 394.313, a provider may deliver to the
 8-56 administrator a substitute provided by this section. The
 8-57 substitute must be in the amount required by Section 394.313(b)
 8-58 and, except as otherwise provided in Subdivision (2)(A), payable or
 8-59 available to this state and to individuals who reside in this state
 8-60 when they agree to receive debt management services from the
 8-61 provider, as their interests may appear, if the provider or its
 8-62 agent does not comply with this subchapter. On satisfying the
 8-63 requirements of this subsection, a provider may deliver to the
 8-64 administrator one of the following substitutes:

8-65 (1) a certificate of insurance:

8-66 (A) issued by an insurance company authorized to
 8-67 do business in this state and rated at least A or equivalent by a
 8-68 nationally recognized rating organization approved by the
 8-69 administrator; and

9-1 (B) with no deductible, or, if the provider
 9-2 supplies a bond in the amount of \$5,000, a deductible not exceeding
 9-3 \$5,000; or
 9-4 (2) with the approval of the administrator:
 9-5 (A) an irrevocable letter of credit, issued or
 9-6 confirmed by a bank approved by the administrator, payable on
 9-7 presentation of a certificate by the administrator stating that the
 9-8 provider or its agent has not complied with this subchapter; or
 9-9 (B) bonds or other obligations of the United
 9-10 States or guaranteed by the United States or bonds or other
 9-11 obligations of this state or a political subdivision of this state,
 9-12 to be deposited and maintained with a bank approved by the
 9-13 administrator for this purpose.
 9-14 (b) If a provider furnishes a substitute pursuant to
 9-15 Subsection (a), Sections 394.313(a), (c), (d), and (e) apply to the
 9-16 substitute.
 9-17 Sec. 394.315. REQUIREMENT OF GOOD FAITH. A provider shall
 9-18 act in good faith in all matters under this subchapter.
 9-19 Sec. 394.316. CUSTOMER SERVICE. A provider that is
 9-20 required to be registered under this chapter shall maintain a
 9-21 toll-free communication system, staffed at a level that reasonably
 9-22 permits an individual to speak to a certified counselor, certified
 9-23 debt specialist, or customer service representative, as
 9-24 appropriate, during ordinary business hours.
 9-25 Sec. 394.317. PREREQUISITES FOR PROVIDING DEBT MANAGEMENT
 9-26 SERVICES. (a) Before providing debt management services, a
 9-27 registered provider shall give the individual an itemized list of
 9-28 goods and services and the charges for each. The list must be clear
 9-29 and conspicuous, be in a record the individual may keep whether or
 9-30 not the individual assents to an agreement, and describe the goods
 9-31 and services the provider offers:
 9-32 (1) free of additional charge if the individual enters
 9-33 into an agreement;
 9-34 (2) for a charge if the individual does not enter into
 9-35 an agreement; and
 9-36 (3) for a charge if the individual enters into an
 9-37 agreement using the following terminology, as applicable, and
 9-38 format:
 9-39 Setup fee _____ (dollar amount of fee)
 9-40 Monthly service fee _____ (dollar amount of fee or method of
 9-41 determining amount)
 9-42 Settlement fee _____ (dollar amount of fee or method of
 9-43 determining amount)
 9-44 Goods and services in addition to those provided in connection with
 9-45 a plan:
 9-46 _____ (item) _____ (dollar amount or method of determining amount)
 9-47 _____ (item) _____ (dollar amount or method of determining
 9-48 amount).
 9-49 (b) A provider may not furnish debt management services
 9-50 unless the provider, through the services of a certified counselor
 9-51 or certified debt specialist:
 9-52 (1) provides the individual with reasonable education
 9-53 about the management of personal finance;
 9-54 (2) has prepared a financial analysis; and
 9-55 (3) if the individual is to make regular periodic
 9-56 payments to a creditor or provider:
 9-57 (A) has prepared a plan for the individual;
 9-58 (B) has made a determination, based on the
 9-59 provider's analysis of the information provided by the individual
 9-60 and otherwise available to it, that the plan is suitable for the
 9-61 individual and the individual will be able to meet the payment
 9-62 obligations under the plan; and
 9-63 (C) believes that each creditor of the individual
 9-64 listed as a participating creditor in the plan will accept payment
 9-65 of the individual's debts as provided in the plan.
 9-66 (c) Before an individual assents to an agreement to engage
 9-67 in a plan, a provider shall:
 9-68 (1) provide the individual with a copy of the analysis
 9-69 and plan required by Subsection (b) in a record that identifies the

10-1 provider and that the individual may keep whether or not the
10-2 individual assents to the agreement; and

10-3 (2) inform the individual of the availability, at the
10-4 individual's option, of assistance by a toll-free communication
10-5 system or in person to discuss the financial analysis and plan
10-6 required by Subsection (b).

10-7 (d) Before an individual assents to an agreement, the
10-8 provider shall inform the individual, in a separate record that the
10-9 individual may keep whether or not the individual assents to the
10-10 agreement:

10-11 (1) of the name and business address of the provider;

10-12 (2) that plans are not suitable for all individuals
10-13 and the individual may ask the provider about other ways, including
10-14 bankruptcy, to deal with indebtedness;

10-15 (3) that establishment of a plan may adversely affect
10-16 the individual's credit rating or credit scores;

10-17 (4) that nonpayment of debt may lead creditors to
10-18 increase finance and other charges or undertake collection
10-19 activity, including litigation;

10-20 (5) unless it is not true, that the provider may
10-21 receive compensation from the creditors of the individual; and

10-22 (6) that, unless the individual is insolvent, if a
10-23 creditor settles for less than the full amount of the debt, the plan
10-24 may result in the creation of taxable income to the individual, even
10-25 though the individual does not receive any money.

10-26 (e) If a provider may receive payments from an individual's
10-27 creditors and the plan contemplates that the individual's creditors
10-28 will reduce finance charges or fees for late payment, default, or
10-29 delinquency, the provider may comply with Subsection (d) by
10-30 providing the following disclosure, surrounded by black lines:

10-31 IMPORTANT INFORMATION FOR YOU TO CONSIDER

10-32 (1) Debt management plans are not right for all individuals, and
10-33 you may ask us to provide information about other ways, including
10-34 bankruptcy, to deal with your debts.

10-35 (2) Using a debt management plan may make it harder for you to
10-36 obtain credit.

10-37 (3) We may receive compensation for our services from your
10-38 creditors.

10-39 Name and business address of provider

10-40 (f) If a provider will not receive payments from an
10-41 individual's creditors and the plan contemplates that the
10-42 individual's creditors will reduce finance charges or fees for late
10-43 payment, default, or delinquency, a provider may comply with
10-44 Subsection (d) by providing the following disclosure, surrounded by
10-45 black lines:

10-46 IMPORTANT INFORMATION FOR YOU TO CONSIDER

10-47 (1) Debt management plans are not right for all individuals, and
10-48 you may ask us to provide information about other ways, including
10-49 bankruptcy, to deal with your debts.

10-50 (2) Using a debt management plan may make it harder for you to
10-51 obtain credit.

10-52 Name and business address of provider

10-53 (g) If a plan contemplates that creditors will settle debts
10-54 for less than the full principal amount of debt owed, a provider may
10-55 comply with Subsection (d) by providing the following disclosure,
10-56 surrounded by black lines:

10-57 IMPORTANT INFORMATION FOR YOU TO CONSIDER

10-58 (1) Our program is not right for all individuals, and you may ask
10-59 us to provide information about bankruptcy and other ways to deal
10-60 with your debts.

10-61 (2) Nonpayment of your debts under our program may:

10-62 (A) hurt your credit rating or credit scores;

10-63 (B) lead your creditors to increase finance and other
10-64 charges; and

10-65 (C) lead your creditors to undertake activity, including
10-66 lawsuits, to collect the debts.

10-67 (3) Reduction of debt under our program may result in taxable
10-68
10-69

11-1 income to you, even though you will not actually receive any money.

11-2 Name and business address of provider

11-3 Sec. 394.318. COMMUNICATION BY ELECTRONIC OR OTHER MEANS.

11-4 (a) In this section:

11-5 (1) "Federal act" means the Electronic Signatures in
11-6 Global and National Commerce Act, 15 U.S.C. Section 7001 et seq.

11-7 (2) "Consumer" means an individual who seeks or
11-8 obtains goods or services that are used primarily for personal,
11-9 family, or household purposes.

11-10 (b) A provider may satisfy the requirements of Section
11-11 394.317, 394.319, or 394.327 by means of the Internet or other
11-12 electronic means if the provider obtains a consumer's consent in
11-13 the manner provided by Section 101(c)(1) of the federal act.

11-14 (c) The disclosures and materials required by Sections
11-15 394.317, 394.319, and 394.327 shall be presented in a form that is
11-16 capable of being accurately reproduced for later reference.

11-17 (d) With respect to disclosure by means of an Internet
11-18 website, the disclosure of the information required by Section
11-19 394.317(d) must appear on one or more screens that:

11-20 (1) contain no other information; and

11-21 (2) the individual must see before proceeding to
11-22 assent to formation of an agreement.

11-23 (e) At the time of providing the materials and agreement
11-24 required by Sections 394.317(c) and (d), 394.319, and 394.327, a
11-25 provider shall inform the individual that on electronic,
11-26 telephonic, or written request, it will send the individual a
11-27 written copy of the materials, and shall comply with a request as
11-28 provided in Subsection (f).

11-29 (f) If a provider is requested, before the expiration of 90
11-30 days after an agreement is completed or terminated, to send a
11-31 written copy of the materials required by Sections 394.317(c) and
11-32 (d), or by Section 394.319 or 394.327, the provider shall send them
11-33 at no charge within three business days after the request is
11-34 received, but the provider need not comply with a request more than
11-35 once per calendar month or if it reasonably believes the request is
11-36 made for purposes of harassment. If a request is made more than 90
11-37 days after an agreement is completed or terminated, the provider
11-38 shall send within a reasonable time a written copy of the materials
11-39 requested.

11-40 (g) A provider that maintains an Internet website shall
11-41 disclose on the home page of its website or on a page that is clearly
11-42 and conspicuously connected to the home page by a link that clearly
11-43 reveals its contents:

11-44 (1) its name and all names under which it does
11-45 business;

11-46 (2) its principal business address, telephone number,
11-47 and electronic mail address, if any; and

11-48 (3) the names of its principal officers.

11-49 (h) Subject to Subsection (i), if a consumer who has
11-50 consented to electronic communication in the manner provided by
11-51 Section 101 of the federal act withdraws consent as provided in the
11-52 federal act, a provider may terminate its agreement with the
11-53 consumer.

11-54 (i) If a provider wishes to terminate an agreement with a
11-55 consumer pursuant to Subsection (h), it shall notify the consumer
11-56 that it will terminate the agreement unless the consumer, within 30
11-57 days after receiving the notification, consents to electronic
11-58 communication in the manner provided in Section 101(c) of the
11-59 federal act. If the consumer consents, the provider may terminate
11-60 the agreement only as permitted by Section 394.319(a)(6)(F).

11-61 Sec. 394.319. FORM AND CONTENTS OF AGREEMENT. (a) An
11-62 agreement must:

11-63 (1) be in a record;

11-64 (2) be dated and signed by the provider and the
11-65 individual;

11-66 (3) include the name of the individual and the address
11-67 where the individual resides;

11-68 (4) include the name, business address, and telephone
11-69

12-1 number of the provider;
12-2 (5) be delivered to the individual immediately on
12-3 formation of the agreement; and
12-4 (6) disclose:
12-5 (A) the services to be provided;
12-6 (B) the amount, or method of determining the
12-7 amount, of all fees, individually itemized, to be paid by the
12-8 individual;
12-9 (C) the schedule of payments to be made by or on
12-10 behalf of the individual, including the amount of each payment, the
12-11 date on which each payment is due, and an estimate of the date of the
12-12 final payment;
12-13 (D) if a plan provides for regular periodic
12-14 payments to creditors:
12-15 (i) each creditor of the individual to
12-16 which payment will be made, the amount owed to each creditor, and
12-17 any concessions the provider reasonably believes each creditor will
12-18 offer;
12-19 (ii) the schedule of expected payments to
12-20 each creditor, including the amount of each payment and the date on
12-21 which it will be made; and
12-22 (iii) each creditor that the provider
12-23 believes will not participate in the plan and to which the provider
12-24 will not direct payment;
12-25 (E) how the provider will comply with its
12-26 obligations under Section 394.327;
12-27 (F) that the provider may terminate the agreement
12-28 for good cause, on return of unexpended money of the individual;
12-29 (G) that the individual may cancel the agreement
12-30 as provided in Section 394.320;
12-31 (H) that the individual may contact the
12-32 administrator with any questions or complaints regarding the
12-33 provider; and
12-34 (I) the address, telephone number, and Internet
12-35 address or website of the administrator.
12-36 (b) For purposes of Subsection (a)(5), delivery of an
12-37 electronic record occurs when it is made available in a format in
12-38 which the individual may retrieve, save, and print, and the
12-39 individual is notified that it is available.
12-40 (c) If the administrator supplies the provider with any
12-41 information required under Subsection (a)(6)(I), the provider may
12-42 comply with that requirement only by disclosing the information
12-43 supplied by the administrator.
12-44 (d) An agreement must provide that:
12-45 (1) the individual has a right to terminate the
12-46 agreement at any time, without penalty or obligation, by giving the
12-47 provider written or electronic notice, in which event:
12-48 (A) the provider will refund all unexpended money
12-49 that the provider or its agent has received from or on behalf of the
12-50 individual for the reduction or satisfaction of the individual's
12-51 debt;
12-52 (B) with respect to an agreement that
12-53 contemplates that creditors will settle debts for less than the
12-54 principal amount of debt, the provider will refund 65 percent of any
12-55 portion of the setup fee that has not been credited against the
12-56 settlement fee; and
12-57 (C) all powers of attorney granted by the
12-58 individual to the provider are revoked and ineffective;
12-59 (2) the individual authorizes any bank in which the
12-60 provider or its agent has established a trust account to disclose to
12-61 the administrator any financial records relating to the trust
12-62 account; and
12-63 (3) the provider will notify the individual within
12-64 five days after learning of a creditor's decision to reject or
12-65 withdraw from a plan and that this notice will include:
12-66 (A) the identity of the creditor; and
12-67 (B) the right of the individual to modify or
12-68 terminate the agreement.
12-69 (e) An agreement may confer on a provider a power of

13-1 attorney to settle the individual's debt for not more than 50
13-2 percent of the outstanding amount of the debt owed at the time of
13-3 settlement. An agreement may not confer a power of attorney to
13-4 settle a debt for more than 50 percent of that amount, but may
13-5 confer a power of attorney to negotiate with creditors of the
13-6 individual on behalf of the individual. An agreement must provide
13-7 that the provider will obtain the assent of the individual after a
13-8 creditor has assented to a settlement for more than 50 percent of
13-9 the outstanding amount of the debt owed at the time of settlement.

13-10 (f) An agreement may not:

13-11 (1) provide for application of the law of any
13-12 jurisdiction other than the United States and this state;

13-13 (2) except as permitted by Section 2 of the Federal
13-14 Arbitration Act, 9 U.S.C. Section 2, contain a provision that
13-15 modifies or limits otherwise available forums or procedural rights,
13-16 including the right to trial by jury, that are generally available
13-17 to the individual under law other than this subchapter;

13-18 (3) contain a provision that restricts the
13-19 individual's remedies under this subchapter or law other than this
13-20 subchapter; or

13-21 (4) contain a provision that:

13-22 (A) limits or releases the liability of any
13-23 person for not performing the agreement or for violating this
13-24 subchapter; or

13-25 (B) indemnifies any person for liability arising
13-26 under the agreement or this subchapter.

13-27 (g) All rights and obligations specified in Subsection (e)
13-28 and Section 394.320 exist even if not provided in the agreement. A
13-29 provision in an agreement which violates Subsection (d), (e), or
13-30 (f) is void.

13-31 Sec. 394.320. CANCELLATION OF AGREEMENT; WAIVER. (a) An
13-32 individual may cancel an agreement before midnight of the third
13-33 business day after the individual assents to it, unless the
13-34 agreement does not comply with Section 394.319(b) or Section
13-35 394.328, in which event the individual may cancel the agreement
13-36 within 30 days after the individual assents to it. To exercise the
13-37 right to cancel, the individual must give notice in a record to the
13-38 provider. Notice by mail is given when mailed.

13-39 (b) An agreement must be accompanied by a form that contains
13-40 in bold-faced type, surrounded by bold black lines:

13-41 Notice of Right to Cancel

13-42 You may cancel this agreement, without any penalty or obligation,
13-43 at any time before midnight of the third business day that begins
13-44 the day after you agree to it by electronic communication or by
13-45 signing it.

13-46 To cancel this agreement during this period, send an e-mail to
13-47 _____ [e-mail address of provider] or mail or
13-48 deliver a signed, dated copy of this notice, or any other written
13-49 notice to _____ [name of provider] at
13-50 _____ [address of provider] before midnight on
13-51 [date].

13-52 If you cancel this agreement within the three-day period, we will
13-53 refund all money you already have paid us.

13-54 You also may terminate this agreement at any later time, but we are
13-55 not required to refund fees you have paid us.

13-56 I cancel this agreement,

13-57 _____ [Printed name]

13-58 _____ [Signature]

13-59 _____ [Date]

13-60 (c) If a personal financial emergency necessitates the
13-61 disbursement of an individual's money to one or more of the
13-62 individual's creditors before the expiration of three days after an
13-63 agreement is signed, an individual may waive the right to cancel.

13-64 To waive the right, the individual must send or deliver a signed,
13-65 dated statement in the individual's own words describing the
13-66 circumstances that necessitate a waiver. The waiver must
13-67 explicitly waive the right to cancel. A waiver by means of a
13-68 standard form record is void.

13-69 Sec. 394.321. REQUIRED LANGUAGE. Unless the Finance

14-1 Commission of Texas, by rule, provides otherwise, the disclosures
 14-2 and documents required by this subchapter must be in English. If a
 14-3 provider communicates with an individual primarily in a language
 14-4 other than English, the provider must furnish a translation into
 14-5 the other language of the disclosures and documents required by
 14-6 this subchapter.

14-7 Sec. 394.322. TRUST ACCOUNT. (a) All money paid to a
 14-8 provider by or on behalf of an individual pursuant to a plan for
 14-9 distribution to creditors is held in trust. Within two business
 14-10 days after receipt, the provider shall deposit the money in a trust
 14-11 account established for the benefit of individuals to whom the
 14-12 provider is furnishing debt management services.

14-13 (b) Money held in trust by a provider is not property of the
 14-14 provider or its designee. The money is not available to creditors
 14-15 of the provider or designee, except an individual from whom or on
 14-16 whose behalf the provider received money, to the extent that the
 14-17 money has not been disbursed to creditors of the individual.

14-18 (c) A provider shall:

14-19 (1) maintain separate records of account for each
 14-20 individual to whom the provider is furnishing debt management
 14-21 services;

14-22 (2) disburse money paid by or on behalf of the
 14-23 individual to creditors of the individual as disclosed in the
 14-24 agreement, except that:

14-25 (A) the provider may delay payment to the extent
 14-26 that a payment by the individual is not final; and

14-27 (B) if a plan provides for regular periodic
 14-28 payments to creditors, the disbursement must comply with the due
 14-29 dates established by each creditor; and

14-30 (3) promptly correct any payments that are not made or
 14-31 that are misdirected as a result of an error by the provider or
 14-32 other person in control of the trust account and reimburse the
 14-33 individual for any costs or fees imposed by a creditor as a result
 14-34 of the failure to pay or misdirection.

14-35 (d) A provider may not commingle money in a trust account
 14-36 established for the benefit of individuals to whom the provider is
 14-37 furnishing debt management services with money of other persons.

14-38 (e) A trust account must at all times have a cash balance
 14-39 equal to the sum of the balances of each individual's account.

14-40 (f) If a provider has established a trust account pursuant
 14-41 to Subsection (a), the provider shall reconcile the trust account
 14-42 at least once a month. The reconciliation must compare the cash
 14-43 balance in the trust account with the sum of the balances in each
 14-44 individual's account. If the provider or its designee has more than
 14-45 one trust account, each trust account must be individually
 14-46 reconciled.

14-47 (g) If a provider discovers, or has a reasonable suspicion
 14-48 of, embezzlement or other unlawful appropriation of money held in
 14-49 trust, the provider immediately shall notify the administrator by a
 14-50 method approved by the administrator. Unless the Finance
 14-51 Commission of Texas by rule provides otherwise, within five days
 14-52 thereafter, the provider shall give notice to the administrator
 14-53 describing the remedial action taken or to be taken.

14-54 (h) If an individual terminates an agreement or it becomes
 14-55 reasonably apparent to a provider that a plan has failed, the
 14-56 provider shall promptly refund to the individual all money paid by
 14-57 or on behalf of the individual which has not been paid to creditors,
 14-58 less fees that are payable to the provider under Section 394.323.

14-59 (i) Before relocating a trust account from one bank to
 14-60 another, a provider shall inform the administrator of the name,
 14-61 business address, and telephone number of the new bank. As soon as
 14-62 practicable, the provider shall inform the administrator of the
 14-63 account number of the trust account at the new bank.

14-64 Sec. 394.323. FEES AND OTHER CHARGES. (a) A provider may
 14-65 not impose directly or indirectly a fee or other charge on an
 14-66 individual or receive money from or on behalf of an individual for
 14-67 debt management services except as permitted by this section.

14-68 (b) A provider may not impose charges or receive payment for
 14-69 debt management services until the provider and the individual have

15-1 signed an agreement that complies with Sections 394.319 and
 15-2 394.328.

15-3 (c) If an individual assents to an agreement, a provider may
 15-4 not impose a fee or other charge for educational or counseling
 15-5 services, or the like, except as otherwise provided in this
 15-6 subsection and Section 394.328(d). The administrator may authorize
 15-7 a provider to charge a fee based on the nature and extent of the
 15-8 educational or counseling services furnished by the provider.

15-9 (d) Subject to adjustment of dollar amounts pursuant to
 15-10 Section 394.332(f), fees and other charges must meet the following
 15-11 requirements:

15-12 (1) If an individual assents to a plan that
 15-13 contemplates that creditors will reduce finance charges or fees for
 15-14 late payment, default, or delinquency, the provider may charge:

15-15 (A) a fee not to exceed \$50 for consultation,
 15-16 obtaining a credit report, setting up an account, and the like; and

15-17 (B) a monthly service fee, not to exceed \$10
 15-18 times the number of accounts remaining in a plan at the time the fee
 15-19 is assessed, but not more than \$50 in any month.

15-20 (2) If an individual assents to a plan that
 15-21 contemplates that creditors will settle debts for less than the
 15-22 principal amount of the debt, the provider may charge:

15-23 (A) subject to Section 394.319(d), a fee for
 15-24 consultation, obtaining a credit report, setting up an account, and
 15-25 the like, in an amount not to exceed the lesser of \$400 or four
 15-26 percent of the debt in the plan at the inception of the plan; and

15-27 (B) a monthly service fee, not to exceed \$10
 15-28 times the number of accounts remaining in the plan at the time the
 15-29 fee is assessed, but not more than \$50 in any month.

15-30 (3) A provider may not impose or receive fees under
 15-31 both Subdivisions (1) and (2).

15-32 (4) Except as otherwise provided in Section
 15-33 394.328(d), if an individual does not assent to an agreement, a
 15-34 provider may receive for educational and counseling services it
 15-35 provides to the individual a fee not to exceed \$100 or, with the
 15-36 approval of the administrator, a larger amount. The administrator
 15-37 may approve a fee in an amount greater than \$100 if the nature and
 15-38 extent of the educational and counseling services warrant the
 15-39 larger fee.

15-40 (e) If, before the expiration of 90 days after the
 15-41 completion or termination of educational or counseling services, an
 15-42 individual assents to an agreement, the provider shall refund to
 15-43 the individual any fee paid pursuant to Subsection (d)(4).

15-44 (f) Except as otherwise provided in Subsections (c) and (d),
 15-45 if an agreement contemplates that creditors will settle an
 15-46 individual's debts for less than the principal amount of the debt,
 15-47 compensation for services in connection with settling debt may not
 15-48 exceed one of the following applicable settlement fee limits in
 15-49 Subdivision (1) or (2), the terms of which shall be clearly
 15-50 disclosed in the agreement.

15-51 (1) With respect to agreements in which a flat
 15-52 settlement fee is charged based on the overall amount of included
 15-53 debt, the total aggregate amount of fees charged to any individual
 15-54 under this chapter, including fees charged under Subsections
 15-55 (d)(2)(A) and (B), may not exceed 17 percent of the principal amount
 15-56 of debt included in the agreement at the agreement's inception. The
 15-57 flat settlement fee authorized under this subchapter shall be
 15-58 assessed in equal monthly payments over not less than half of the
 15-59 length of the plan, as estimated at the plan's inception, unless:

15-60 (A) voluntarily accelerated by the individual in
 15-61 a separate record; and

15-62 (B) offers of settlement by creditors have been
 15-63 obtained on at least half of the outstanding debt included in the
 15-64 agreement.

15-65 (2) With respect to agreements in which fees are
 15-66 calculated as a percentage of the amount saved by an individual, a
 15-67 settlement fee may not exceed 30 percent of the excess of the
 15-68 outstanding amount of each debt over the amount actually paid to the
 15-69 creditor, as calculated at the time of settlement. Settlement fees

16-1 authorized under this subsection shall become billable only as
 16-2 debts are settled, and the total aggregate amount of fees charged to
 16-3 any individual under this subchapter, including fees charged under
 16-4 Subsections (d)(2)(A) and (B), may not exceed 20 percent of the
 16-5 principal amount of debt included in the agreement at the
 16-6 agreement's inception.

16-7 (3) A provider may not impose or receive fees under
 16-8 both Subdivisions (1) and (2).

16-9 (g) Subject to adjustment of the dollar amount pursuant to
 16-10 Section 394.332(f), if a payment to a provider by an individual
 16-11 under this subchapter is dishonored, a provider may impose a
 16-12 reasonable charge on the individual not to exceed the lesser of \$25
 16-13 or the amount permitted by law other than this subchapter.

16-14 Sec. 394.324. VOLUNTARY CONTRIBUTIONS. A provider may not
 16-15 solicit a voluntary contribution from an individual or an affiliate
 16-16 of the individual for any service provided to the individual. A
 16-17 provider may accept voluntary contributions from an individual but,
 16-18 until 30 days after completion or termination of a plan, the
 16-19 aggregate amount of money received from or on behalf of the
 16-20 individual may not exceed the total amount the provider may charge
 16-21 the individual under Section 394.323.

16-22 Sec. 394.325. VOIDABLE AGREEMENTS. (a) If a provider
 16-23 imposes a fee or other charge or receives money or other payments
 16-24 not authorized by Section 394.323 or 394.324, the individual may
 16-25 void the agreement and recover as provided in Section 394.335.

16-26 (b) If a provider is not registered as required by this
 16-27 subchapter when an individual assents to an agreement, the
 16-28 agreement is voidable by the individual.

16-29 (c) If an individual voids an agreement under Subsection
 16-30 (b), the provider does not have a claim against the individual for
 16-31 breach of contract or for restitution.

16-32 Sec. 394.326. TERMINATION OF AGREEMENTS. (a) If an
 16-33 individual who has entered into an agreement fails for 60 days to
 16-34 make payments required by the agreement, a provider may terminate
 16-35 the agreement.

16-36 (b) If a provider or an individual terminates an agreement,
 16-37 the provider shall immediately return to the individual:

16-38 (1) any money of the individual held in trust for the
 16-39 benefit of the individual; and

16-40 (2) 65 percent of any portion of the setup fee received
 16-41 pursuant to Section 394.323(d)(2) which has not been credited
 16-42 against settlement fees.

16-43 Sec. 394.327. PERIODIC REPORTS AND RETENTION OF RECORDS.

16-44 (a) A provider shall provide the accounting required by Subsection

16-45 (b):

16-46 (1) on cancellation or termination of an agreement;
 16-47 and

16-48 (2) before cancellation or termination of any
 16-49 agreement:

16-50 (A) at least once each month; and

16-51 (B) within five business days after a request by
 16-52 an individual, but the provider does not need to comply with more
 16-53 than one request in any calendar month.

16-54 (b) A provider, in a record, shall provide each individual
 16-55 for whom it has established a plan an accounting of the following
 16-56 information:

16-57 (1) the amount of money received from the individual
 16-58 since the last report;

16-59 (2) the amounts and dates of disbursement made on the
 16-60 individual's behalf, or by the individual on the direction of the
 16-61 provider, since the last report to each creditor listed in the plan;

16-62 (3) the amounts deducted from the amount received from
 16-63 the individual;

16-64 (4) the amount held in reserve; and

16-65 (5) if, since the last report, a creditor has agreed to
 16-66 accept as payment in full an amount less than the principal amount
 16-67 of the debt owed by the individual:

16-68 (A) the total amount and terms of the settlement;

16-69 (B) the amount of the debt when the individual

17-1 assented to the plan;

17-2 (C) the amount of the debt when the creditor
17-3 agreed to the settlement; and

17-4 (D) the calculation of a settlement fee.

17-5 (c) A provider shall maintain records for each individual
17-6 for whom it provides debt management services for five years after
17-7 the final payment made by the individual and produce a copy of the
17-8 records to the individual within a reasonable time after a request
17-9 for them. The provider may use electronic or other means of storage
17-10 for the records.

17-11 Sec. 394.328. PROHIBITED ACTS AND PRACTICES. (a) A
17-12 provider may not, directly or indirectly:

17-13 (1) misappropriate or misapply money held in trust;

17-14 (2) settle a debt on behalf of an individual for more
17-15 than 50 percent of the outstanding amount of the debt owed a
17-16 creditor unless the individual assents to the settlement after the
17-17 creditor has assented;

17-18 (3) take a power of attorney that authorizes it to
17-19 settle a debt, unless the power of attorney expressly limits the
17-20 provider's authority to settle debts for not more than 50 percent of
17-21 the actual outstanding balance of the debt owed a creditor;

17-22 (4) exercise or attempt to exercise a power of
17-23 attorney after an individual has terminated an agreement;

17-24 (5) initiate a transfer from an individual's account
17-25 at a bank or with another person unless the transfer is:

17-26 (A) a return of money to the individual; or

17-27 (B) before termination of an agreement, properly
17-28 authorized by the agreement and this subchapter, and for:

17-29 (i) payment to one or more creditors
17-30 pursuant to a plan; or

17-31 (ii) payment of a fee;

17-32 (6) offer a gift or bonus, premium, reward, or other
17-33 compensation to an individual for executing an agreement;

17-34 (7) offer, pay, or give a gift or bonus, premium,
17-35 reward, or other compensation to a person for referring a
17-36 prospective customer, if the person making the referral has a
17-37 financial interest in the outcome of debt management services
17-38 provided to the customer, unless neither the provider nor the
17-39 person making the referral communicates to the prospective customer
17-40 the identity of the source of the referral;

17-41 (8) receive a bonus, commission, or other benefit for
17-42 referring an individual to a person;

17-43 (9) structure a plan in a manner that would result in a
17-44 negative amortization of any of an individual's debts, unless a
17-45 creditor that is owed a negatively amortizing debt agrees to refund
17-46 or waive the finance charge on payment of the principal amount of
17-47 the debt;

17-48 (10) compensate its employees on the basis of a
17-49 formula that incorporates the number of individuals the employee
17-50 induces to enter into agreements;

17-51 (11) settle a debt or lead an individual to believe
17-52 that a payment to a creditor is in settlement of a debt to the
17-53 creditor unless, at the time of settlement, the individual receives
17-54 a certification by the creditor that the payment is in full
17-55 settlement of the debt or is part of a payment plan, the terms of
17-56 which are included in the certification, that on completion will
17-57 lead to full settlement of the debt;

17-58 (12) make a representation that:

17-59 (A) the provider will furnish money to pay bills
17-60 or prevent attachments;

17-61 (B) payment of a certain amount will permit
17-62 satisfaction of a certain amount or range of indebtedness; or

17-63 (C) participation in a plan will or may prevent
17-64 litigation, garnishment, attachment, repossession, foreclosure,
17-65 eviction, or loss of employment;

17-66 (13) misrepresent that it is authorized or competent
17-67 to furnish legal advice or perform legal services;

17-68 (14) represent in its agreements, disclosures
17-69 required by this subchapter, advertisements, or Internet website

18-1 that it is:

18-2 (A) a nonprofit entity unless it is organized and
 18-3 properly operating as a nonprofit entity under the laws of the state
 18-4 in which it was formed; or

18-5 (B) a tax-exempt entity unless it has received
 18-6 certification of tax-exempt status from the Internal Revenue
 18-7 Service and is properly operating as a nonprofit entity under the
 18-8 laws of the state in which it was formed;

18-9 (15) take a confession of judgment or power of
 18-10 attorney to confess judgment against an individual; or

18-11 (16) employ an unfair, unconscionable, or deceptive
 18-12 act or practice, including the knowing omission of any material
 18-13 information.

18-14 (b) If a provider furnishes debt management services to an
 18-15 individual, the provider may not, directly or indirectly or through
 18-16 an affiliate:

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

18-18 (2) receive from or on behalf of the individual:

18-19 (A) a promissory note or other negotiable
 18-20 instrument other than a check or a demand draft; or

18-21 (B) a postdated check or demand draft;

18-22 (3) lend money or provide credit to the individual,
 18-23 except as a deferral of a settlement fee at no additional expense to
 18-24 the individual;

18-25 (4) obtain a mortgage or other security interest from
 18-26 any person in connection with the services provided to the
 18-27 individual;

18-28 (5) except as permitted by federal law, disclose the
 18-29 identity or identifying information of the individual or the
 18-30 identity of the individual's creditors, except to:

18-31 (A) the administrator or the attorney general, on
 18-32 proper demand;

18-33 (B) a creditor of the individual, to the extent
 18-34 necessary to secure the cooperation of the creditor in a plan; or

18-35 (C) the extent necessary to administer the plan;

18-36 (6) except as otherwise provided in Section
 18-37 394.323(f), provide the individual less than the full benefit of a
 18-38 compromise of a debt arranged by the provider;

18-39 (7) charge the individual for or provide credit or
 18-40 other insurance, coupons for goods or services, membership in a
 18-41 club, access to computers or the Internet, or any other matter not
 18-42 directly related to debt management services or educational
 18-43 services concerning personal finance, except to the extent such
 18-44 services are expressly authorized by the administrator;

18-45 (8) furnish legal advice or perform legal services,
 18-46 unless the person furnishing that advice to or performing those
 18-47 services for the individual is licensed to practice law; or

18-48 (9) receive compensation for referring, directing, or
 18-49 negotiating a loan or extension of credit on behalf of the
 18-50 individual.

18-51 (c) This subchapter does not authorize any person to engage
 18-52 in the practice of law.

18-53 (d) A provider may not receive a gift or bonus, premium,
 18-54 reward, or other compensation, directly or indirectly, for
 18-55 advising, arranging, or assisting an individual in connection with
 18-56 obtaining an extension of credit or other service from a lender or
 18-57 service provider, except for educational or counseling services
 18-58 required in connection with a government program or as expressly
 18-59 approved by the administrator.

18-60 (e) Unless a person supplies goods, services, or facilities
 18-61 generally and supplies them to the provider at a cost not greater
 18-62 than the cost the person generally charges to others, a provider may
 18-63 not purchase goods, services, or facilities from the person if an
 18-64 employee or a person that the provider should reasonably know is an
 18-65 affiliate of the provider:

18-66 (1) owns more than 10 percent of the person; or

18-67 (2) is an employee or affiliate of the person.

18-68 Sec. 394.329. NOTICE OF LITIGATION. Not later than 30 days
 18-69 after a provider has been served with notice of a civil action for

19-1 violation of this subchapter by or on behalf of an individual who
 19-2 resides in this state at either the time of an agreement or the time
 19-3 the notice is served, the provider shall notify the administrator
 19-4 in a record that it has been sued.

19-5 Sec. 394.330. ADVERTISING. (a) If the agreements of a
 19-6 provider contemplate that creditors will reduce finance charges or
 19-7 fees for late payment, default, or delinquency and the provider
 19-8 advertises debt management services, it shall disclose, in an
 19-9 easily comprehensible manner, that using a debt management plan may
 19-10 make it harder for the individual to obtain credit.

19-11 (b) If the agreements of a provider contemplate that
 19-12 creditors will settle for less than the full principal amount of
 19-13 debt and the provider advertises debt management services, it shall
 19-14 disclose, in an easily comprehensible manner, the information
 19-15 specified in Sections 394.317(d)(3) and (4).

19-16 Sec. 394.331. LIABILITY FOR CONDUCT OF OTHER PERSONS. If a
 19-17 provider delegates any of its duties or obligations under an
 19-18 agreement or this subchapter to a third-party agent, including an
 19-19 independent contractor, the provider is liable for the person's
 19-20 conduct which, if done by the provider, would violate the agreement
 19-21 or this subchapter.

19-22 Sec. 394.332. POWERS OF ADMINISTRATOR. (a) The
 19-23 administrator may receive complaints, act on its own initiative or
 19-24 in response to complaints, take action to obtain voluntary
 19-25 compliance with this subchapter, and seek or provide remedies as
 19-26 provided in this subchapter or Chapter 14.

19-27 (b) The administrator or the administrator's representative
 19-28 may investigate and examine, in this state or elsewhere, by
 19-29 subpoena or otherwise, the activities, books, accounts, and records
 19-30 of a person that provides or offers to provide debt management
 19-31 services, or a person to whom a provider has delegated its
 19-32 obligations under an agreement or this subchapter, to determine
 19-33 compliance with this subchapter. Information that identifies
 19-34 individuals who have agreements with the provider may not be
 19-35 disclosed to the public. In connection with the investigation, the
 19-36 administrator may:

19-37 (1) charge the person the reasonable expenses
 19-38 necessarily incurred to conduct the examination;

19-39 (2) require or permit a person to file a statement
 19-40 under oath as to all the facts and circumstances of a matter to be
 19-41 investigated or examined; and

19-42 (3) seek a court order authorizing seizure from a bank
 19-43 at which the person maintains a trust account required by Section
 19-44 394.322, any or all money, books, records, accounts, and other
 19-45 property of the provider that is in the control of the bank and
 19-46 relates to individuals who reside in this state.

19-47 (c) The Finance Commission of Texas may adopt rules to
 19-48 implement this subchapter in accordance with Chapter 2001,
 19-49 Government Code.

19-50 (d) The administrator may enter into cooperative
 19-51 arrangements with any other federal or state agency having
 19-52 authority over providers and may exchange with any of those
 19-53 agencies information about a provider, including information
 19-54 obtained during an examination of the provider.

19-55 (e) The Finance Commission of Texas by rule shall establish
 19-56 reasonable fees to be paid by providers for the expense of
 19-57 administering this subchapter.

19-58 (f) The administrator shall compute and publish the dollar
 19-59 amounts instead of those specified in Sections 394.302, 394.305,
 19-60 394.309, 394.313, 394.323, 394.333, and 394.335 to reflect
 19-61 inflation, as measured by the United States Bureau of Labor
 19-62 Statistics Consumer Price Index for All Urban Consumers or, if that
 19-63 index is not available, another index adopted by finance commission
 19-64 rule. The administrator shall adopt a base year and adjust the
 19-65 dollar amounts, effective on July 1 of each year, if the change in
 19-66 the index from the base year, as of December 31 of the preceding
 19-67 year, is at least 10 percent. The dollar amount must be rounded to
 19-68 the nearest \$100, except that the amounts in Section 394.323 must be
 19-69 rounded to the nearest dollar.

20-1 (g) The administrator shall notify registered providers of
 20-2 any change in dollar amounts made pursuant to Subsection (f) and
 20-3 make that information available to the public.

20-4 (h) Information obtained under an examination is
 20-5 confidential.

20-6 Sec. 394.333. ADMINISTRATIVE REMEDIES. (a) For purposes
 20-7 of enforcing this subchapter, the administrator:

20-8 (1) has the powers granted to the administrator under
 20-9 Chapter 14;

20-10 (2) may exercise those powers in the same manner as
 20-11 those powers may be exercised under:

20-12 (A) Chapters 14 and 392; and

20-13 (B) Subtitle B, Title 4; and

20-14 (3) has any authority granted to the administrator by
 20-15 other law.

20-16 (b) The administrator may enforce this subchapter and rules
 20-17 adopted under this subchapter by taking one or more of the following
 20-18 actions:

20-19 (1) ordering a provider or a director, employee, or
 20-20 other agent of a provider to cease and desist from any violations;

20-21 (2) ordering a provider or a person that has caused a
 20-22 violation to correct the violation, including making restitution of
 20-23 money or property to a person aggrieved by a violation;

20-24 (3) subject to adjustment of the dollar amount
 20-25 pursuant to Section 394.332(f), imposing against a provider or a
 20-26 person that has caused a violation a civil penalty in an amount not
 20-27 to exceed \$10,000 for each violation;

20-28 (4) prosecuting a civil action to:

20-29 (A) enforce an order; or

20-30 (B) obtain restitution or an injunction or other
 20-31 equitable relief, or both; or

20-32 (5) intervening in an action brought under Section
 20-33 394.335.

20-34 (c) Subject to adjustment of the dollar amount pursuant to
 20-35 Section 394.332(f), if a person violates or knowingly authorizes,
 20-36 directs, or aids in the violation of a final order issued under
 20-37 Subsection (b)(1) or (2), the administrator may assess an
 20-38 administrative penalty in an amount not to exceed \$20,000 for each
 20-39 violation.

20-40 (d) The administrator may maintain an action to enforce this
 20-41 subchapter in any county at the administrator's sole discretion.

20-42 (e) The administrator may recover the reasonable costs of
 20-43 enforcing this subchapter under Subsections (b) and (d), including
 20-44 attorney's fees based on the hours reasonably expended and the
 20-45 hourly rates for attorneys of comparable experience in the
 20-46 community.

20-47 (f) In determining the amount of an administrative penalty
 20-48 to impose under Subsection (b) or (c), the administrator shall
 20-49 consider:

20-50 (1) the seriousness of the violation;

20-51 (2) the good faith of the violator;

20-52 (3) any previous violations by the violator;

20-53 (4) the deleterious effect of the violation on the
 20-54 public;

20-55 (5) the net worth of the violator; and

20-56 (6) any other factor the administrator considers
 20-57 relevant to the determination of the penalty.

20-58 Sec. 394.334. SUSPENSION, REVOCATION, OR NONRENEWAL OF
 20-59 REGISTRATION. (a) In this section, "insolvent" means:

20-60 (1) having generally ceased to pay debts in the
 20-61 ordinary course of business other than as a result of a good faith
 20-62 dispute;

20-63 (2) being unable to pay debts as they become due; or

20-64 (3) being insolvent within the meaning of federal
 20-65 bankruptcy law, 11 U.S.C. Section 101 et seq.

20-66 (b) The administrator may suspend, revoke, or deny renewal
 20-67 of a provider's registration if:

20-68 (1) a fact or condition exists that, if it had existed
 20-69 when the registrant applied for registration as a provider, would

21-1 have been a reason for denying registration;
 21-2 (2) the provider has committed a material violation of
 21-3 this subchapter or a rule or order of the administrator under this
 21-4 subchapter;
 21-5 (3) the provider is insolvent;
 21-6 (4) the provider or an employee or affiliate of the
 21-7 provider has refused to permit the administrator to make an
 21-8 examination authorized by this subchapter, failed to comply with
 21-9 Section 394.332(b)(2) within 15 days after request, or made a
 21-10 material misrepresentation or omission in complying with Section
 21-11 394.332(b)(2); or
 21-12 (5) the provider has not responded within a reasonable
 21-13 time and in an appropriate manner to communications from the
 21-14 administrator.
 21-15 (c) If a provider does not comply with Section 394.322(f) or
 21-16 if the administrator otherwise finds that the public health or
 21-17 safety or general welfare requires emergency action, the
 21-18 administrator may order a summary suspension of the provider's
 21-19 registration, effective on the date specified in the order.
 21-20 (d) If the administrator suspends, revokes, or denies the
 21-21 renewal of the registration of a provider, the administrator may
 21-22 seek a court order authorizing seizure of any or all of the money in
 21-23 a trust account required by Section 394.322, books, records,
 21-24 accounts, and other property of the provider that are located in
 21-25 this state.
 21-26 (e) If the administrator suspends or revokes a provider's
 21-27 registration, the provider may appeal and request a hearing
 21-28 pursuant to Chapter 2001, Government Code.
 21-29 Sec. 394.335. PRIVATE ENFORCEMENT. (a) In addition to the
 21-30 recovery under Subsection (b)(3), if an individual voids an
 21-31 agreement under Section 394.325(a) or (b), the individual may
 21-32 recover in a civil action all money paid or deposited by or on
 21-33 behalf of the individual under the agreement, other than amounts
 21-34 paid to creditors.
 21-35 (b) An individual with respect to whom a provider violates
 21-36 this subchapter or a rule adopted under this subchapter or commits
 21-37 any unfair or deceptive act may recover in a civil action from the
 21-38 provider and any third party that caused the violation or committed
 21-39 the act or practice, not including a provider's officers,
 21-40 directors, employees, or investors:
 21-41 (1) actual damages for injury caused by the violation
 21-42 or conduct;
 21-43 (2) punitive damages not to exceed three times actual
 21-44 damages only upon a finding of unconscionable conduct relating to a
 21-45 violation of this subchapter or a rule adopted under this
 21-46 subchapter; and
 21-47 (3) reasonable attorney's fees and costs.
 21-48 (c) In addition to the remedy available under Subsection
 21-49 (b), if a provider violates an individual's rights under Section
 21-50 394.320, the individual may recover in a civil action all money paid
 21-51 or deposited by or on behalf of the individual under the agreement,
 21-52 except for amounts paid to creditors.
 21-53 (d) A provider is not liable under this section for a
 21-54 violation of this subchapter if the provider proves that the
 21-55 violation was not intentional and resulted from a good faith error,
 21-56 notwithstanding the maintenance of reasonable procedures adopted
 21-57 to avoid the error. An error of legal judgment with respect to a
 21-58 provider's obligations under this subchapter is not a good faith
 21-59 error. If, in connection with a violation, the provider has
 21-60 received more money than authorized by an agreement or this
 21-61 subchapter, the defense provided by this subsection is not
 21-62 available unless the provider refunds the excess amount not later
 21-63 than the seventh calendar day after the date of learning of the
 21-64 violation.
 21-65 (e) The administrator shall assist an individual in
 21-66 enforcing a judgment against the surety bond or other security
 21-67 provided under Section 394.313 or 394.314.
 21-68 (f) An administrative penalty or fine under this title or
 21-69 federal law that is assessed by or agreed to with an administrative

22-1 agency or the attorney general shall be considered and applied as a
22-2 bar or credit to recovery of further fines, penalties, or enhanced
22-3 damages for substantially the same act, practice, or violation in a
22-4 suit or other proceeding brought by a private litigant under this
22-5 title, the Business & Commerce Code, or other applicable law of this
22-6 state. This subsection and Subsection (g) do not apply to a claim
22-7 for restitution for unreimbursed actual damages.

22-8 (g) A suit or other proceeding by a private litigant does
22-9 not affect or restrict any state or federal agency from pursuing a
22-10 person for any administrative remedy, including an administrative
22-11 penalty. An administrative agency of this state, however, shall
22-12 consider as a mitigating factor any relief recovered in a private
22-13 suit or proceeding when the agency determines an administrative
22-14 remedy.

22-15 Sec. 394.336. VIOLATION OF DECEPTIVE TRADE PRACTICES ACT.
22-16 If an act or practice of a provider violates both this subchapter
22-17 and Chapter 17, Business & Commerce Code, an individual may not
22-18 recover under both for the same act or practice.

22-19 Sec. 394.337. STATUTE OF LIMITATIONS. (a) An action or
22-20 proceeding brought pursuant to Section 394.333(a), (b), or (c),
22-21 must be commenced within four years after the conduct that is the
22-22 basis of the administrator's complaint.

22-23 (b) An action brought under Section 394.335 must be
22-24 commenced within two years after the latest of:

22-25 (1) the individual's last transmission of money to a
22-26 provider;

22-27 (2) the individual's last transmission of money to a
22-28 creditor at the direction of the provider;

22-29 (3) the provider's last disbursement to a creditor of
22-30 the individual;

22-31 (4) the provider's last accounting to the individual
22-32 pursuant to Section 394.327;

22-33 (5) the date on which the individual discovered or
22-34 reasonably should have discovered the facts giving rise to the
22-35 individual's claim; or

22-36 (6) termination of actions or proceedings by the
22-37 administrator with respect to a violation of this subchapter.

22-38 (c) The period prescribed in Subsection (b)(5) is tolled
22-39 during any period in which the provider or, if different, the
22-40 defendant has materially and wilfully misrepresented information
22-41 required by this subchapter to be disclosed to the individual, if
22-42 the information so misrepresented is material to the establishment
22-43 of the liability of the defendant under this subchapter.

22-44 Sec. 394.338. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
22-45 In applying and construing this subchapter, consideration must be
22-46 given to the need to promote uniformity of the law with respect to
22-47 the subject matter of this subchapter among states that have
22-48 enacted a law substantially similar to this subchapter.

22-49 Sec. 394.339. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL
22-50 AND NATIONAL COMMERCE ACT. This subchapter modifies, limits, and
22-51 supersedes the federal Electronic Signatures in Global and National
22-52 Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify,
22-53 limit, or supersede 15 U.S.C. Section 7001(c) or authorize
22-54 electronic delivery of any of the notices described in 15 U.S.C.
22-55 Section 7003(b).

22-56 SECTION 2. Subchapter C, Chapter 394, Finance Code, is
22-57 repealed.

22-58 SECTION 3. A transaction entered into before the effective
22-59 date of this Act and the rights, duties, and interests resulting
22-60 from the transaction may be completed, terminated, or enforced as
22-61 required or permitted by a law amended, repealed, or modified by
22-62 this Act as though the amendment, repeal, or modification had not
22-63 occurred.

22-64 SECTION 4. This Act takes effect January 1, 2010.

22-65 * * * * *