

By: Eltife

S.B. No. 141

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

spouse of any of them; or

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

(B) with respect to an entity, means:

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

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

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

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

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

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

(vii) an individual who has the relationship specified in Paragraph (A)(iv) to an individual 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 or its agent,
6 including a commercial bank, savings bank, savings and loan
7 association, credit union, or trust company, engaged in the
8 business of banking, chartered under federal or state law, and
9 regulated by a federal or 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

contract between the individual and a creditor.

(9) "Day" means calendar day.

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

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

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

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

(i) licensed by this state;

(ii) subject to a disciplinary mechanism;

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

(iv) subject to a continuing education requirement.

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

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

(13) "Person" means an individual, corporation, 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

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

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

(A) established in an insured bank;

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

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

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

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

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

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

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

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

1 (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, title insurance agent, escrow
9 company, or other person that provides bill-paying services if the
10 provision of debt management services is incidental to the
11 bill-paying services or a disbursement, closing, or settlement.

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

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

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

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

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

1 (1) the appropriate fees set by the Finance Commission
2 of Texas in an amount necessary to recover the costs of
3 administering this subchapter;

4 (2) the bond required by Section 394.313;

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

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

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

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

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

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

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

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

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

1 (1) the applicant's name, principal business address
2 and telephone number, and all other business addresses in this
3 state, electronic mail addresses, and Internet website addresses;

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

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

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

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

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

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

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

26 (7) subject to Subsection (b), the applicant's
27 financial statements, reviewed by an independent accountant

1 licensed to practice accounting under Chapter 901, Occupations
2 Code, or licensed in the State of the applicant's principal place of
3 business, for each of the two years immediately preceding the
4 application or, if it has not been in operation for the two years
5 preceding the application, for the period of its existence;

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

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

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

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

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

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

22 (14) at the applicant's expense, the results of a
23 criminal records check, including fingerprints, conducted within
24 the immediately preceding 12 months, covering every officer of the
25 applicant and every employee or agent of the applicant who is
26 authorized to have access to the trust account required by Section
27 394.322;

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

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

6 (A) any affiliate of the applicant; or

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

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

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

21 (19) any other information that the administrator
22 reasonably requires.

23 (b) If the applicant claims nonprofit or tax-exempt status,
24 or if the applicant's business practices involve holding,
25 accessing, or directing the funds of an individual, the applicant's
26 financial statements required by Subsection (a)(7) must be audited
27 by an accountant licensed to practice accounting under Chapter 901,

Occupations Code or licensed in the State of the applicant's principal place of business.

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

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

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

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

(c) The administrator may deny registration if:

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

(2) an officer, director, or owner of the applicant

1 has been convicted of a crime, or suffered a civil judgment,
2 involving dishonesty or the violation of state or federal
3 securities laws;

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

7 (4) the administrator finds that the financial
8 responsibility, experience, character, or general fitness of the
9 applicant or its owners, directors, employees, or agents does not
10 warrant belief that the business will be operated in compliance
11 with this subchapter.

12 (d) The administrator shall deny registration with respect
13 to an applicant that claims nonprofit or tax-exempt status if the
14 applicant's board of directors is not independent of the
15 applicant's employees and agents.

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

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

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

26 Sec. 394.310. CERTIFICATE OF REGISTRATION: TIMING.

27 (a) The administrator shall approve or deny an initial

1 registration as a provider not later than the 60th day after the
2 date on which the completed application, including all required
3 documents and payments, is filed. The administrator shall inform
4 the applicant in writing of the reasons for the denial.

5 (b) If the administrator denies an application for
6 registration as a provider, the applicant may appeal and request a
7 hearing pursuant to Chapter 2001, Government Code. The applicant
8 may appeal and request a hearing on the question of the applicant's
9 qualifications for initial registration as a provider if the
10 administrator has notified the applicant in a record that the
11 initial application has been denied. A request for a hearing may
12 not be made after the 30th day after the date the administrator
13 mails a notice to the applicant stating that the application has
14 been denied and stating the reasons for the denial.

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

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

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

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

23 (2) be accompanied by the fee established by the
24 Finance Commission of Texas and the bond required by Section
25 394.313;

26 (3) subject to Subsection (b-1), contain the matters
27 required for initial registration as a provider by Sections

1 394.306(a)(8) and (9) and a financial statement for the applicant's
2 fiscal year immediately preceding the application;

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

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

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

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

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

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

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

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

1 during that period;

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

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

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

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

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

27 (d-1) If an application is otherwise complete and the

applicant has made a timely effort to obtain the information required by Section 394.306(a)(14) but the information has not been received, the administrator may issue a temporary renewal of registration. The temporary renewal shall expire not later than 180 days after issuance.

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

Sec. 394.312. REGISTRATION IN ANOTHER STATE. If a provider holds a license or certificate of registration in another state authorizing it to provide debt management services, the provider may submit a copy of that license or certificate and the application for it instead of an application in the form prescribed by Sections 394.305 and 394.306 or by Section 394.311. The administrator shall accept the application and the license or certificate from the other state as an application for registration as a provider or for renewal of registration as a provider, as appropriate, in this

1 state if:

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

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

7 (3) the applicant, under oath, certifies that the
8 information contained in the application is current or, to the
9 extent it is not current, supplements the application to make the
10 information current.

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

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

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

22 (b) Subject to adjustment of the dollar amount pursuant to
23 Section 394.332(f), a surety bond filed pursuant to Subsection (a)
24 must:

25 (1) be in the amount of \$50,000 or other larger or
26 smaller amount that the administrator determines is warranted by
27 the financial condition and business experience of the provider,

1 the history of the provider in performing debt management services,
2 the risk to individuals, and any other factor the administrator
3 considers appropriate;

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

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

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

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

21 (1) the administrator assesses expenses under Section
22 394.332(b)(1), issues a final order under Section 394.333(b)(2), or
23 recovers a final judgment under Section 394.333(b)(4) or (5) or
24 394.333(e); or

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

27 (e) If claims against a surety bond exceed or are reasonably

expected to exceed the amount of the bond, the administrator, on the initiative of the administrator or on petition of the surety, shall, unless the proceeds are adequate to pay all costs, judgments, and claims, distribute the proceeds in the following order:

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

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

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

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

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

(1) a certificate of insurance:

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

5 (B) with no deductible, or, if the provider
6 supplies a bond in the amount of \$5,000, a deductible not exceeding
7 \$5,000; or

8 (2) with the approval of the administrator:

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

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

18 (b) If a provider furnishes a substitute pursuant to
19 Subsection (a), Sections 394.313(a), (c), (d), and (e) apply to the
20 substitute.

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

23 Sec. 394.316. CUSTOMER SERVICE. A provider that is
24 required to be registered under this chapter shall maintain a
25 toll-free communication system, staffed at a level that reasonably
26 permits an individual to speak to a certified counselor, certified
27 debt specialist, or customer service representative, as

appropriate, during ordinary business hours.

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

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

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

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

Setup fee _____ (dollar amount of fee)

Monthly service fee _____ (dollar amount of fee or method of determining amount)

Settlement fee _____ (dollar amount of fee or method of determining amount)

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

_____ (item) _____ (dollar amount or method of determining amount)

_____ (item) _____ (dollar amount or method of determining amount).

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

1 or certified debt specialist:

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

4 (2) has prepared a financial analysis; and

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

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

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

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

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

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

22 (2) inform the individual of the availability, at the
23 individual's option, of assistance by a toll-free communication
24 system or in person to discuss the financial analysis and plan
25 required by Subsection (b).

26 (d) Before an individual assents to an agreement, the
27 provider shall inform the individual, in a separate record that the

individual may keep whether or not the individual assents to the agreement:

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

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

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

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

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

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

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

IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

(2) Using a debt management plan may make it harder for you to

1 obtain credit.

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

4 _____

5 Name and business address of provider

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

12 IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

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

18 _____

19 Name and business address of provider

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

24 IMPORTANT INFORMATION FOR YOU TO CONSIDER

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

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

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

3 (B) lead your creditors to increase finance and other
4 charges; and

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

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

9 =====
10 Name and business address of provider

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

12 (a) In this section:

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

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

18 (b) A provider may satisfy the requirements of Section
19 394.317, 394.319, or 394.327 by means of the Internet or other
20 electronic means if the provider obtains a consumer's consent in
21 the manner provided by Section 101(c)(1) of the federal act.

22 (c) The disclosures and materials required by Sections
23 394.317, 394.319, and 394.327 shall be presented in a form that is
24 capable of being accurately reproduced for later reference.

25 (d) With respect to disclosure by means of an Internet
26 website, the disclosure of the information required by Section
27 394.317(d) must appear on one or more screens that:

1 (1) contain no other information; and

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

4 (e) At the time of providing the materials and agreement
5 required by Sections 394.317(c) and (d), 394.319, and 394.327, a
6 provider shall inform the individual that on electronic,
7 telephonic, or written request, it will send the individual a
8 written copy of the materials, and shall comply with a request as
9 provided in Subsection (f).

10 (f) If a provider is requested, before the expiration of 90
11 days after an agreement is completed or terminated, to send a
12 written copy of the materials required by Sections 394.317(c) and
13 (d), or by Section 394.319 or 394.327, the provider shall send them
14 at no charge within three business days after the request is
15 received, but the provider need not comply with a request more than
16 once per calendar month or if it reasonably believes the request is
17 made for purposes of harassment. If a request is made more than 90
18 days after an agreement is completed or terminated, the provider
19 shall send within a reasonable time a written copy of the materials
20 requested.

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

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

27 (2) its principal business address, telephone number,

1 and electronic mail address, if any; and

2 (3) the names of its principal officers.

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

8 (i) If a provider wishes to terminate an agreement with a
9 consumer pursuant to Subsection (h), it shall notify the consumer
10 that it will terminate the agreement unless the consumer, within 30
11 days after receiving the notification, consents to electronic
12 communication in the manner provided in Section 101(c) of the
13 federal act. If the consumer consents, the provider may terminate
14 the agreement only as permitted by Section 394.319(a)(6)(F).

15 Sec. 394.319. FORM AND CONTENTS OF AGREEMENT. (a) An
16 agreement must:

17 (1) be in a record;

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

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

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

24 (5) be delivered to the individual immediately on
25 formation of the agreement; and

26 (6) disclose:

27 (A) the services to be provided;

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

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

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

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

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

17 (iii) each creditor that the provider
18 believes will not participate in the plan and to which the provider
19 will not direct payment;

20 (E) how the provider will comply with its
21 obligations under Section 394.327;

22 (F) that the provider may terminate the agreement
23 for good cause, on return of unexpended money of the individual;

24 (G) that the individual may cancel the agreement
25 as provided in Section 394.320;

26 (H) that the individual may contact the
27 administrator with any questions or complaints regarding the

1 provider; and

2 (I) the address, telephone number, and Internet
3 address or website of the administrator.

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

8 (c) If the administrator supplies the provider with any
9 information required under Subsection (a)(6)(I), the provider may
10 comply with that requirement only by disclosing the information
11 supplied by the administrator.

12 (d) An agreement must provide that:

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

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

20 (B) with respect to an agreement that
21 contemplates that creditors will settle debts for less than the
22 principal amount of debt, the provider will refund 65 percent of any
23 portion of the setup fee that has not been credited against the
24 settlement fee; and

25 (B) all powers of attorney granted by the
26 individual to the provider are revoked and ineffective;

27 (2) the individual authorizes any bank in which the

1 provider or its agent has established a trust account to disclose to
2 the administrator any financial records relating to the trust
3 account; and

4 (3) if a plan provides for regular periodic payments
5 to creditors, the provider will notify the individual within five
6 days after learning of a creditor's decision to reject or withdraw
7 from a plan and that this notice will include:

8 (A) the identity of the creditor; and

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

11 (e) An agreement may confer on a provider a power of
12 attorney to settle the individual's debt for not more than 50
13 percent of the outstanding amount of the debt owed at the time of
14 settlement. An agreement may not confer a power of attorney to
15 settle a debt for more than 50 percent of that amount, but may
16 confer a power of attorney to negotiate with creditors of the
17 individual on behalf of the individual. An agreement must provide
18 that the provider will obtain the assent of the individual after a
19 creditor has assented to a settlement for more than 50 percent of
20 the outstanding amount of the debt owed at the time of settlement.

21 (f) An agreement may not:

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

24 (2) except as permitted by Section 2 of the Federal
25 Arbitration Act, 9 U.S.C. Section 2, contain a provision that
26 modifies or limits otherwise available forums or procedural rights,
27 including the right to trial by jury, that are generally available

1 to the individual under law other than this subchapter;

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

5 (4) contain a provision that:

6 (A) limits or releases the liability of any
7 person for not performing the agreement or for violating this
8 subchapter; or

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

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

15 Sec. 394.320. CANCELLATION OF AGREEMENT; WAIVER. (a) An
16 individual may cancel an agreement before midnight of the third
17 business day after the individual assents to it, unless the
18 agreement does not comply with Section 394.319(b) or Section
19 394.328, in which event the individual may cancel the agreement
20 within 30 days after the individual assents to it. To exercise the
21 right to cancel, the individual must give notice in a record to the
22 provider. Notice by mail is given when mailed.

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

25 Notice of Right to Cancel

26 You may cancel this agreement, without any penalty or obligation,
27 at any time before midnight of the third business day that begins

the day after you agree to it by electronic communication or by signing it.

To cancel this agreement during this period, send an e-mail to _____ [e-mail address of provider] or mail or deliver a signed, dated copy of this notice, or any other written notice to _____ [name of provider] at _____ [address of provider] before midnight on the third business day after you execute the agreement.

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

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

I cancel this agreement,

[Printed name]

[Signature]

[Date]

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

Sec. 394.321. REQUIRED LANGUAGE. Unless the Finance Commission of Texas, by rule, provides otherwise, the disclosures

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

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

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

17 (c) A provider shall:

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

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

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

26 (B) if a plan provides for regular periodic
27 payments to creditors, the disbursement must comply with the due

1 dates established by each creditor; and

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

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

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

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

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

26 (h) If an individual terminates an agreement or it becomes
27 reasonably apparent to a provider that a plan has failed, the

1 provider shall promptly refund to the individual all money paid by
2 or on behalf of the individual which has not been paid to creditors,
3 less fees that are payable to the provider under Section 394.323.

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

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

13 (b) A provider may not impose charges or receive payment for
14 debt management services until the provider and the individual have
15 signed an agreement that complies with Sections 394.319 and
16 394.328.

17 (c) If an individual assents to an agreement, a provider may
18 not impose a fee or other charge for educational or counseling
19 services, or the like, except as otherwise provided in this
20 subsection and Section 394.328(d). The administrator may authorize
21 a provider to charge a fee based on the nature and extent of the
22 educational or counseling services furnished by the provider.

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

26 (1) If an individual assents to a plan that
27 contemplates that creditors will reduce finance charges or fees for

1 late payment, default, or delinquency, the provider may charge:

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

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

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

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

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

17 (C) a fee as permitted in subdivision (f).

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

20 (4) Except as otherwise provided in Section
21 394.328(d), if an individual does not assent to an agreement, a
22 provider may receive for educational and counseling services it
23 provides to the individual a fee not to exceed \$100 or, with the
24 approval of the administrator, a larger amount. The administrator
25 may approve a fee in an amount greater than \$100 if the nature and
26 extent of the educational and counseling services warrant the
27 larger fee.

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

5 (f) Except as otherwise provided in Subsections (c) and (d),
6 if an agreement contemplates that creditors will settle an
7 individual's debts for less than the principal amount of the debt,
8 compensation for services in connection with settling debt may not
9 exceed one of the following applicable settlement fee limits in
10 Subdivision (1), (2), or (3) the terms of which shall be clearly
11 disclosed in the agreement.

12 (1) With respect to agreements in which a flat fee is
13 charged based on the overall amount of included debt and collected
14 in equal payments, the total aggregate amount of fees charged to any
15 individual under this chapter, including fees charged under
16 Subsections (d)(2)(A) and (B), may not exceed 17 percent of the
17 principal amount of debt included in the agreement at the
18 agreement's inception. The flat fee authorized under this
19 subchapter shall be assessed in equal monthly payments over not
20 less than the length of the plan, as estimated at the plan's
21 inception, unless:

22 (A) voluntarily accelerated by the individual in
23 a separate record; and

24 (B) offers of settlement by creditors have been
25 obtained on at least half of the outstanding debt included in the
26 agreement.

27 (2) With respect to agreements in which fees are

1 calculated as a percentage of the amount saved by an individual in
2 addition to fees under Subsections (d)(2)(A) and (B), a settlement
3 fee may not exceed 30 percent of the excess of the outstanding
4 amount of each debt over the amount actually paid to the creditor,
5 as calculated at the time of settlement. Settlement fees
6 authorized under this subsection shall become billable only as
7 debts are settled, and the total aggregate amount of fees charged to
8 any individual under this subchapter, including fees charged under
9 Subsections (d)(2)(A) and (B), may not exceed 20 percent of the
10 principal amount of debt included in the agreement at the
11 agreement's inception.

12 (3) With respect to agreements in which no fees are
13 charged or collected until the time a settlement agreement is
14 reached with a creditor and at least one payment has been made
15 towards such agreement by the individual, a settlement fee must be a
16 reasonable amount, the amount or calculation of which must be
17 disclosed at the time of the inception of the agreement between the
18 provider and the individual per Sec. 394.319. The fee must:

19 (i) bear the same proportional relationship
20 to the total fee for renegotiating, settling, reducing, or altering
21 the terms of the entire debt balance as the individual debt amount
22 bears to the entire debt amount based on the time the debt was
23 enrolled in the service; or

24 (ii) be a percentage of the amount saved as
25 a result of the renegotiation, settlement, reduction, or
26 alteration. The percentage charged cannot change from one
27 individual debt to another.

1 (4) A provider may only impose on or receive from any
2 individual or agreement fees under one of the fee structures listed
3 in Subdivisions (1), (2) and (3).

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

9 (h) The finance commission may establish maximum fair and
10 reasonable fees under this section.

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

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

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

26 (c) If an individual voids an agreement under Subsection
27 (b), the provider does not have a claim against the individual for

breach of contract or for restitution.

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

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

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

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

Sec. 394.327. PERIODIC REPORTS AND RETENTION OF RECORDS.

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

(b):

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

(2) before cancellation or termination of any agreement:

(A) at least once each month; and

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

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

(1) the amount of money received from the individual

1 since the last report;

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

5 (3) the amounts deducted from the amount received from
6 the individual;

7 (4) the amount held in reserve; and

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

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

12 (B) the amount of the debt when the individual
13 assented to the plan;

14 (C) the amount of the debt when the creditor
15 agreed to the settlement; and

16 (D) the calculation of a settlement fee.

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

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

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

26 (2) settle a debt on behalf of an individual for more
27 than 50 percent of the outstanding amount of the debt owed a

creditor unless the individual assents to the settlement after the creditor has assented;

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

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

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

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

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

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

(ii) payment of a fee;

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

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

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

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

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

9 (11) settle a debt or lead an individual to believe
10 that a payment to a creditor is in settlement of a debt to the
11 creditor unless, at the time of settlement, the individual receives
12 a certification by the creditor that the payment is in full
13 settlement of the debt or is part of a payment plan, the terms of
14 which are included in the certification, that on completion will
15 lead to full settlement of the debt;

16 (12) make a representation that:

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

19 (B) payment of a certain amount will permit
20 satisfaction of a certain amount or range of indebtedness; or

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

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

26 (14) represent in its agreements, disclosures
27 required by this subchapter, advertisements, or Internet website

1 that it is:

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

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

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

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

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

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

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

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

21 (B) a postdated check or demand draft;

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

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

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

4 (A) the administrator or the attorney general, on
5 proper demand;

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

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

9 (6) except as otherwise provided in Section
10 394.323(f), provide the individual less than the full benefit of a
11 compromise of a debt arranged by the provider;

12 (7) charge the individual for or provide credit or
13 other insurance, coupons for goods or services, membership in a
14 club, access to computers or the Internet, or any other matter not
15 directly related to debt management services or educational
16 services concerning personal finance, except to the extent such
17 services are expressly authorized by the administrator;

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

21 (9) receive compensation for referring, directing, or
22 negotiating a loan or extension of credit on behalf of the
23 individual.

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

26 (d) A provider may not receive a gift or bonus, premium,
27 reward, or other compensation, directly or indirectly, for

1 advising, arranging, or assisting an individual in connection with
2 obtaining an extension of credit or other service unrelated to debt
3 management services from a lender or service provider, except for
4 educational or counseling services required in connection with a
5 government program or as expressly approved by the administrator.

6 (e) Unless a person supplies goods, services, or facilities
7 generally and supplies them to the provider at a cost not greater
8 than the cost the person generally charges to others, a provider may
9 not purchase goods, services, or facilities from the person if an
10 employee or a person that the provider should reasonably know is an
11 affiliate of the provider:

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

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

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

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

26 (b) If the agreements of a provider contemplate that
27 creditors will settle for less than the full principal amount of

1 debt and the provider advertises debt management services, it shall
2 disclose, in an easily comprehensible manner, the information
3 specified in Sections 394.317(d)(3) and (4).

4 Sec. 394.331. LIABILITY FOR CONDUCT OF OTHER PERSONS. If a
5 provider delegates any of its duties or obligations under an
6 agreement or this subchapter to a third-party agent, including an
7 independent contractor, the provider is liable for the person's
8 conduct which, if done by the provider, would violate the agreement
9 or this subchapter.

10 Sec. 394.332. POWERS OF ADMINISTRATOR. (a) The
11 administrator may receive complaints, act on its own initiative or
12 in response to complaints, take action to obtain voluntary
13 compliance with this subchapter, and seek or provide remedies as
14 provided in this subchapter or Chapter 14.

15 (b) The administrator or the administrator's representative
16 may investigate and examine, in this state or elsewhere, by
17 subpoena or otherwise, the activities, books, accounts, and records
18 of a person that provides or offers to provide debt management
19 services, or a person to whom a provider has delegated its
20 obligations under an agreement or this subchapter, to determine
21 compliance with this subchapter. Information that identifies
22 individuals who have agreements with the provider may not be
23 disclosed to the public. In connection with the investigation, the
24 administrator may:

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

27 (2) require or permit a person to file a statement

1 under oath as to all the facts and circumstances of a matter to be
2 investigated or examined; and

3 (3) seek a court order authorizing seizure from a bank
4 at which the person maintains a trust account required by Section
5 394.322, any or all money, books, records, accounts, and other
6 property of the provider that is in the control of the bank and
7 relates to individuals who reside in this state.

8 (c) The Finance Commission of Texas may adopt rules to
9 implement this subchapter in accordance with Chapter 2001,
10 Government Code.

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

16 (e) The Finance Commission of Texas by rule shall establish
17 reasonable fees to be paid by providers for the expense of
18 administering this subchapter.

19 (f) The administrator shall compute and publish the dollar
20 amounts instead of those specified in Sections 394.302, 394.305,
21 394.309, 394.313, 394.323, 394.333, and 394.335 to reflect
22 inflation, as measured by the United States Bureau of Labor
23 Statistics Consumer Price Index for All Urban Consumers or, if that
24 index is not available, another index adopted by finance commission
25 rule. The administrator shall adopt a base year and adjust the
26 dollar amounts, effective on July 1 of each year, if the change in
27 the index from the base year, as of December 31 of the preceding

year, is at least 10 percent. The dollar amount must be rounded to the nearest \$100, except that the amounts in Section 394.323 must be rounded to the nearest dollar.

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

(h) Information obtained under an examination is confidential.

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

(1) has the powers granted to the administrator under Chapter 14;

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

(A) Chapters 14 and 392; and

(B) Subtitle B, Title 4; and

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

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

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

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

(3) subject to adjustment of the dollar amount

pursuant to Section 394.332(f), imposing against a provider or a person that has caused a violation a civil penalty in an amount not to exceed \$10,000 for each violation;

(4) prosecuting a civil action to:

(A) enforce an order; or

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

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

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

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

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

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

(1) the seriousness of the violation;

(2) the good faith of the violator;

1 (3) any previous violations by the violator;
2 (4) the deleterious effect of the violation on the
3 public; and
4 (5) any other factor the administrator considers
5 relevant to the determination of the penalty.

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

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

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

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

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

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

19 (2) the provider has committed a material violation of
20 this subchapter or a rule or order of the administrator under this
21 subchapter;

22 (3) the provider is insolvent;

23 (4) the provider or an employee or affiliate of the
24 provider has refused to permit the administrator to make an
25 examination authorized by this subchapter, failed to comply with
26 Section 394.332(b)(2) within 15 days after request, or made a
27 material misrepresentation or omission in complying with Section

1 394.332(b)(2); or

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

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

10 (d) If the administrator suspends, revokes, or denies the
11 renewal of the registration of a provider, the administrator may
12 seek a court order authorizing seizure of any or all of the money in
13 a trust account required by Section 394.322, books, records,
14 accounts, and other property of the provider that are located in
15 this state.

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

19 Sec. 394.335. PRIVATE ENFORCEMENT. (a) In addition to the
20 recovery under Subsection (b)(3), if an individual voids an
21 agreement under Section 394.325(a) or (b), the individual may
22 recover in a civil action all money paid or deposited by or on
23 behalf of the individual under the agreement, other than amounts
24 paid to creditors.

25 (b) An individual with respect to whom a provider violates
26 this subchapter or a rule adopted under this subchapter or commits
27 any unfair or deceptive act may recover in a civil action from the

provider and any third party that caused the violation or committed the act or practice, not including a provider's officers, directors, employees, or investors:

(1) actual damages for injury caused by the violation or conduct;

(2) punitive damages not to exceed three times actual damages only upon a finding of unconscionable conduct relating to a violation of this subchapter or a rule adopted under this subchapter; and

(3) reasonable attorney's fees and costs.

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

(d) A provider is not liable under this section for a violation of this subchapter if the provider proves that the violation was not intentional and resulted from a good faith error, notwithstanding the maintenance of reasonable procedures adopted to avoid the error. An error of legal judgment with respect to a provider's obligations under this subchapter is not a good faith error. If, in connection with a violation, the provider has received more money than authorized by an agreement or this subchapter, the defense provided by this subsection is not available unless the provider refunds the excess amount not later than the seventh calendar day after the date of learning of the violation.

1 (e) The administrator shall assist an individual in
2 enforcing a judgment against the surety bond or other security
3 provided under Section 394.313 or 394.314.

4 (f) An administrative penalty or fine under this title or
5 federal law that is assessed by or agreed to with an administrative
6 agency or the attorney general shall be considered and applied as a
7 bar or credit to recovery of further fines, penalties, or enhanced
8 damages for substantially the same act, practice, or violation in a
9 suit or other proceeding brought by a private litigant under this
10 title, the Business & Commerce Code, or other applicable law of this
11 state. This subsection and Subsection (g) do not apply to a claim
12 for restitution for unreimbursed actual damages.

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

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

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

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

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

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

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

9 (4) the provider's last accounting to the individual
10 pursuant to Section 394.327;

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

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

16 (c) The period prescribed in Subsection (b)(5) is tolled
17 during any period in which the provider or, if different, the
18 defendant has materially and willfully misrepresented information
19 required by this subchapter to be disclosed to the individual, if
20 the information so misrepresented is material to the establishment
21 of the liability of the defendant under this subchapter.

22 Sec. 394.338. UNIFORMITY OF APPLICATION AND CONSTRUCTION.
23 In applying and construing this subchapter, consideration must be
24 given to the need to promote uniformity of the law with respect to
25 the subject matter of this subchapter among states that have
26 enacted a law substantially similar to this subchapter.

27 Sec. 394.339. RELATION TO ELECTRONIC SIGNATURES IN GLOBAL

1 AND NATIONAL COMMERCE ACT. This subchapter modifies, limits, and
2 supersedes the federal Electronic Signatures in Global and National
3 Commerce Act (15 U.S.C. Section 7001 et seq.) but does not modify,
4 limit, or supersede 15 U.S.C. Section 7001(c) or authorize
5 electronic delivery of any of the notices described in 15 U.S.C.
6 Section 7003(b).

7 SECTION 2. Subchapter C, Chapter 394, Finance Code, is
8 repealed.

9 SECTION 3. A transaction entered into before the effective
10 date of this Act and the rights, duties, and interests resulting
11 from the transaction may be completed, terminated, or enforced as
12 required or permitted by a law amended, repealed, or modified by
13 this Act as though the amendment, repeal, or modification had not
14 occurred.

15 SECTION 4. This Act takes effect January 1, 2012.